

ANDHRA PRADESH HIGH COURT

Boddu Seetharamaswamy

Vs.

Commissioner of Income Tax

Case Ref. No. 35 of 1952

(Subba Rao, C.J. and Bhimasankaram, J.)

12.01.1955

JUDGMENT

Subba Rao, C.J.

1. The Income-tax Appellate Tribunal, Madras Branch referred for the opinion of this Court the following questions:

"Whether an appeal to the Appellate Assistant Commissioner against the levy of penal interest under the provisions of Section 18-A(6) is competent?"

2. The facts are in a small compass and they are: The assessee carried on business in the manufacture and sale of groundnut oil and cake. In making the assessment for the year 1945-46, the Income-tax Officer arrived at an assessable income of Rs. 40,739/- as the assessee gave a wrong estimate of the income, he directed him to pay penal interest at 6 per cent. under Section 18-A(6) of the Act upon the amount by which the tax already paid by him fell short of 80 per cent. of the tax imposed on the basis of the regular assessment. The assessee preferred an appeal against the order of assessment to the Appellate Assistant Commissioner and contended, inter alia, that the order imposing penal interest was wrong, but the appeal was dismissed. When he carried on appeal the said matter, the Income-tax Appellate Tribunal confirmed the order of the Appellate Assistant Commissioner on the ground that no appeal lay against an order under Section 18-A of the Act. The aforesaid question was referred under the said circumstances.

3. The learned counsel for the assessee contended that an order imposing penal interest is part of the order of assessment and therefore an appeal lies under Section 30 of the Act. To appreciate his argument, the following provisions may be read:
Sections 18-A(6):

"Where in any year an assessee had paid tax under Sub-section (2) or Sub-section (3) on the basis of his own estimate and the tax so paid is less than 80 per cent. of the tax determined on the basis of the regular assessment.....simple interest at the rate of 6 per

cent. per annum from the 1st 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."

Section 18-A(8):

"Where on making the regular assessment, the Income-tax Officer finds that no payment of tax has been made in accordance with the foregoing 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."

Section 23(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 person 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".

Section 29:

"When any tax penalty or interest is due in consequence of an order passed under or in pursuance of this Act, the Income-tax Officer shall serve upon the assessee or other person liable to pay such tax, penalty or interest, a notice of demand in the prescribed form specifying the sum so payable."

Section 30:

"Any assessee objecting to the amount of income assessed under Section 23 or Section 27 or the amount of loss computed under Section 24 or the amount of tax determined under Section 23 or Section 27 or denying his liability to be assessed under this Act, or objecting to the cancellation by an Income-tax Officer of the registration of a firm under sub-section (4) of Section 23 or to a refusal to register a firm under sub-section (4) of Section 23 or Section 26-A or to make a fresh assessment under Section 27 or objecting to any order under sub-section (2) of Section 25 or Section 28-A or sub-section (2) of Section 26 or Section 28 made by an Income-tax Officer or objecting to any penalty imposed by an Income-tax Officer under sub-section (6) of Section 44-E or sub-section (5) of Section 44-F or sub-section (1) of Section 46 or objecting to a refusal of an Income-tax Officer to allow a claim to a refund under Section 48, 49 or 49-F or to the amount of the refund allowed by the Income-tax Officer under any of those sections, and any assessee being a company objecting to an order made by an Income-tax Officer under sub-section (1) of Section 23-A, may appeal to the Appellate Assistant Commissioner

against the assessment or against such refusal or order."

4. It is common-place that a right of appeal must expressly be conferred by statutes. Section 30 which regulates the right of appeal conferred under the Act does not in express terms provide for an appeal against an order imposing penal interest under Section 18-A(6) of the Act. Though the section enumerates in detail the orders made under different sections which are subject to an appeal Section 18-A(6) is omitted. If the Legislature intended that the order imposing penal assessment under Section 18-A(6) was also subject to an appeal, they would have said so in clear terms. The omission, in our view, is designed, rather than accidental. It is, therefore argued that the order imposing penal assessment is part and parcel of an order of assessment made under Section 23, and, therefore, is appealable as if it is an order of assessment. But a careful scrutiny of the aforesaid provisions does not lead to that result. Under Section 30, an assessee may appeal to the Appellate Assistant Commissioner objecting to the amount of income assessed under Section 23. Section 23 prescribes a particular procedure for assessing the total income of the assessee. The imposition of penal interest mentioned in Section 18-A(6) is not a part of the process of assessment of the income of the assessee. Penal interest is imposed only to compel any assessee not to underestimate his income during the current year. A special procedure is prescribed for imposing it and that is regulated by Section 18-A(8) of the Act. Under that section, the penal interest imposed under Section 18-A(6) is added to the tax determined under Section 23. The fact that the interest is added to the tax determined under Section 23 brings out the distinction between the tax determined and the penal interest imposed. Section 29 enables the Income-tax Officer to collect the total amount, i.e., the tax and the penal interest in the same manner. To put it shortly, the adding of interest to the tax is only for the purpose of facilitating the collection of the entire amount found due from the assessee. This will not make the penal interest the amount of income assessed under Section 23. As the order imposing penal interest is not an order assessing the income under Section 23, it follows that no appeal lies under Section 30.

5. Then it is contended that, if an appeal does not lie against an order imposing penal interest, it would cause irreparable hardship to an assessee. When the provisions of the statute are clear and unambiguous, there is no scope for invoking equitable doctrines. Section 30 does not either expressly or by necessary implication confer a right of appeal on the assessee against an order under Section 18-A(6) and we cannot add any words to that section which are not there.

6. We are also satisfied from the scheme of the provisions of Section 18-A that there cannot be any prejudice to the assessee. The provisions of Section 18-A (1), (2), (3) and (6) may be summarised thus: The section deals with what is popularly called the advance payment of income-tax in the case of income in respect whereof no deduction is made at the source. It applies only to an assessee whose total income is over the full taxable income of Rs. 2,500/-. In the case of an old assessee the Income-tax Officer takes the initiative on the basis of the assessment of the previous year and directs the assessee to pay the tax during the current year in quarterly instalments on or before the prescribed dates to be adjusted later when the final adjustment in that year is made. The assessee has no option to submit an alternative estimate. But, if the estimate turns out to be less than 30 per cent. of the tax determined, he would be bound to pay the varying rates of interest upon the amount by which the tax so paid falls short of the said 80 per cent. So too, in the case of a person who has not hitherto been assessed, he is given liberty to estimate his income but subject to similar penalty in the case of a fall or shortage

of the tax paid by him on the basis of the said estimate turns out to be less than 80 per cent. of the tax ultimately determined as payable by him. But in either case, if the amount is reduced by the competent authority in appeal or revision there will be a proportionate reduction of interest and an order for refund. These provisions clearly show that no hardship would be caused if ultimately the assessment is reduced. But it is said that, if no appeal is provided, the assessee will not have an opportunity to contend that interest should not have been ordered to be paid. There is no scope for this argument for the simple reason that under Section 18-A(6) there is no option but to award interest in the contingency contemplated by the section. The words used are "shall be payable" and the assessee is therefore, bound to pay interest on the deficiency found below 80 per cent. of the actual amount and that order cannot be modified unless the tax itself is reduced.

7. The learned counsel for the assessee brought to our notice that Indian Income-tax Rules have been amended, conferring a power on the Income-tax Officer to reduce or waive interest payable under Section 18-A under certain circumstances and if a right of appeal is not conferred against the order of the Income-tax Officer under Section 18 A, any wrong order of his made under the rules cannot be corrected or otherwise modified. But the rules were only made on 14-12-1953 i.e., long after the order imposing penal interest was made in the instant case.

8. Further, as we have already stated, such consideration cannot override the express provisions of the Statute.

9. A similar question was raised in - '*Deo Sharma v. Commissioner of Income Tax, U.P.*'¹, where in the learned Judges held that no appeal lies under Section 30(1) against an order of an Income-tax Officer under Section 18-A(6) of the Act. It is true that there is no discussion of the point raised in the judgment, but we respectfully agree with the conclusion of the learned Judges. We, therefore, answer in the negative the question propounded for our decision. The petitioner will pay the respondent costs which we fix at Rs. 250/-.

Answer in the negative.

¹ AIR 1953 All 482