

Commissioner of Income-Tax, U.P.

Vs

Kanpur Coal Syndicate

Civil Appeal No. 673 of 1963

(K. Subha, J. C. Shah, S. M. Sikri JJ)

30.04.1964

JUDGMENT

SUBBA RAO J. -

The question for decision in this appeal is whether when the Income-tax Officer in his discretion assessed an association of persons to income-tax, the Appellate Assistant Commissioner in appeal or the Income-tax Appellate Tribunal in further appeal can set aside that order and direct him to assess the members of that association individually.

The facts lie in a small compass and they are as follows : The assessee consisted of several persons combined together for the purpose of purchasing coal in order to supply the same to customers for domestic purposes and other small scale industries. For the assessment year 1948-49 the Income-tax Officer levied tax upon the total income in the hands of the said association of persons. The assessee claimed that in the circumstances of the case it should not be assessed to tax as an association of person, but the proportion of the income in the hands of each of the members of the association might be assessed to tax instead. As the Income-tax Officer did not comply with this request, the assessee preferred an appeal to the Appellate Assistant Commissioner, but it was dismissed. On a further appeal to the Income-tax Appellate Tribunal, the Tribunal held that though the Income-tax Officer had the power to assess the income of the association of persons as such or in the alternative on the individual members ther

"If in pursuance of section 3 of the Indian Income-tax Act the Income- tax Officer levies the income-tax in respect of the total income of the previous year of an association of person upon the said association of persons as a collective unit, whether the Tribunal is competent to direct the Income-tax Officer to levy the income-tax proportionately upon the individual members of the said association of persons in respect of the proportionate income of each of the members constituting the said association of persons".

A Division Bench of the High Court held that the Appellate Tribunal had power to set aside the Income-tax Officer's assessment against the association and to give consequential and ancillary direction to the said officer to assess the individuals.

Learned counsel for the revenue contends that under the Indian Income- tax Act, 1922, hereinafter called the Act, the Income-tax Officer has no option but to assess the total income of the association of members, though the individual's share in the income may be added to his individual income for the purpose of ascertaining his total income. He further argues that even if the Income-tax Officer

has the option to assess to income-tax the association of persons on its total income or the individual members thereof in respect of their proportionate share of the income, if he had exercised the option in one way or the other neither the Appellate Assistant Commissioner in appeal nor the Income-tax Appellate Tribunal in further appeal has power to direct the Income-tax Officer to exercise his discretion in a different way; and for this conclusion he seeks to draw strength from his further submission that no appeal lies at the instance of the association of persons when they are assessed as one unit on the ground t

At the outset it will be convenient to read the relevant provisions of the Act.

"3. Charge of income-tax. - Where any Central Act enacts that income- tax shall be charged for any year at any rate or rates, tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of the total income of the previous year of every individual, Hindu undivided family, company of and local authority, and of every firm and other association of persons or the partners of the firm or the members of the association individually.

14. (2) The tax shall not be payable by an assessee - . . . . .

(b) if a member of an association of person other than a Hindu undivided family, a company or a firm, in respect of any portion of the amount which he is entitled to received from the association on which the tax has already been paid by the association.

30. (1) Any assessee objecting to the amount of income assessed under section 23. . . or the amount of tax determined under section 23. . . or denying his liability to the assessed under this Act. . . may appeal to the Appellate Assistant Commissioner against the assessment or against such refusal or order.

31. (3) In disposing of an appeal the Appellate Assistant Commissioner may, in the case of an order of assessment, -

(a) confirm, reduce, enhance or annul the assessment, or

(b) set aside the assessment and direct the Income-tax Officer to make a fresh assessment after making such further inquiry as the Income-tax Officer thinks fit or the Appellate Assistant Commissioner may direct, and the Income-tax Officer shall thereupon proceed to make such fresh assessment and determine where necessary the amount of tax payable on the basis of such fresh assessment. . . . .

(4) Where as the result of an appeal any change is made in the assessment of a firm or association of persons or a new assessment of a firm or association of persons is ordered to be made, the Appellate Assistant Commissioner may authorise the Income-tax Officer to amend accordingly any assessment made on any partner of the firm or any member of the association".

Section 3 imposes a tax upon a person in respect of his total income. The person on whom such tax can be imposed are particularized therein, namely, Hindu undivided family, company, local authority, firm, association of person, partners of firm or members of association individually. The section, therefore, does not in terms confer any power on any particular officer to assess one of the

persons described therein, but is only a charging section imposing the levy of tax on the total income of an assessable entity described therein. The section expressly treats an association of persons and the individual members of an association as two distinct and different assessable entities. On the terms of the section the tax can be levied on either of the said two entities according to the provisions of the Act. There is no scope for the argument that under section 3 the assessment shall be only on the association of persons as a unit though after such assessment the share of the income of a member of that association

The next question is whether the said option is given only to the Income-tax Officer and is denied to the Appellate Assistant Commissioner and the Appellate Tribunal. Under the Act the Income-tax Officer, after following the procedure prescribed, makes the assessment under section 23 of the Act. Doubtless in making the assessment at the first instance he has to exercise the option whether he should assess the association of persons or the members thereof individually. It is not because that any section of the Act confers an exclusive power on him to do so, but because it is part of the process of assessment; that is to say, he has to ascertain who is the person liable to be assessed for the tax. If he seeks to assess an association of persons an assessable entity, the said entity can object to the assessment, inter alia, on the ground that in the circumstances of the case the assessment should be made on the members of the association individually. The Income-tax Officer may reject its contention and may ass

We, therefore, hold, agreeing with the High Court, that the Appellate Tribunal has jurisdiction to give directions to the appropriate authority to cancel the assessment made on the association of persons and to give appropriate directions to the authority concerned to make a fresh assessment on the members of that association individually. The answer given by the High Court to the question propounded is correct.

In the result, the appeal fail and is dismissed with costs.

Appeal dismissed.

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