Jaipur Udyog Ltd. and Another

Vs

Commissioner of Income-Tax, Delhi and Rajasthan, and Another

Civil Appeals Nos. 586 to 588 of 1967

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

24.09.1968

JUDGMENT

SHAH J. -

Jaipur Udyog Ltd., a company registered under the Indian Companies Act, 1913, established in 1953 a cement factory at Sawai Madhopur in the State of Rajasthan. From time to time the company filed its returns under the Income-tax Act, 1922, and after the repeal of that Act under the Act of 1961. The following chart sets out the income or loss returned by the company for the years 1954-55 to 1964- 65 and the income or loss computed for the years by the Income-tax Officer on assessment :

#Year of Income or loss returned Income or losscomputedassessment. by the company. by the Income-taxOfficer.1954-55 61,24,270 (Loss) 22,53,457 (Loss)1955-56 4,59,963 (Profit) 19,84,447(Profit)1956-57 12,92,958 (Profit) 16,88,480(Profit)1957-58 23,05,305 (Loss) 12,53,222 (Loss)1958-59 40,44,779 (Loss) 31,48,707 (Loss)1959-60 28,77,487 (Loss) 20,62,180 (Loss)1960-61 11,35,365 (Loss) Assessmentpending.1961-62 66,086 (Loss) "1962-63 44,93,236 (Profit) "1963-64 74,52,402 (Profit) "1964-65 59,89,757 (Profit) "##

Against the orders of assessment made by the Income-tax Officer for the years 1954-55 to 1959-60 determining its net income or loss as set out in the chart the company appealed to the Appellate Assistant Commissioner, and the appeals were pending at the dates of commencement of the petitions in the High Court of Rajasthan which give rise to the proceedings in this court. Assessments for the years 1960-61, 1961-62, 1962-63, 1963-64 and 1964-65 were, however, then not completed. In its return of income for the assessment year 1963-64 the company claimed to set off against the income returned Rs. 1,03,03,935 being the aggregate amount of loss which it claimed it had suffered in the previous years and was entitled to set off against the income of that year. The Income-tax Officer made a provision assessment of the tax under section 141 of the Income-tax Act, 1961, and against the income returned by the company he allowed deduction of Rs. 39,89,731 as loss carried forward from the earlier years, and made a demand

For the assessment year 1964-65 the company returned a net income of Rs. 59,89,757 as profit, and claimed to set off against that amount Rs. 36,01,735 as loss of the previous years and paid Rs. 12,13,596.65 as tax due by it in accordance with section 140A(1) of the Act. But the Income-tax Officer made a provisional assessment and computed the tax on the total income of Rs. 59,89,757 returned by the company without allowing any deduction claimed and ordered the company to pay an additional amount of Rs. 17,32,768.60. Against that order the company moved petition No. 26 of

1965 for an order quashing the demand of tax and for an injunction restraining the Income-tax Officer, from enforcing the demand.

For the assessment year 1965-66 the Income-tax Officer, relying upon section 210(3) of the Act, called upon the company to pay Rs. 29,45,365.25 as advance tax. The company moved petition No. 67 of 1965 in the High Court of Rajasthan for an order quashing the demand.

The High Court rejected the three petitions. Against the orders passed by the High Court, these three appeals have been preferred by the company.

Section 141 of the Income-tax Act, 1961, authorises the Income-tax Officer to make a provisional assessment of the income of the assessee on the basis of the return made under section 139 and the accounts and documents, if any, accompanying the return. The assessment so made is summary and is based only on the return and the accounts and documents filed by the assessee. The Income-tax Officer is not bound to make any enquiry before making a provisional assessment; he is not bound even to give to the assessee any notice of his intention to make a provisional assessment, not to hear the assessee. He may, if he desires, call upon the assessee to elucidate the return or the entries posted in the accounts and documents, but he is not obliged to do so. Section 141 has been enacted with the object of expenditure collection of tax on the basis of the return made by the assessee. The Act contains several provisions for collection of tax before regular assessment, e.g., payment of advance tax, deduction of tax at sour

The company claimed that it was entitled to deduct the aggregate of losses which it had suffered since the year 1954-55 year after year from the profits of the year 1963-64. It is true that the loss returned by the company year after year was in excess of the amount of loss determined by the Income-tax Officer. But in respect of the orders of assessment appeals were pending. Counsel for the revenue concedes that assessment under section 141 being provisional, the Income-tax Officer cannot make an enquiry into disputed questions of fact or law, but he submits, relying upon sub-section (2) of section 141, that the assessee cannot claim, and the Income-tax Officer cannot, allow, loss in respect of previous years in excess of the loss certified by the Income-tax Officer. That he says is the effect of sections 72 and 80 of the Income-tax Act, 1961. Section 72 provides :

> "(1) Where for any assessment year, the net result of the computation under the head 'Profits and gains of business or profession' is a loss to the assessee,..... and such loss cannot be or is not wholly set off against income under any head of income in accordance with the provisions of section 71, so much of the loss as has not been so set off or,..... or where he has no income under any other head, the whole loss shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year, and -
>
> (i) it shall be set off against the profits and gains, if any, of any business or profession carried on by him and assessable for that assessment year :
>
> Provided that the business or profession for which the loss was originally computed continued to be carried on by him in the previous year relevant for that assessment year; and
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> (ii) if the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on.....

> (3) No loss shall be carried forward under this section for more than eight assessment years immediately succeeding the assessment year for which the loss was first computed."

Section 80 of the Act provides :

> "Notwithstanding anything contained in this Chapter, no loss which has not been determined in pursuance of a return filed under section 139, shall be carried forward and set off under sub-section (1) of section 72 or....."

Under section 72(1) read with section 80 loss of a previous year under the head of income from profits and gains of business, profession or vocation may be carried forward to the next succeeding year only if it is has been determined in pursuance of a return filed under section 139. If it is not so determined in the assessment of the subsequent year the loss cannot be carried forward and set off against the profit of the subsequent year of years. By sub-section (2) of section 141 the Income-tax Officer is enjoyed to give effect to the loss so certified and carried forward. But it does not follow therefrom that when the assessee claims that out of the income of the year returned by him certain amounts are liable to be deducted in computing the taxable total income, the Income-tax Officer may adjudicate upon the validity of the claim in making a provisional assessment. In our judgment, if it be granted that the Income-tax Officer has jurisdiction to hold an enquiry into disputed matters, the expression "provis

The High Court was of the view that the basic scheme of the Act is that tax is to be charged at the rate or rates prescribed for the year on the total income of the assessee and in accordance with the provisions of the Act, and that this basic scheme applied alike to a provisional assessment as to a regular assessment. Consequently, in construing the provisions of section 141 of the Act, assessment of tax must also be made in accordance with and subject to the provisions of the Act, i.e., in making a provisional assessment, the "necessary facts" about the income of the assessee must be taken by the Income- tax Officer from the return and the documents accompanying it and he should not travel beyond, but, in making the provisional assessment he cannot ignore the other statutory provisions : he must apply the law correctly to the admitted facts as per return. The High Court proceeded to observe :

> "The combined effect of the two sections, namely, sections 72 and 80 of the Act, is that a business loss can be carried forward to the subsequent assessment years only when it has been determined in pursuance of a return filed under section 139 of the Act."

The claim of the company that it was entitled to the benefit of carry forward of losses of previous years, merely because it had shown such losses in the returns, could not, in the view of the High Court, be accepted : to give effect to the claim of the company, in the view of the High Court, will be to ignore the provisions of section 80 which apply both to a regular assessment and a provisional assessment under section 141.

We are unable to accept the opinion of the High Court. If it be assumed that provisional assessment has to be made in accordance with and subject to the provisions of the Act, distinction between a provisional assessment and a regular assessment gets completely blurred. The scheme of section 141 is to call upon the assessee to pay tax provisionally at the appropriate rate on what he admits is his taxable income, subject to the benefit of the allowances under sub- section (2). The section does not

permit an enquiry to be made whether the total income returned by the assessee exceeds the amount admitted by him, nor whether the allowances or deductions claimed are admissible. If there be a discrepancy between the return made and the accounts and documents accompanying the return, the Income-tax Officer may ask the assessee to explain the discrepancy, but he must make a provisional assessment on the basis of the return initially made or clarified and the accounts and documents filed. He cannot make a provisional

For the same reasons in making the provisional assessment for the year 1964-65 the Income-tax Officer was not entitled to ignore the claim made by the company that against the income of Rs. 59,89,757 returned Rs. 36,01,735 should be permitted to be debited. The order demanding tax of Rs. 17,32,768.60 for the year 1964-65 also was, in our view, erroineous.

For the year 1965-66 the Income-tax Officer demanded payment of advance tax on the provisional assessment for the year 1964-65. It is true that under sub-section (3) of section 210 as inserted by the Finance Act, 1963 (13 of 1963), and later modified by the Direct Taxes (Amendment) Act, 1964 (31 of 1964), the Income-tax Officer is entitled to make an order for payment of advance tax on the basis of provisional assessment made under section 141, and he is not obliged to demand advance tax only for the amount provisionally assessed by way of regular assessment in respect of any previous year. Sub-section (3) of section 210, however, predicates a valid provisional assessment on the basis of which advance tax may be demanded. But the provisional assessment for the year 1964-65 made by the Income-tax Officer was invalid, and tax could not be demanded on that invalid assessment. No order for payment of advance tax for the year 1965-66 could then be made, relying upon the provisional assessment for the year 1964-65

The appeals will be allowed and the orders passed by the High Court set aside. The orders of provisional assessment made by the Income-tax Officer in respect of the years 1963-64 and 1964-65 will be set aside and the order for payment of advance tax for the year 1965-66 is also set aside. There will be no order as to costs in these appeals. The order of penalty in respect of the year 1963-64 is also quashed.

Appeal allowed.

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