

Income-Tax Officer, Madurai and Another

Vs

M. R. Vidyasagar

Civil Appeals Nos. 545 and 546 Of 1960

(CJI B. P. Sinha, J. L. Kapur, M. Hidayatullah, J. C. Shah, J. R. Mudholkar JJ)

17.01.1962

JUDGMENT

SHAH J. –

These are two appeals with certificates of fitness granted by the High Court of Judicature at Madras against certain order passed in writ Petition under article 226 of the Constitution.

One Ramaswami Iyer - father of respondent - was assessed to income-tax in the status of a Hindu undivided family. Ramaswami Iyer died in 1949 and the respondent, M. R. Vidyasagar, became the manager of family. The family was partner through its manager in a firm styled "The Madura Knitting Company", and the share in the profits of the partnership which was registered under the Indian Income-tax Act was the principal source of its assessable income. Under section 18A of the Indian Income Income-tax Act, the Hindu undivided family was liable to pay advance tax for each of the assessment years 1946-47, 1947-48 and 1948-49. The Income-tax Officer, Madura, issued notices under section 18A (i) of the Indian Income-tax Act for payment of advance tax on the basis of the preceding year's income. It was open to the assessee to submit a revised estimate of his income under section 19A (2) in respect of the year in question and Ramaswami Iyer - who was at the material time the manager - availed himself of the option to

A division bench of the Madras High Court held that the provision imposing liability to pay interest under sub-section (6) of section 18A was not opposed to law and could be enforced against the legal representative of the deceased manager, who was a partner of the assessee firm. The High Court, however, was of the view that as the Income-tax Officer and Inspecting Assistant Commissioner had failed to consider whether, in the circumstances of the case, the reduction of waiver of the interest was justified, it be ordered that the Income- tax Office do decide whether the petitioner had made out a case for the exercise of the discretion vested in the Income-tax Officer to waive or reduce the interest under the powers conferred on him by the 5th proviso of clause (6) of section 18A. Against that order with certificates of fitness these appeals are preferred by the Commissioner of Income-tax.

Section 18A which imposes liability upon the taxpayer to made advance payment of tax was incorporated into the Indian Income-tax Act by Act 11 of 1944. That section enables the Income-tax on or after the 1st day of April in any financial year, by order in writing, to require an assessee to pay to the Central Government in specified installments income as is included in the assessee's total income of the previous year in respect of which he had been assessed. Under sub-section (2), if the assessee who is required to pay tax by an order under sub- section (1) estimates at any time before the last installment is due that the part of his income to which the sub-section applies for the period

which would be the previous year for an assessment for the year next following as less than the income on which he is required to pay tax and accordingly wished to pay tax which is less than the amount he is required to pay, he may send to the Income-tax Officer an estimate of the tax payable by him, and pay tax as accords wi

"Provided further that in such cases and under such circumstance as may be prescribed, the Income-tax Officer may reduce or waive the interest payable by the assessee."

The proviso was given retrospective effect as from April 1, 1952. Thereafter, in exercise of powers conferred by section 59 the Central Board of Revenue added rule 48 to the following effect :

"48. The Income-tax Officer may reduce or waive the interest payable under section 18A in the cases and under the circumstances mentioned below, namely :

(1) Where the relevant assessment is completed more than one year after the submission of the return, the delay in assessment not being attributable to the assessee.

(2) Where a person is under section 43 deemed to be an agent of another person and is assessed upon the latter's income.

(3) Where the assessee has income from an unregistered firm to which the provision of clause (b) of sub-section (5) of section 23 are applied.

(4) Where the 'previous year' is the financial year or any year ending near about the close of the financial year and large profits are made after the 15th of March in circumstances which could not be foreseen.

(5) any case in which the Inspecting Assistant Commissioner considers that the circumstance are such that reduction or waiver of the interest payable under section 18A (6) is justified."

The effect of the incorporation of the 5th proviso in section 18A (6) and of rule 48 was manifestly to authorise the Income-tax Officer in exercise of his discretion to relieve against the rigour of the inflexible rule originally enacted in clause (6) about payment of interest by the assessee when the tax paid by him on his estimate fell below 80% of the tax payable on regular assessment.

The only question which falls to be determined in these appeals is whether the benefit of the fifty proviso to section 18A (6) could be claimed in respect of the assessments of the income of the respondent's family which were completed by the Income-tax Officer before April 1, 1952. The High Court was of the view that even if the assessment by the Income-tax Officer was completed before April 1, 1952, if the final adjustment pursuant to the order of the Appellate Tribunal was made after the date the Income-tax Officer was competent, in exercise his discretion a case the Income-tax Officer having failed to exercise his discretion a case was made out for the issue of a writ under article 226 of the Constitution directing that officer to consider whether in the circumstances of the case relief may be grated to the respondent.

On behalf of the Commissioner of Income-tax it is urged that the power conferred by the fifth proviso may undoubtedly be exercised in those cases where assessment is completed on or after

April 1, 1952, but where the assessment was completed and liability to pay interest had crystallized under sub-section (6) as it originally stood, the Income- tax Officer has no power under the amended sub-section to reduce or waive the interest ordered to be paid by the assessee even if the proceedings in assessment are pending in appeal before the Appellate Assistant Commissioner or the Appellate Tribunal. It was urged that the interest under section 18A (6) is payable up to the date of the regular assessment and if in the contingencies prescribed by section 18A (6), as originally enacted, liability to pay interest crystallized, the Income-tax Officer could not, in exercise of a power invested by the amending Act reopen the order, because the Legislature had given to the amending statute only a partial retroactive operatio

In the present case, the original assessments made by the Income-tax orders passed by the Appellate Tribunal in the assessment of the Madura Knitting Co. The order of the Appellate Tribunal was passed on April 12, 1953, i.e., after the date on which Act 25 of 1953 came into operation. After that date the Income-tax Officer was bound to give effect to the orders of the Appellate Tribunal and to adjust liability in computing the assessable income and the tax payable thereon. The Income-tax Officer being bound to adjust liability to pay interest under clause (6) of section 18A, we see no reason why in adjusting that liability he may not exercise the powers with which he has been invested since April, 1952, if the circumstances of the case warrant such exercise.

In our view the High Court was right in holding that the Income-tax Officer had the power in the case of the assessments in question to exercise the authority conferred by the fifth proviso to section 18A (6) and he having failed to exercise the discretion, a writ requiring him to consider whether a case is made out for the exercise of his discretion was properly issued.

These appeals therefore fail and are dismissed.

Appeals dismissed.

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