

Commissioner of Income-Tax, Mysore

Vs

Segu Buchiah Setty

Civil Appeals Nos. 235 and 236 of 1967

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

23.04.1970

JUDGMENT

GROVER, J. -

These appeals by certificate arise out of a common judgment of the Mysore High Court in references made with regard to the assessment relating to the assessment years 1953-54 and 1954-55.

2. For the assessment year 1953-54 the assessee was served with a notice under Section 22(2) of the Income-tax Act, 1922, hereinafter called the "Act" on March 5, 1954. A similar notice was served in respect of the assessment year 1954-55 on June 5, 1954. The assessee failed to file any return in compliance with the notices. Thereupon he was served with notices under Section 22(4) for both the assessment years and was required to produce accounts on specified dates. None appeared on any of those dates but applications were submitted praying for adjournment on certain grounds. The Income-tax Officer was not satisfied with the reasons given for seeking adjournment and he proceeded to make the assessment under Section 23(4) of the Act. The assessee moved the Income-tax Officer under Section 27 to re-open the assessment on the grounds given in the applications filed in that behalf. The Income-tax Officer appeared to be satisfied that there was sufficient cause for non-compliance with the notices issued under Section 22(4) of the Act but he was of the view that the assessee had been a habitual defaulter inasmuch as he had not submitted the return under Section 22(2) even for several proceeding years for which the assessments had to be completed under Section 23(4) of the Act. He declined to re-open the assessment under Section 27. Appeals to the Appellate Assistant Commissioner were filed. According to the Appellate Assistant Commissioner sufficient cause for non-compliance with one of the statutory notices i.e., the notice under section 22(4) could not constitute sufficient cause for non-compliance with any other statutory notice [in this case the notice under Section 22(2)]. The appellate Tribunal dismissed the appeals filed by the assessee upholding the view of the departmental authorities.

3. On the Tribunal having declined to refer the questions of law which were sought to be referred the High Court directed the Tribunal to state a case and refer the following questions of law :

"Whether the Income-tax Officer having recorded a finding there was sufficient cause for non-compliance with the notice issued under Section 22(4), was not bound to cancel the assessment made under Section 23(4) and to proceed to make a fresh assessment even though there was no sufficient cause for non-compliance with the notice under Section 22(2) ?"

The High Court answered the question in favour of the assessee, Section 27 of the Act is in the following terms :

"Section 27. Cancellation of assessment when cause is shown. - Where an assessee within one month from the service of a notice of demand issued as hereinafter provided, satisfies the Income-tax Officer that he was prevented by sufficient cause from making the return required by Section 22, or that he did not receive the notice issued under sub-section (4) of Section 22, or sub-section (2) of Section 23, or that he had not a reasonable opportunity to comply, or was prevented by sufficient cause from complying with the terms of the last mentioned notices, the Income-tax Officer shall cancel the assessment and proceed to make a fresh assessment in accordance with the provisions of Section 23."

Section 22 provides for return of income. Sub-section (1) relates to a general notice to be given each year by the Income-tax Officer by publication in the press or in the prescribed manner. Sub-section (2) relates to an individual notice. According to sub-section (4) the Income-tax Officer may serve on any person who has made a return under sub-section (1) or upon whom a notice has been served under sub-section (2) a notice requiring him on a date to be specified to produce or cause to be produced such account or documents as the Income-tax Officer may require or to furnish in writing and verified in the prescribed manner in such form and on such points or matters as may be required for the purpose of the section including, with the previous approval accounts. Under Section 23 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 has to assess the total income of the assessee on the basis of the return filed by him [sub-section (1)]. If he is not so satisfied he must serve a notice requiring the person who has made the return to attend at his office or to produce or cause to be produced any evidence on which such person may rely in support of his return [sub-section (2)]. Under sub-section (3) the Income-tax Officer after hearing such evidence as may be produced by the person making the return in response to the notice issued under sub-section (2) or such other evidence as the Income-tax Officer may require to be produced on specified points has to assess the total income of the assessee. It is provided by sub-section (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 (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 ....."

4. The High Court considered that the provisions of Section 27 were not cumulative but disjunctive and so the assessee could claim cancellation of the assessment on one of the grounds on which such cancellation could be sought under the section. According to the High Court it followed that even if there was no sufficient cause for non-compliance with a notice issued under Section 22(2) so long as there was sufficient reason for non-compliance with the notice issued under Section 22(4) the assessee could ask for the cancellation of the assessment. In our judgment the view of the High Court cannot be sustained. The clear import of Section 23(4) is that on committing any one of the defaults mentioned therein the Income-tax Officer is bound to make the assessment to the best of his judgment. In other words if a person fails to make the return required by a notice under Section 22(2) and he has further not made a return or a revised return under sub-section (3) of the same

section the Income-tax Officer must make an assessment under this provision. Similarly if that person fails to comply with all the terms of the notice issued under Section 23(4) or if he fails to comply with all the terms of the notice issued under Section 23(2) the Income-tax Officer must proceed to make an assessment to the best of his judgment. Section 27 empowers the Income-tax Officer to cancel the assessment when sufficient cause is shown but such cause has to be shown for each default. For the sake of illustration, if an assessee makes a default under Section 22(2) by not filing a return pursuant to a notice received under that section and he also does not comply with the notice under Section 22(4) he must show sufficient cause for non-compliance with both the provisions and he cannot get the assessment cancelled merely by showing good cause for one of the two defaults. Although the word "or" which is disjunctive is used in Section 27 it has to be read in a reasonable and harmonious way and in conjunction with Section 23(4). It is inconceivable that the legislature could have ever intended that in case of multiple defaults for each one of which an ex parte best judgment assessment has to be made the assessee can ask for cancellation of the assessment by merely showing cause for one of such defaults. In our opinion the Bombay High Court in *Chiranjilal Tibrewala v. The Commissioner of Income-tax, Bombay City II* (59 ITR 42), was right in holding that in circumstances similar to the present case the assessee cannot ask for cancellation under Section 27 of an assessment made under Section 23(4). In this view of the matter the judgment of the High Court has to be set aside, and the question has to be answered against the assessee and in favour of the appellant.

5. The appeals are accordingly allowed with costs. One hearing fee.

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