

BOMBAY HIGH COURT

Lata Mangeshkar

Vs

Union of India

(K Desai, C.J. S.T Desai, J.)

07.11.1958

JUDGMENT

S.T. Desai, J.

1. It is the duty of the court to see as far as possible in interpreting the provisions of income-tax law that the various provisions read harmoniously. Courts have never pronounced that they have always succeeded in doing so and in this case the effort of learned counsel for the assessee has been to show that if we accept the construction strongly pressed for our acceptance on behalf of the Revenue, the result will be illogical.

2. Now, in these matters it has been stated over and over again that the court must look merely at the express language of the law-maker if it is clear or the necessary intendment to be gathered from such express language of the enactment. Apart from that, there is no room for intendment in a taxing statute. The matter must depend on the language of the section and construction of any provision of a taxing statute cannot be controlled by the consequences that may follow where the language is clear and capable of only one meaning.

3. On 11th February, 1952, the assessee, who is singer by profession, submitted her return of income in respect of the assessment years 1948-49, 1949-50 and 1950-51. That was her first return and was made after the close of the assessment year 1950-51. She submitted her return for the assessment year 1951-52 on 9th October, 1952. That also was after the close of the assessment year 1951-52. The assessments for the years 1948-49 to 1950-51 were completed on 5th March, 1952, and the assessment for the year 1951-52 was completed on 11th September, 1953. The second respondent is the Income-tax Officer and the third respondent is the Commissioner of Income-tax, Bombay. On 27th February, 1956, the second respondent issued a notice on the assessee alleging in it that the petitioner had not submitted an estimate of her total income for the years which we have already mentioned and had also failed to pay advance tax. He called upon the petitioner by that notice to show cause why an order under section 35 should

not be passed on her levying penal interest in respect of these years. Ultimately, the Income-tax Officer passed three orders, two of them on 3rd March, 1956, and one on 20th March, 1956.

4. There being no appeal under the statute against an order made under section 35, the assessee preferred revision applications to the third respondent, which applications were dismissed by him on 3rd January, 1958. The assessee thereupon preferred this petition to this court asking for a writ of certiorari or any other appropriate writ in the matter.

5. The petition was filed on 26th June, 1958, and one of the contentions urged on behalf of the Revenue - we shall examine it a little later - is that there is inordinate delay in the filing of this petition and that on that ground alone this petition should be dismissed in limine. Mr. Palkhivala, learned counsel for the assessee, at the very outset of his argument stated that he did not propose to argue the case of the petitioner in respect of the earlier years and would only confine his submissions to the penal interest levied in respect of the year 1951-52. Briefly stated, the argument of counsel for the assessee is that the Income-tax Officer did not levy any penal interest when he made the assessment order for the year 1951-52 on 11th September, 1953, and on a proper interpretation of section 18A he must be deemed to have waived interest which might have been charged under the provisions of that section. Reliance has been placed by learned counsel on a decision of Chagla, C.J., and myself in *Shantilal Rawji v. Income-tax Officer, E-W and, Bombay*. The argument is that if penal interest could be said to have been waived by the Income-tax Officer, there could be no question of rectifying that order on the ground that there was an error apparent on the face of the record.

6. Before we turn to the judgment of this court in the case of *Shantilal Rawji*, it will be convenient to set out the relevant provisions of section 18A which deal with advance payment of tax which are as under :

"(2) If any assessee who is required to pay tax by an order under sub-section (1) estimates at any time before the last installment is due that the part of his income to which that sub-section applies for the period which would be the previous year for an assessment for the year next following is less than the income on which he is required to pay tax and accordingly wishes to pay an amount less than the amount which he is so required to pay, he may send to the Income-tax Officer an estimate of the tax payable by him calculated in the manner laid down in sub-section (1) on that part of his income for such period; and shall pay such amount as accords with his estimate in equal installments on such of the dates specified in sub-section (1)(a) as have not expired or in one sum if only the last of such dates has not expired :

Provided that the assessee may send a revised estimate of the tax payable by him before

any one of the dates specified in sub-section (1)(a) and adjust any excess or deficiency in respect of any installment already paid in a subsequent installment or in subsequent instalments.

(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 than 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 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. :

Provided that for any period after the 31st day of March, 1952, interest shall be payable at the rate of four per cent. per annum :

Provided further that where a provisional assessment is made under section 23B, interest shall be calculated in accordance with the foregoing provision up to the date on which the tax as provisionally assessed is paid, and thereafter interest shall be calculated at the rate aforesaid on the amount by which the tax as so assessed (in so far as it relates to income to which the provisions of section 18 do not apply) falls short of the said eighty per cent. :

Provided also that, where, as a result of an appeal under section 31 or section 33 or of a revision under section 33A or of a reference to the High Court under section 66, the amount on which interest was payable under this sub-section has been reduced the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded together with the amount of income-tax that is refundable :

Provided further that where a business, profession or vocation is newly set up and is assessable on the income, profits and gains of its first previous year in the financial year following that in which it is set up, the interest payable shall be computed from the 1st day of April of the said financial year.

Provided further that in such cases and under such circumstances as may be prescribed, the Income-tax Officer may reduce or waive the interest payable by the assessee...

(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."

7. In the case of Shantilal Rawji we held that where it was clear that under section 18A(6) it was incumbent upon the Income-tax Officer to charge interest, then his failure to do so would be an error apparent on the face of the record capable of being rectified under section 35. We also took the view that the fifth proviso to section 18A(6) which was inserted in the Act in May, 1953, with retrospective effect from 1st April, 1952, (and which must, therefore, be deemed to have been part of the Act on the date of the assessment order) vested a discretion in the Income-tax Officer to reduce or waive the interest payable by the assessee, and finally we decided in that case that as there was nothing on the record to show that the failure to charge interest was due to the failure to discharge his obligation on the part of the Income-tax Officer under section 18A(6), it was not possible to hold that the omission to charge interest must necessarily be ascribed to an error of law on the part of the Income-tax Officer and that the Income-tax Officer had, therefore, no jurisdiction to pass the order of rectification. The argument of counsel for the assessee is that the present case is wholly covered by the ratio disdained of Shantilal Rawji's case.

8. Two contentions were raised before us at the very outset and it was said that they are of the nature of preliminary objections which went to the root of the matter. The first objection of Mr. Joshi, learned counsel for the Revenue, was that in this case there was inordinate delay in the matter of the presentation of this petition to the court. It was said that the assessment was made in 1953, the order of the Income-tax Officer whereby he charged penal interest was made on 20th March, 1956, and the petition was filed on 26th June, 1958. The submission was that there was here a delay of two years and three months. If these were the only two dates to be taken into consideration, evidence the delay would be inordinate and inexcusable. But we have to bear in mind the fact, and the more important fact, that this order was not appeal able and the assessee had preferred an application in revision to the Commissioner. That application was filed on 6th April, 1956, and was dismissed by the Commissioner on 3rd January, 1958. Mr. Palkhivala very frankly stated that it was after knowing the view taken by this court in Shantilal Rawji's case and

after studying the judgment of this court that this petition was preferred in June, 1958. It is true that a period of 5 months had elapsed between the date of the Commissioner's order dismissing the revision application and the filing of this petition. This court has often said, and we may well say it once again, that writ petitions are not for those who slumber and sleep over their rights. An aggrieved party who wants us to exercise these extraordinary powers of the High Court must be very vigilant and seek relief at the earliest date. If he fails to do so and has no satisfactory explanation for the delay, then his petition is liable to be thrown out in limine. At the same time, there can be no yard-stick of measurement of time which may be applicable to all cases. Being a matter of discretion with the court, there can be no rule which may be adhered to in every case, because the very conception of discretion rules out the existence of any rigid formula. In the present case, we do not think we would be justified in rejecting the petition on the ground that there has been inordinate delay in the filing of the petition.

9. The next contention of the nature of a preliminary objection urged before us by the counsel for the Revenue is that the relief sought by the petitioner is in respect of three orders and notices of the Income-tax Officer who is respondent No. 2, as well as the order passed in revision by the third respondent, who is the Commissioner of Income-tax and it is said that there is no ground mentioned in the petition for any writ being issued in respect of the order passed by the third respondent in revision. We agree that there is no ground for any writ being issued in respect of the order passed in revision by the third respondent. Even if the petitioner in her petition had asked that the order passed by the third respondent may be quashed, it was not necessary for her to seek that relief at our hands. It was competent to her and open to her to come to this court only for the purpose of challenging the validity of the three orders and the three notices of demand issued by the second respondent. The order of the Commissioner, as we shall immediately point out, does not affect the relief which she would get if she was ultimately entitled to the same from this court. The real question here is : what is the operative order that she challenges on this petition ? or to put it differently, what is the enforceable order that she is challenging on this petition ? Is it the order of the Income-tax Officer or is it the order dismissing the revision application by the Commissioner of Income-tax ?

10. It has been argued by Mr. Joshi that revision is just like an appeal and the final order with which we would concern ourselves is the order of the Commissioner and not the order or orders which the Income-tax Officer has passed. It is said that the Supreme Court has held that where a decree is passed in appeal, the decree of the trial court is merged in the decree of the appeal court. That proposition is well established and has always been given effect to by courts. Then it is said that revision is just like an appeal and there is no warrant for drawing any distinction between an appeal and a revision. The argument has been that even in cases of revision, the order or orders under revision become merged in the decree or order which may be passed on revision.

11. This precise question came up for my consideration in *K. B. Sipahimalani v. Fidahussein Vallibhoy* and I took the view that there were clear and tenable reasons for the distinction to be drawn between an appeal and a revisional application when the revisional application was dismissed. There was an appeal against that judgment and the appeal court confirmed that decision. It was held by the appeal court that when the revisional court interferes with the order of the court below, the result is not that the order of the lower court is merged in the order passed by the revisional court, but the result is that the order of the revisional court sets aside or modifies the of the lower court. Whereas in the case of an appeal when the appeal is dismissed the appellate court confirms the decree of the trial court, in the case of a revisional court when it dismisses the petition in revision all that it does is that it does not interfere with the order of the court below. The effect of the dismissal of the petition is not to confirm the order of the trial court, because no confirmation is necessary from the revisional court. When the revisional court dismisses the petition, the true effect in law is that it refuses to exercise the revisional jurisdiction conferred upon it. In fact case, in the course of my judgment I had observed :

"There are to my mind clear and tenable reasons for the distinction I am asked to draw. First of all I would like to accentuate only one point of differentiation between an appeal and a revisional application, which to my mind is sufficient to bring out this distinction. An appeal is a rehearing of the suit and, therefore, it would be sound logic to say that when there is any judicial determination of an appeal, the decree under appeal becomes merged in the decree passed on appeal, even though the decree under appeal is after judicial determination left untouched and unvaried. Such confirmation, it has been ruled, has the same effect as an order of reversal would have had in so far as it leaves the decree of the appellate court as the only decree in existence for the purpose of execution and the decree of the lower court becomes incorporated in it. This cannot be said of an order dismissing a revisional application. When a revisional application is dismissed, there is no confirmation of any decree or order, but there is only a refusal by the court to exercise its powers of supervision. In such a case the decree or order under revision is left untouched, neither confirmed, nor varied, nor reversed, and it remains a decree or order of the lower court, which can be executed."

12. The principle of the decision of the appeal court is clearly applicable to the point raised by Mr. Joshi and the present contention must, therefore, be negated.

13. It is next argued by Mr. Joshi that the decision relied upon by learned counsel for the assessee does not touch the present case and Mr. Joshi has drawn our attention to the various provisions of section 18A and its sub-section which run into a number of pages. The argument has been that the decision in the case of *Shantilal Rawji* clearly proceeded on the fifth proviso to sub-section

(6) of the section, and on facts, the case before us is totally outside the language of sub-section (6) and is directly covered by the language of sub-section (8). The next step of the argument is that the proviso which this court had to construe in Shantilal Rawji's case is not a proviso to the entire section but only a proviso to sub-section (6). We have already set out the relevant provisions which it is necessary for us to consider. But before we proceed to consider them, it is necessary to state one or two facts which we have already indicated. Before she submitted her return as already mentioned the assessee had not paid any tax under sub-section (2) or sub-section (3). This is a case in which no payment of tax at all had been made by the assessee in accordance with any of the provisions of section 18A. The argument of learned counsel may be summed up by saying that the initial words of sub-section (6) expressly lay down that it applies only to the case of an assessee who has paid tax under sub-section (2) or sub-section (3) on the basis of his own estimate. In the present case, the assessee did not pay any tax under sub-section (2) or sub-section (3), nor did she do so on the basis of her own estimate. She paid tax without submitting her own estimate and, therefore, her case did not at all fall within the ambit of sub-section (6). The initial words of sub-section (6) are plain and simple when they say "where in any year an assessee has paid tax under sub-section (2) or sub-section (3) on the basis of his own estimate". Therefore, the penal interest that can be charged to any assessee under sub-section (6) can only be in respect of an assessee who has paid tax under sub-section (2) or sub-section (3) on the basis of his own estimate, and the assessee in the case before us could not have been charged with any penal interest under sub-section (6). If she could not have been charged any penal interest under sub-section (6), says Mr. Joshi, there could be no question of invoking the fifth proviso to that sub-section. In our judgment, there is considerable force in this argument of learned counsel for the Revenue.

14. It is next urged by Mr. Joshi that this case clearly falls within the language of sub-section (8) because on making the regular assessment of the assessee, the Income-tax Officer found that she had not made any payment of tax in accordance with any of the provisions of the section and the language of sub-section (8) is mandatory and there is no proviso tacked on to sub-section (8) of the nature of the proviso engrafted on sub-section (6). In such a case, it is said, no question of waiver can arise as may happen in a case under sub-section (6). Mr. Joshi also indicated another argument which seemed to us to go contrary to the view which we had taken in the case of Shantilal Rawji and we did not allow him to press that argument. We shall not be referring to it, because in the view we take of the matter it is not even necessary for us to refer to that argument. We have made this observation only for the purpose of noting that Mr. Joshi had another argument to urge.

15. It has been strenuously contended before us by Mr. Palkhivala, learned counsel for the assessee, that there are words in sub-section (8) which, properly interpreted, must be read to

incorporate all the provisos of sub-section (6) in sub-section (8), and the argument is on the principle of referential legislation or legislation by incorporation. There is little scope for this argument and, as we shall presently point out, ultimately the argument must come to this that an illogical and anomalous position would arise if the discretion given to the Income-tax Office in the matter of cases covered by sub-section (6) was not given to him in matters covered by sub-section (8). Now, the first consideration for the court is not the consequences of the interpretation that it places on any provision of a statute. The primary consideration of the court must invariably be what is it that the Legislature has said it meant. Learned counsel referred us to sub-section (6) and pointed out three aspects of that section, viz., the margin of error, default on the part of an assessee to pay advance payment of tax and the factor that changes are often made by Finance Acts. It has been strongly contended that the sub-section deals with substantive matters and not with matters which are merely procedural and every one of the provisos to that sub-section must be applied on the principle of referable legislation while giving effect to sub-section (8).

16. Now, one short answer to the argument is that if it was the intention of the Legislature to rule that the fifth proviso to sub-section (6) which vested certain discretion in the Income-tax Officer to reduce or waive the interest payable by the assessee as penal interest, there was nothing to prevent it from adding a proviso to sub-section (8) at the time when by an amendment the proviso was incorporated in sub-section (6) of section 18A. The argument had of necessity to come to the length of saying that every proviso under sub-section (6) must be incorporated under sub-section (8). An examination of those provisos shows that there is no reason whatever why all those provisos should be incorporated under sub-section (8). It will be seen that in some of the provisions laid down in sub-section (6) what is stated is nothing more than a mode or method of calculating interest and the Legislature has deliberately used certain words in sub-section (8) referable to the meaning of calculating interest to be added to the tax as determined on the basis of the regular assessment with which sub-section (8) deals. If the intention of the Legislature was to incorporate all the provisions in those provisos under sub-section (8), it was not necessary for it to refer in express and explicit terms to the meaning of calculating interest laid down in sub-section (6) in enacting sub-section (8). It is clear, therefore, that in sub-section (8) the legislature thought it necessary only to bring that part of sub-section (6) within the ambit of sub-section (8) which it thought was necessary to work out the provisions of sub-section (8) and this provision only refers, as we have just stated, to the meaning of calculating interest and nothing else. With these express words in sub-section (8) in reference to sub-section (6), it is extremely difficult to see how the last proviso of sub-section (6) is to be read as applicable also to cases falling under sub-section (8).

17. In view of the fact that sub-section (8) explicitly speaks of the manner of calculating interest

laid down in sub-section (6), learned counsel for the assessee had to go to the length of arguing that the expression "calculated" in sub-section (8) included the concept of reducing or waiving payment of interest by an assessee for which provision is made in the fifth proviso to sub-section (6). It has been stated that calculating interest in charging penal interest necessarily involves the power of the authority to reduce or waive the amount of interest. It is difficult for us to see how a person who sits down to calculate interest in the manner suggested by the legislature can in doing so waive the whole amount of interest that he may be calculating. But the argument has been that both the expressions "reduce" or "waive" appear in the fifth proviso to sub-section (6) and if the idea of calculating includes the idea of reducing, then the proviso, although it speaks of reducing and waiving the amount of interest payable, would apply in case falling under sub-section (8). In this context, it is said that the person who calculates interest must have the discretion to reduce the amount of interest. It is not possible to accept this suggestion. Then it has been stated that before calculating interest the Officer must fix the rate and that would involve discretion. That suggestion also it is not possible to accept.

18. Next it has been said that there are four ways of reducing interest under the fifth proviso to sub-section (6) :

- (i) lump sum deduction,
- (ii) reduction in the rate of interest,
- (iii) reduction in the amount of income on which penal interest is charged, and
- (iv) reduction in the period for which interest is charged.

19. We agree that an Income-tax Officer authorised to reduce the amount of interest payable under the discretion vested in him by the fifth proviso to sub-section (6) may give a lump sum deduction, may take into consideration the rate of interest, the amount of income on which penal interest is charged as also the period for which the interest is charged. But all that would be within the matrix of the fifth proviso to sub-section (6) and that sub-section alone. There is no warrant for transmitting that proviso to sub-section (8). It has also been urged that no proper calculation can be made if there is no discretion to waive or reduce the amount. We have already mentioned that the language of sub-section (8) is mandatory. It says that interest calculated in the prescribed manner shall be added to the tax as determined on the basis of the regular assessment, whereas the proviso leaves a discretion in the Income-tax Officer. It is not possible for us to acquiesce in the suggestion that the authority vested in the Income-tax Officer to add interest to the amount of tax determined on the basis of the regular assessment must of necessity be coupled with a discretion in the matter when the language of the provision is mandatory and leaves little

scope for any such suggestion. It has also been urged that calculations can always be variable because that would depend on the discretion of the Income-tax Officer. That certainly is not the meaning of the language employed in sub-section (8).

20. It is lastly urged that an anomalous situation must arise if we accept the contention of the Revenue. The Income-tax Officer under similar circumstances would have the power to reduce or waive the interest payable by an assessee if his case fell under sub-section (6) whereas he would have no such discretion vested in him to reduce or waive the amount of interest payable by the assessee if his case fell under sub-section (8). Now, as we have already indicated at the outset of our judgment, it would be our duty to see that as few anomalies as possible arise as a result of any interpretation that we put on any provision of the income-tax law. But as has so often been said, from the nature of things the provisions of income-tax law cannot be cast upon absolutely logical lines and if they cannot be cast upon absolutely logical lines they cannot be interpreted upon absolutely logical lines. Anomalies are bound to arise and whenever they arise and deserve to be removed, it is not for the court to do so. It is not within the powers of the court to do so. It is for the Legislature to intervene in deserving cases and set matters right by appropriate amendments of the law.

21. Learned counsel also relied upon rule 48 of the Income-tax Rules. Here the argument has been that the rules are so worded that they can apply to cases falling under sub-section (6) as well as to cases falling under sub-section (8) and the rules postulate power in the Income-tax Officer to levy interest and exercise discretion in the matter. We agree that rule 48 postulates a power in the Income-tax Officer to levy interest and exercise his discretion. But the question is in what context does it postulate that and quoad what provisions of section 18A does the rule postulate what is there laid down. An examination of the language used in the fifth proviso itself would immediately suggest that rule 48 is intended to carry out what has been stated in the proviso and that proviso speaks of "in such cases and under such circumstances" and the rule prescribes those cases and circumstances. In terms the rule says that discretion to reduce or waive the interest payable may be exercised by the Income-tax Officer in the cases and under the circumstances there mentioned. Reference to section 18A in that rule cannot be read as if the rule was being laid down as applicable to all the provisions of section 18A. It must be read in the context of the language of sub-section (6) and particularly the fifth proviso to that sub-section. It is true that the rules are statutory rules and made by the Central Board of Revenue. But we are not prepared to subscribe to the principle that rules can in any manner control or direct the interpretation to be placed on the plain language of sub-section (8). In a case of doubt, a rule of the nature before us may throw some light on the trend of the section or the intention of the law-maker.

22. In the matter of interpretation, the court derives assistance from various factors. But the most

important of these factors is intrinsic evidence. The intrinsic evidence in the case before us is the clear and unambiguous language of sub-section (8) and (6). In a case of doubt or difficulty, the history of legislation may at times render assistance to the court in ascertaining the intention of the law-maker. In the case before us, it is not necessary for us to examine the history of legislation in any detail, but if it were necessary to do so the history of legislation would strongly support the contention pressed before us by Mr. Joshi. In the section as originally enacted, the fifth proviso was not there. It was incorporated in sub-section (6) by the Indian Income-tax (Amendment) Act, 1953. Let us, therefore, see how the relevant provisions of section 18A read before the amending Act of 1953. The language of sub-section (6) was in terms mandatory and calculation had to be made in accordance with the provisions laid down in sub-section (6) in a case which fell either under sub-section (6) or sub-section (8). There was no discretion of any kind or power of any kind vested in the Income-tax Officer to reduce or waive the interest payable by an assessee under any of those sub-sections and it was only by the newly added proviso that a discretion was vested in the Income-tax Officer of the nature which we have already mentioned and the proviso having been engrafted in sub-section (6) it was intended to apply to cases which fell within the ambit of sub-section (6). This being the history of legislation, it is difficult to accept the contention that the history of legislation supports the case not of the Revenue but of the assessee. The argument before us has been that the principle of referable legislation must apply to this case in view of the words which refer to sub-section (8). We have already observed that the reference is solely in the context of the mode or method of calculating interest and for no other purpose. Therefore, even when we take into consideration the history of legislation on this section, we find that it lends some support to the conclusion which we have already reached.

23. In the result, the petition fails.

24. We have heard counsel on the question of costs. Mr. Palkhivala states that in Appeal No. 51 of 1957 arising out of Miscellaneous Application No. 127 of 1957, Chagla, C.J., decided the matter arising under section 18A(8) in favour of the assessee and assessee should, in view of that judgment, not be mulcted with the costs of this petition. There is substance in this argument, In view of that judgment, we would not have made any order for costs against the assessee. But as against that, the petition refers to three years of assessment and learned counsel for the assessee has argued the petition only in respect of the assessment year 1951-52. We think the fair order for costs would be that the petitioner will pay half the costs of the respondents of this petition. Rule discharged.

25. Petition dismissed.