

The Commissioner of Income-Tax Delhi (Central) New Delhi

Vs

M/s. Singh Engineering Works (P) Ltd., Kanpur

Income-Tax Reference Cases Nos. 1 and 2 of 1969

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

11.08.1970

JUDGMENT

GROVER, J. -

The respondent company which is an assessee was required by the Income-tax Officer by notices issued under section 18-A(1) of the Indian Income-tax Act, 1922, hereinafter called the "old Act", to make an advance payment of tax amounting to Rs. 3,17,077 for the assessment year 1960-61, and Rs. 3,54,911 for the assessment year 1961-62. The assessee chose to file its own estimate of tax under section 18-A(2) and in accordance therewith it paid two instalments of advance tax of Rs. 38,333/- each for the assessment year 1960-61 and three instalments of Rs. 12,875/- each for the assessment year 1961-62. Thereafter, the assessee filed revised estimates of tax in the month of March 1960 and March 1961 respectively, estimating the tax at Rs. 1,80,000/- for each of the assessment years on a total income of Rs. 4 lakhs. The balance of advance tax as per its revised estimate was paid in time after deducting the instalments which had already been paid. The assessee subsequently filed its returns of income for the aforesaid two years declaring the total income of Rs. 4,53,942/- and Rs. 7,02,383/- respectively. The Income-tax Officer completed the assessment of total income of Rs. 5,35,000/- and Rs. 8,99,029/- for the assessment years 1960-61 and 1961-62, on January 21, 1963 after the Income-tax Act 1961, hereinafter called the "New Act", had come into force. The Income-tax Officer took the view that the assessee had furnished inaccurate and nature estimates of tax and had not given any satisfactory explanation in respect of them. He imposed penalties under section 273 of the new Act amounting to Rs. 13,700/- and Rs. 12,342/- for the assessment years 1960-61 and 1961-62 respectively. Appeals to the Appellate Assistant Commissioner in the matter of imposition of penalty were rejected. The Appellate Tribunal held that the penalties could not have been imposed under the provisions of section 273 of the new Act in respect of the two assessment years in questions. It was said, inter alia, that in the absence of any deeming provision in the new Act the default under Section 18-A of the old Act could not be treated as a default under Section 212 of the new Act and that section 297(2)(g) of the new Act did not save the proceedings under Section 18-A of the old Act. A question of law was referred directly to this court under the provisions of Section 257 of the new Act owing to the conflict between the decisions of the various High Courts.

2. Section 18-A of the Act makes provisions for advance payments of tax. Sub-section (9) provides, inter alia, for the imposition of penalty if the Income-tax Officer is satisfied that the assessee has furnished estimates of the tax payable by him which he knew or had reason to believe to be untrue. In the new Act section 212 makes provision for the estimate by the assessee and payment of tax in accordance with that estimate. Section 273 of the new Act empowers the Income-tax Officer to levy penalty on an assessee where he finds at the time of regular assessment that the assessee had

furnished, under section 212, an estimate of the advance tax payable by him which he knew or had reason to believe to be untrue.

3. As stated before, the Tribunal was of the opinion that section 297(2)(g) of the new Act did not save proceedings under section 18-A of the old Act According to that provision any proceedings for the imposition of a penalty in respect of any assessment for the year ending on 31st day of March, 1962, or any earlier year which is completed on or after the first day of April, 1962 may be initiated and any such penalty may be imposed under the new Act.

4. In *M/s. Jain Bros. and Others v. The Union of India* (1969 (3) SCC 311) this court examined the provision of section 271 which also appears in Chapter XXI under which section 273 is to be found and the provision of section 297(2)(g) of the new Act. This is what was stated in that case :

"We are further unable to agree that the language of section 271 does not warrant the taking of proceedings under that section when a default has been committed by failure to comply with a notice issued under section 22(2) of the Act of 1922. It is true that clause (a) of sub-section (1) of Section 271 mentions the corresponding provisions of the Act of 1961, but that will not make the part relating to payment of penalty inapplicable once it is held that section 297(2)(g) governs the case. Both sections 271(1) and 297(2)(g) have to be read together and in harmony and so read the only conclusion possible is that for the imposition of a penalty in respect of any assessment for the year ending on March 31, 1962 or any earlier year which is completed after first day of April 1962, the proceedings have to be initiated and the penalty imposed in accordance with the provision of section 271 of the Act of 1961. Thus, the assessee would be liable to a penalty as provided by section 271(1) for the default mentioned in section 28(1) of the Act of 1922, if his case falls within the terms of section 297(2)(g). We may usefully refer to this court's decisions in *Third Income-tax Officer, Mangalore v. Damodar Bhat* (71 ITR 806) with reference to section 297(2)(j) of the Act of 1961. According to it in a case falling within that section in a proceeding for recovery of tax and penalty imposed under the Act of 1922 it is not required that all the sections of the new Act relating to recovery or collection should be literally applied, but only such of the section will apply as are appropriate in the particular case and subject, if necessary, to suitable modification. In other words, the procedure of the new Act will apply to cases contemplated by section 297(2)(j) of the new Act *mutatis mutandis*. Similarly, the provision of Section 271 of the Act of 1961 will apply *mutatis mutandis* to proceedings relating to penalty initiated in accordance with section 297(2)(g) of that Act."

5. In our judgment section 297(2)(g) is clearly applicable to the present case inasmuch as the assessment was completed on or after the first day of April, 1962. The provisions of the new Act contained in section 273 will apply *mutatis mutandis* to proceedings relating to penalty initiated in accordance with section 297(2)(g) of the new Act. The Question which has been referred to us is answered in the affirmative and in favour of the Commissioner of Income-tax who will be entitled to his costs in this court.

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