

Esthuri Aswathiah

Vs

Commissioner of Income-Tax, Mysore

Civil Appeal No. 402 of 1965

(K. Subha Rao, M. Hidayatullah, R. S. Bachawat JJ)

18.01.1966

JUDGMENT

BACHAWAT, J. -

The appeal raises a question of interpretation of the proviso to cl. (i)(a) of s. 2(11) of the Indian Income-tax Act, 1922. Up to the assessment year 1951-52, the appellant adopted the year ending on June 30 as the "previous year" applicable to him. The assessment for the assessment year, 1951-52 was accordingly made in respect of the previous year ended on June 30, 1950. For the assessment year, 1952-53, the assessee filed a return for 21 months commencing on July 1, 1950 and ending on March 31, 1952, and requested the Income-tax Officer to accord his sanction to the change of the previous year from an year ending on June 30 to an year ending on March 31. The Income-tax Officer duly sectioned the change. In the assessment order for the year, 1952-53 he stated :

"The return of income filed for this year is for the period between 1-7-50 and 31-3-52. The permission to change the previous year is granted subject to the condition that the total income in the period of 21 months ending 31-3-52 will be assessed to tax at the rate applicable to the total income in the said 21 months."

The appellant was apparently happy with this order, and he made no protest before the Income-tax Officer. The assessment for the assessment year 1952-53 was accordingly made in respect of the income of the previous year consisting of 21 months commencing from July 1, 1950 and ending on March 31, 1952. In his appeals before the Appellate Assistant Commissioner and the Income tax Appellate Tribunal, the appellant, however, contended that the total income of 21 months should be assessed at the rate applicable to the proportionate income for a period of 12 months. Both the authorities concurrently rejected this contention. On the application of the assessee, the Tribunal referred the following two questions of law for the decision of the High Court of Mysore :

"(1) Within the meaning of Sec. 2(11)(a) of the Income-tax Act, whether the Income-tax Officer is entitled to have the length of the 'previous year' as 21 months though the assessee itself applies for such a change ?

(2) When the length of the assessee's previous year is allowed to be 21 months, whether it is obligatory on the part of the Income-tax Officer to tax the income for the said period of 21 months at the rate applicable to the proportionate income for a period of 12 months ?"

At the hearing of the reference, the second question of law was not pressed. The first of law was

pressed, and it was contended that according to the scheme of the Indian-tax Act, there cannot be a previous year consisting of more than 12 months, and the Income-tax Officer was not competent to constitute a previous year consisting of 21 months under the proviso to cl. (i)(a) to s. 2(11). The High Court rejected this contention and answered the questions in favour of the Revenue and against the assessee. The assessee now appeals to this Court on a certificate granted by the High Court under s. 66A(2) of the Indian Income-tax Act, 1922.

Mr. Srinivasan repeated before us the contentions which he urged before the High Court. He submitted that the scheme of the Act and particularly ss. 2(11) and 3 show that there cannot be a previous year consisting of more than 12 months, and the Income-tax Officer had no power to direct under the proviso to cl. (i)(a) of s. 2(11) that the previous year should consist of 21 months. We are unable to accept this contention.

Section 3 is the charging section. For any assessment year, income-tax is charged on the income of the previous year. Section 3 does not define the length of the previous year. The "previous year" is defined in s. 2(11). The main part of cl. (i)(a) of s. 2(11) reads :

"(11) 'previous year' means -

(i) in respect of any separate source of income, profits and gains -

(a) the twelve months ending on the 31st day of March next preceding the year for which the assessment is to be made, or, if the accounts of the assessee have been made up to a date within the said twelve months in respect of a year ending on any date other than the said 31st day of March, then at the option of the assessee, the year ending on the date to which his accounts have been so made up."

The main part of cl. (i)(a) of s. 2(11) gives the primary meaning of the expression "previous year", and this meaning was elucidated by Mahajan, J. in *Commissioner of Income-tax, Madras v. K. Srinivasan and K. Gopalan* ((1963) S.C.R. 486, 501) thus :

"The expression 'previous year' substantially means an accounting period comprised of a full period of twelve months and usually corresponding to a financial year preceding the financial year of assessment. It also means an accounting year comprised of a full period of twelve months adopted by the assessee for maintaining his accounts but different from the financial year and preceding a financial year."

Thus, under the main part of cl. (i)(a) of s. 2(11), the previous year is either a period of 12 months ending on March 31 next preceding the assessment year or at the option of the assessee the year ending on some other date within the aforesaid period of 12 months, if the accounts of the assessee have been made up to such date. The proviso to sub-cl. (i)(a) reads :

"Provided that where in respect of a particular source of income, profits and gains an assessee has once been assessed, or where in respect of a business, profession or vocation newly set up an assessee has exercised the option under sub-clause (e), he shall not, in respect of that source or, as the case may be, business, profession or vocation, exercise the option given by this sub-clause so as to vary the meaning of the expression 'previous year' as then applicable to him except with the consent of the Income-tax Officer and upon such conditions as the Income-tax Officer may think fit to impose."

Sub-clause (i)(b) of s. 2(11) empowers the Central Board of Revenue or its nominee to determine the period of the previous year in respect of any person, business or company or class of person, business or company. Sub-clause (i)(c) defines the previous year in respect of a newly set up business, profession or vocation. Sub-clause (ii) defines the previous year in respect of the share of the assessee's income in a firm.

A combined reading of the several clauses of s. 2(11) shows that the length of a previous year need not necessarily be 12 Calendar months. Under s. 2(11)(i)(b), the previous year is such period as may be determined by Central Board of Revenue or such authority as the Board may authorise in this behalf, and the period so determined may be more or less than 12 months. Under s. 2(11)(i)(c), the period of the previous year in respect of a newly set up business, profession or vocation may be less than 12 months. In this background, let us consider the meaning of s. 2(11)(i)(a). The assessee has the option to choose his accounting year ending on any date within the preceding financial year as his previous year. Once he exercises this option, the meaning of the expression "previous year" as applicable to him is determined, and he cannot exercise this option again "so as to vary the meaning of the expression 'previous year' as then applicable to him except with the consent of the Income-tax Officer and upon such conditions as the Income-tax Officer may think fit to impose." If the assessee wants to change the meaning of the previous year as then applicable to him, he must obtain the consent of the Income-tax Officer, and the Income-tax Officer may accord such consent on proper terms. The Income-tax Officer may refuse to give his consent, but if he does give his consent, he has ample power to impose the condition that the full period from the end of the "previous year" for the preceding year's assessment to the end of the new accounting year should be taken as the previous year for the current assessment year. Thus, if the previous year at any given time applicable to the assessee ends on June 30 and he wants to vary it so as to make it end on March 31 next, the Income-tax Officer has power to accord sanction to the change on the condition that the previous year would consist of the entire period of 21 months commencing on June 30 of the year up to which his accounts were last made up to March 31 of the year up which his accounts are newly made up. The condition properly safeguards the interest of the Revenue. Had he sanctioned the change on the footing that the previous year of the assessee in relation to the current assessment year would be the period of 12 months from April 1 to March 31, the income of the preceding 9 months from July 1 to March 31 would have escaped taxation altogether.

Mr. Srinivasan submitted that the Income-tax Officer could grant the sanction on condition that the assessee should have two previous years, one consisting of a period of nine months from July 1 up to March 31 and the other of a period of 12 months from April 1 to the next succeeding March 31. This is an impossible contention. There cannot be two previous year in respect of the same assessment year. The charge under s. 3 for any assessment year is in respect of the income of the previous year. The concept of two previous years in relation to the same assessment year is repugnant to s. 3. In *Dhandhaniah Kedia & Co. v. Commissioner of Income-tax* (1958) 35 I.T.R. 400, 404.), this Court pointed out that it is a contradiction in terms to speak of six previous year in relation to any specified assessment year. Mr. Srinivasan is not right in submitting that s. 25(1) contemplates two previous years. Section 25(1) provides that in case of discontinuance of any business, profession or vocation in any assessment year, the Income-tax Officer may in that year make an accelerated assessment in respect of the income of the period between the end of the previous year and the date of discontinuance; it does not contemplate, as counsel submitted, assessments in the same assessment year in respect of two previous years.

Mr. Srinivasan alternatively submitted that the Income-tax Officer could accord sanction to the change on the basis that the income for 21 months should be assessed at the rate applicable to the

income of the last period of 12 months. This again is an impossible contention. The Income-tax Officer has no power to vary the rate on which the income of the previous year is to be assessed. The rate of tax is fixed by the Finance Act every year. By s. 3, the tax is levied at that rate for an assessment year in respect of the income of the previous year. Once the length of the previous year is fixed and the income of true previous year is determined, that income must be charged at the rate specified in the Finance Act and at no other rate. The order of the Income-tax Officer, in substance, permitted the change of the previous year on condition that the previous year in relation to the assessment year, 1952-53, would consist of the period of 21 months commencing from July 1, 1950 and ending on March 31, 1952. The Income-tax Officer has power to impose this condition. The further condition that the income of the previous year of 21 months would be assessed at the rate applicable to the income for 21 months is redundant. Once the length of the previous year is found to be a period of 21 months, the income of the entire period of 21 months must be considered to be the income of the previous year relevant for the assessment year, 1952-53, and the entire income must be assessed at the rate specified in the relevant Finance Act.

The appeal is dismissed with costs.

Appeal dismissed.

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