Income-Tax Officer, District Ii (Ii), Kanpur and Others

Vs

Mani Ram and Others ([1968] 69 I. T. R. (Sh. N.) 44

Civil Appeals Nos. 314 to 322 of 1966

(A. N. Grover, J. C. Shah, V. Ramaswami – I JJ)

20.08.1968

JUDGMENT

RAMASWAMI J. -

In these appeals, which have been heard together, a common question of law arises for determination, that is, whether the expression "any person who has not hitherto been assessed" in section 18A (3) of the Income-tax Act, 1922 (hereinafter called "the Act"), after the Income-tax (Amendment) Act, 1949 (67 of 1949), should be interpreted so as to include a person who has only been provisionally assessed under section 23B of that Act.

The respondents in these appeals are four persons - Mani Ram, Jagmohan, Kishandas, Bhagirathmal - partners of Shri Kishan Das Dhankutti, Kanpur. They were members of a joint Hindu family carrying on business until they came divided in the middle of assessment year 1953-54. Thereafter, they were carrying on the business in partnership. For the year 1953-54, the firm submitted a return showing loss. But in the next succeeding year 1954-55 it disclosed a profit and submitted a return. All the four partners filed returns individually on September 27, 1954, and they were provisionally assessed on their returns on October 14, 1954. But the regular assessment was made for this year only on February 27, 1958. The firm continued to make profits in the subsequent years 1955-56, 1956-57, 1957-58 and 1958-59 and the partners filed returns for their income for each of these years and were regularly assessed for these years under section 23 some time after February 27, 1958. The assessment order for 1958-59 was in fact ma

It is necessary at this stage to set out the provisions of sections 18A, 23 and 23B of the Income-tax Act, 1922, as they stood at the material time :

> "18A. (1) (a) In the case of income in respect of which provision is not made under section 18 for deduction of income-tax at the time of payment, the income-tax Officer may, on or after the 1st day of April in any financial year, by order in writing, require an assessee to pay quarterly to the credit of the Central Government on the 15th day of June, 15th day of September, 15th day of December and 15th day of March in that year, respectively, an amount equal to one-quarter of the income-tax and super-tax payable on so much of income as is included in his total income of the latest previous year in respect of which he has been assessed, if that total income exceeded the maximum amount not chargeable to tax in his case by two thousand five hundred rupees. Such income-tax and super-tax shall be calculated at the rates in force for the financial year in which he is required to pay the tax, and shall bear to the total amount of income-tax and super-tax so calculated on the said total income

the same proportion a

(3) Any person who has not hitherto been assessed shall, before the 15th day of March in each financial year, if his total income of the period which would be the previous year for an assessment for the financial year next following is likely to exceed the maximum amount not chargeable to tax in his case by two thousand five hundred rupees, send to the Income-tax Officer an estimate of the tax payable by him on that part of his income to which the provisions of section 18 do not apply of the said previous year calculated in the manner laid down in sub-section (1), and shall pay the amount on such of the dates specified in that sub-section as have not expired, by installments which may be revised according to the proviso to sub-section (2) ...

(6) Where in any year an assessee has paid tax under sub-section (2) or sub-section (3) on the basis of his own estimate, and the tax so paid is less that eighty per cent. of the tax determined on the basis of the regular assessment, so far as such tax relates to income to which the provisions of section 18 do not apply and so far as it is not due to variations in the rates of tax made by the Finance Act enacted for the year for which the regular assessment is made, simple interest at the rate of six per cent per annum from the first day of January in the financial year in which the tax was paid up to the date of the said regular assessment shall be payable by the assessee upon the amount by which the tax so paid falls short of the said eighty per cent...

(8) Where, on making the regular assessment, the Income-tax Officer finds that no payment of tax has been made in accordance with the fore-going provisions of this section, interest calculated in the manner laid down in sub-section (6) shall be added to the tax as determined on the basis of the regular assessment.

(9) If the Income-tax Officer, in the course of any proceedings in connection with the regular assessment is satisfied that any assessee -

(a) has furnished under sub-section (2) or sub-section (3) estimates of the tax payable by him which he knew or had reason to believe to be untrue, or

(b) has without reasonable cause failed to comply with the provisions of sub-section (3),

the assessee shall be deemed, in the case referred to in clause (a), to have deliberately furnished inaccurate particulars of his income, and in the case referred to in clause (b), to have failed to furnish the return of his total income; and the provisions of section 28, so far as may be, shall apply accordingly.

23. (1) If the Income-tax Officer is satisfied without requiring the presence of the assessee or the production by him of any evidence that a return made under section 22 is correct and complete, he shall assess the total income of the assessee, and shall determine the sum payable by him on the basis of such return.

(2) If the Income-tax Officer is not satisfied without requiring the presence of the persons who made the return or the production of evidence that a return made under section 22 is correct and complete, he shall serve on such person a notice requiring him, on a date to be therein specified, either to attend at the Income-tax Officer's

office or to produce, or to cause to be there produced, any evidence on which such person may rely in support of the return.

(3) On the day specified in the notice issued under sub-section (2), or as soon afterwards as may be, the Income-tax Officer, after hearing such evidence as such persons may produce and such other evidence as the Income-tax Officer may require, on specified points, shall, by an order in writing, assess the total income of the assessee, and determine the sum payable by him on the basis of such assessment.

(4) If any person fails to make the return required by any notice given under sub-section (2) of section 22 and has not made a return or a revised return under sub-section (3) of the same section or fails to comply with all the terms of a notice issued under sub-section (3) of the same section or fails to comply with all the terms of a notice issued under sub-section (4) of the same section or, having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of this section, the Income-tax Officer shall make the assessment to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment and, in the case of a firm, may refuse to register it to or may cancel its registration if it is already registered.

23B. (1) The Income-tax Officer may, at any time after the receipt of a return made under section 22, proceed to make in a summary manner, a provisional assessment of the tax payable by the assessee, on the basis of his return and the accounts and documents, if any, accompanying it, after giving due effect to (i) the allowance referred to in paragraph (b) of the proviso to clause (vi) of Sub-section (2) of section 10, and (ii) any loss carried forward under sub-section (2) of section 24.

(2) A partner of a firm may be provisionally assessed under sub- section (1) in respect of his share in the firm's income, profits and gains, if its return has been received, although the return of the partner himself may not have been received.

(3) A firm may be provisionally assessed under sub-section (1) as if it were an unregistered firm, unless the firm fulfills such conditions as the Central Government May, by notification in the official Gazette, specify in that behalf.

(4) There shall be no right of appeal against a provisional assessment made under sub-section (1).

(5) For the avoidance of doubt, it is hereby declared that the provisions of section 45 (except the first proviso) and section 46 apply in relation to any tax payable in pursuance of a provisional assessment made under sub-section (1) as if it were a regular assessment made under section 23.

(6) Income-tax paid or deemed to have been paid under section 18 or section 18A in respect of any income provisionally assessed under sub- section (1), shall be deemed to have been paid towards the provisional assessment.

(7) After a regular assessment has been made under section 23, any amount paid or deemed to have been paid towards a provisional assessment made under sub-section (1), shall be deeded to have been paid towards the regular assessment; and where the

> amount paid or deemed to have been paid towards the provisional assessment, exceeds the amount payable under the regular assessment, the excess shall be refunded to the assessee.
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> (8) Nothing done or suffered by reason or in consequence of any provisional assessment made under this section shall prejudice the determination on the merits of any issue which may arise in the course of the regular assessment under section 23."

It was argued on behalf of the appellants that a mere provisional assessment under section 23B of the Act will not satisfy the requirements of section 18A(1) of the Act because the language of section 18A(1) shows that the provisions of the sub-section only apply when the amount of tax to be deposited in advance is determined on the basis of the assessee's total income of the previous year to which he has been assessed. It was contended that in the case of a provisional assessment under section 23B of the Act, there is no computation of the total income of the previous year and that under section 23B of the Act all that is done is to determine provisionally the income-tax payable on the basis of the return filed without properly going through the process of assessing the total taxable income. It is not possible to accept this argument because, even when the tax is provisionally assessed, there necessarily has to be a determination of the total income of the assessee. The only difference is that under section

The argument was next stressed that section 18A(11) was introduced into the Act when section 23B did not exist at all and, consequently, no inference should be drawn that the word "assessed" used in section 18A(1) was meant to cover a provisional assessment under section 23B of the Act also. In other words, the argument of the appellants was that when the word "assessed" was used in section 18A(1) of the Act, Parliament could not have contemplated that this word would cover a case of provisional assessment as no section relating to provisional assessment existed in the Act at that time. We are unable to accept this argument as correct. It should be noticed that Parliament introduced certain amendments in section 18A of the Act consequential to be introduction of section 23B of the Act. There is a reference to the provisional assessment made under section 23B in sub-section (5) of section 18A, but Parliament took no step to restrict the meaning of the word "assessed" in section 18A(3) so as to exclude a refer

It is important to notice that in section 18A(1) the expression "assessed" is used without any qualification or restriction as to whether the assessment should be a regular assessment or any other type of assessment under the Act. It is also manifest that in section 18A, sub-section (5), the two expressions "provisional assessment" and "regular assessment" are expressly mentioned. The expression "regular assessment" is also repeatedly used in section 18A, sub-section (6), (7), (8) and (9). We see, therefore, no warrant for restricting the meaning of the word "assessed" in section 18A(1) so as to include only a "regular assessment" under section 23 of the Act. There is no reason why Parliament did not add the word "regularly" in the sub-section so as to qualify the word "assessed". Since there is no such qualification, the word "assessed" in section 18A(3) should be read in its ordinary sense as including every kind of assessment including a provisional assessment under section 23B of the Act.

In the last place, counsel on behalf of the appellants referred to the language of sections 210 and 212(3) of the Income-tax Act, 1961, which state :

> "210. Order by Income-tax Officer. - (1) Where a person has been previously assessed by way of regular assessment under this Act or under the Indian Income-tax

Act, 1922 (11 of 1922), the Income-tax Officer may, an or after the 1st day of April, in the financial year, by order in writing, require him to pay to the credit of the Central Government advance tax determined in accordance with the provisions of sections 207, 208 and 209.

(2) The notice of the demand issued under section 156 in pursuance of such order shall specify the installments in which the advance tax is payable under section 211.

(3) If, after the making of an order by the Income-tax Officer under this section and before the 15th day of February of the financial year, tax is pad by the assessee under section 140A or a regular assessment or a provisional assessment under section 141 of the assessee or of the registered firm of which he is a partner is made in respect of a previous year later than that referred to in the order of the Income-tax Officer, the Income-tax Officer may make an amended order requiring the assessee to pay in one installment on the specified date, or in equal installments on the specified dates, if more than one, falling after the date of the amended order, the advance tax computed on the basis of the total income on which tax has been paid under section 140A or in respect of which the regular assessment or the provisional assessment aforesaid has been made, as reduced by the amount, if any, paid in accordance with the original order.

212. Estimate by assessee. - (1) .....

(3) Any person who has not previously been assessed by way of regular assessment under this Act or under the Indian Income-tax Act, 1922 (11 of 1922), shall, before the first day of March in each financial year, if his total income exclusive of capital gains of the period which would be the previous year for the immediately following assessment year is likely to exceed the maximum amount not chargeable to income-tax in his case by two thousand five hundred rupees, send to the Income-tax Officer -

(i) an estimate of the total income exclusive of capital gains of the said previous year;

(ii) an estimate of the advance tax payable by him calculated in the manner laid down in section 209;

and shall pay such amount as accords with his estimate, on such of the dates specified in section 211 as have not expired, by installments which may be revised according to sub-section (2)."

The argument was that these sections apply to a case of a regular assessment and the enactment of these sections should be treated as a Parliamentary exposition of section 18A(3) of the earlier Act as referring only to a case of regular assessment. We are unable to accept this argument as correct. There is nothing in the 1961 Act to suggest that Parliament intended to explain the meaning or clear up doubts about the meaning of the word "assessed" in section 18A(3) of the earlier Act. Generally speaking, a subsequent Act of Parliament affords no useful guide to the meaning of another Act which came into existence before the later one was ever framed. Under special circumstances, the law does, however, admit of a subsequent Act to be resorted to for this purpose but the conditions under which the later Act may be resorted to for the interpretation of the earlier Act are strict; both must be laws on the same subject and the part of the earlier Act which it is sought to construe must

be ambiguous and capable of

> "I have looked at the later Acts to which the Attorney-General referred in order to satisfy myself that they do not contain a retrospective declaration as to the meaning of the earlier Act. They clearly do not, and I do not think that it has been contended that they do. At the highest it can be said that they may proceed upon an erroneous assumption that the word 'sold' in section 17(1) (a) of the Income Tax Act, 1945, has a meaning which I hold it has not. This may be so and, if so, it is an excellent example of the proposition to which reference was made in the report of the Committee of the Privy Council in In re MacManaway and again by my noble and learned friend Lord Radcliffe in Inland Revenue Commissioners v. Dowdall, O'Mahoney & Co. Ltd. that the beliefs or assumptions of those who frame Acts of Parliament cannot make the law."

For the reasons expressed above, we hold that the judgment of the High Court dated 25th March, 1963, is right and these appeals must be dismissed with costs. One set of hearing fee.

Appeals dismissed.

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