

# **BOMBAY HIGH COURT**

Radhakrishna Rungta

Vs

Seventh Income-Tax Officer

(V Desai, C.J. Y Tambe, J.)

30.03.1963

## **JUDGMENT**

**V.S. Desai, J.**

1. In this application under article 226 of the Constitution, the petitioners has prayed for a writ in the nature of mandamus or other appropriate writ, order or direction, directing the respondent, who is the 7th Income-tax Officer, C-II Ward, Bombay, to compute the loss and to notify the first petitioner firm of the said computation or to take up and complete the assessment of the first petitioner firm for the assessment years 1958-59 and 1959-60 before the 31st of March, 1963, and 31st of March, 1964, respectively. They have also prayed for a further writ requiring the respondent to consider the applications for the renewal of the registration of the first petitioner firm for the assessment years 1958-59 and 1959-60 and, if the said applications are found to be in accordance with law, to grant the first petitioner a renewal of registration before the 31st of March, 1963, and 31st of March, 1964, respectively.

2. The first petitioner firm is a partnership firm consisting of the second and third petitioners as its partners. This firm was formed from the first day of Samvat year 2012, which is the relevant previous year for the assessment year 1957-58. The firm has succeeded to a proprietary concern of the second petitioner who carried on business in the name of Radhakrishna Brijlal Rungta. The partnership deed embodying the partnership is dated 5th April, 1956. On or about 1st of May, 1956, the first petitioner firm filed its application for registration of the firm for the assessment year 1957-58. According to the petitioners after the public notice under section 22(1) had been issued in April, 1957, for the assessment year 1957-58, individual notices under section 22(2) for the said assessment year were served on the first petitioner firm, the first of them, on the 27th September, 1957, by the 7th Income-tax Officer, C-II Ward, Bombay, and the second on the 4th December, 1957, by the 3rd Income-tax Officer, C-II Ward, Bombay. The return for the said assessment year 1957-58 was filed by the first petitioner firm on the 27th January, 1960. For

the subsequent assessment years, viz. 1958-59 and 1959-60, with which we are concerned in the present petition, the notices under section 22(1) were issued in the month of April, 1958, and in the month of April, 1959, respectively. Individual notices under section 22(2) for the said two years were not issued to the first petitioner firm. The returns, however, for the said year were filed by the first petitioner firm on the 23rd February, 1960, and 29th March, 1962, respectively. Both these returns were loss returns showing a loss of Rs. 1,13,394 for the assessment year 1958-59 and Rs. 1,02,360 of the assessment year 1959-60. On the 25th of June, 1958, the first petitioner had also filed its application for renewal of registration of the firm for the assessment year 1958-59 and it had also filed a similar application for the next assessment year on the 11th of January, 1959.

3. With regard to the return, which had been filed by the first petitioner firm on the 27th of January, 1960, in respect of the assessment year 1957-58 and which return also was a loss return showing a loss of Rs. 7,88,326, the Income-tax Officer, C-II Ward, Bombay, by his letter dated 30th December, 1961, informed the first petitioner that since its return was a loss return, it should have been filed in view of the provisions of section 22(2A) of the Indian Income-tax Act, 1922, within 65 days of the public notice issued under section 22(1) for the said assessment year and since that had not been done, the said return could not be proceeded with, and was therefor filed. In response to the correspondence, which was entered into by the first petitioner in connection with the said letter of the Income-tax Officer, on or about the 8th of February, 1962, the Income-tax Officer, C-III Ward, Bombay, informed the petitioners that their registration application for the assessment year 1957-58 was not traceable, and suggested that they should file a fresh registration applications so that the delay in the making of the fresh application may be condoned and the assessment need not be kept in abeyance only on that ground. The petitioner firm, thereafter, asked the Income-tax Officer to take up the assessment of the petitioner firm for the assessment year 1957-58 and complete it before the 31st of March, 1962. A notice under section 22(4) was served on the first petitioner calling upon them to produce their books of account in support of their return for the assessment year 1957-58, but subsequently, by his letter dated 16th March, 1962, the respondent informed the first petitioner that, inasmuch as the return filed by the first petitioner was an invalid return as explained in his earlier letter dated 30th December, 1960, no further action was necessary. The first petitioner then applied to the Inspecting Assistant Commissioner of Income-tax, B-Range, Bombay, and requested him to direct the respondent to proceed with the assessment for the assessment year 1957-58 immediately. Subsequently thereto the respondent took up the assessment of the petitioner firm for the assessment year 1957-58 and completed the said assessment before the 31st of March, 1962. The first petitioner firm also was granted registration certificate for the said assessment year.

4. Thereafter, on 13th June, 1962, the first petitioner requested the respondent to take up the assessment for the assessment years 1958-59 and 1959-60 for which it had already filed its loss returns. On the 4th January, 1963, the respondent informed the first petitioner firm that the returns of income for the assessment years 1958-59 and 1959-60 were not valid returns, which could be acted upon and that the returns, therefore, had been merely filed. It was pointed out in the said letter that the returns in order to be valid ought to have been filed within the time prescribed by section 22(2A) of the Act. After this intimation was given to the petitioner firm by the respondent the present petition has been filed by the petitioners on the 4th of February, 1963. The petitioners' case is that the returns, which have been filed by the first petitioner firm for the assessment years 1958-59 and 1959-60 are good and valid returns under the Act and the respondent is petitioner firm. The petitioners say that the Income-tax Officer was in error in taking the view that the returns not having been filed within the time specified in section 22(2A) they were not valid returns. According to the petitioners, section 22(2A) of the Act has no application to the present case, because that provision applies to a person or an assessee, who is not served with a notice under section 22(2) of the Act at any time. Inasmuch as the assessment year 1957-58, it was not an assessee to whom the provisions of section 22(2A) applied. Their further case is that even if section 22(2A) may have relevance or application to the petitioners' case, the only effect at the worst of the said provision is that the petitioner firm would not be entitled to the benefit of carrying forward the loss. The said provision, however, did not preclude it from filing a loss return subsequent to the period mentioned in the said sub-section. According to the petitioners, the loss returns submitted by the 1st petitioner for the assessment years 1958-59 and 1959-60 were, at any rate, good and valid returns under section 22(3) of the Act and the Income-tax Officer was bound to take up those returns and proceed to pass assessment orders thereon. The petitioners complain that the refusal of the Income-tax Officer to perform the statutory obligation cast on him of entertaining the returns submitted by them and proceeding to pass assessment order on the said returns has prejudiced the petitioners and is also likely to cause further prejudice to them. The petitioners, therefore, say that they are entitled to a writ in the nature of mandamus or other appropriate writ, order or direction requiring the respondent to perform the statutory duty of taking up the returns filed by the first petitioner firm and proceed to assess them.

5. The petitioners also complained that since they have made applications to the department under section 26A for the renewal of their registration and since those applications are in accordance with law, the department was bound to consider the said applications and pass necessary orders on them. No such orders have been passed on their applications for renewal of registration by the respondent. He should, therefore be called upon by an appropriate writ, order or direction to perform his statutory duty in connection with the said applications for renewal of

registration also.

6. In the affidavit in reply to the petition filed by the respondent, the position taken by him is that under section 22 of the Indian Income-tax Act and in view of the specific provisions contained in section 22(2A), no voluntary loss return could be filed by an assessee except in the manner provided in section 22(2A). A voluntary loss return which is not in accordance with the provisions of section 22(2A), is not a good and valid return at all. Such a return need not be entertained by the Income-tax Officer. There is no provision in the Income-tax Act, excepting the provision of section 22(2A), which gives the assessee a right to file a voluntary loss return or casts an obligation on the Income-tax Officer to entertain such a return and proceed with the assessment thereof. At any rate, it is contended that the Income-tax officer is not bound to act on such a return and, therefore, no writ of the nature of mandamus can be obtained requiring him to do so.

7. As to the case of the petitioners that their applications for renewal of registration have not been considered by the respondent, his reply is that no such applications have been filed before him nor have come before him which he could consider. According to him, therefore, since there are no applications before him for the renewal of registration the question of requiring him to consider such applications does not arise.

8. The affidavit in rejoinder has been filed on behalf of the petitioners in reply to the contention of the respondent that there are no applications for the renewal of the registration of the firm received by him from the 1st petitioner firm for the assessment years 1958-59 and 1959-60. It has been averred in the said affidavit that the applications for renewal of registration were forwarded to the 2nd Income-tax Officer, C-II Ward, Bombay and this was done at the suggestion of the then 7th Income-tax Officer, C-II Ward, i.e., the predecessor of the respondent, who had informed the petitioner's accountant that the papers of the 1st petitioner firm were being transferred to the 2nd Income-tax Officer, C-II Ward. It is stated that the office of the 2nd Income-tax Officer, C-II Ward, has duly received the said applications for renewal of registration, which were forwarded to him. It is, therefore, submitted on their behalf that since the petitioners have, in fact, filed applications for renewal of registration the mere technicality that the said applications have been forwarded to the 2nd Income-tax Officer instead of to the 7th Income-tax Officer, C-II Ward, Bombay should not be treated as an excuse by the respondent for not dealing with the said applications.

9. Now, with regard to the first question, which is involved in the present petition, viz., whether the voluntary loss return which have been submitted by the 1st petitioner firm for the assessment years 1958-59 and 1959-60 are good and valid returns on which the Income-tax Officer was

bound, under the Act to proceed with the assessment the submission urged on behalf of the 1st petitioner firm is that a return, even though it be a return showing income less than the taxable income or a return, showing loss, is a good and valid return under the Act. Such a return under section 23(3) is capable of being filed at any time before the assessment is made. If such a return is made, the Income-tax Officer is under section 23, bound to take up the said return and proceed to pass an appropriate order as is contemplated under the provisions of the Act. It is contended on behalf of the petitioner that if a good a valid return is filed before the Income-tax Officer he is bound to proceed with it to make an assessment and there is no provision in the Act, which enables him not to consider the said return and merely file it.

10. The contention of the revenue, on the other hand is that section 22 before its amendment in the year 1953 by the insertion of the sub-section (2A) did not make any provision for the filing of a voluntary loss return. Under section 22(1) the public notice invited only returns of taxable income : The returns, therefore, which could filed in response to the public notice under section 22(1), could be only of income which in the opinion of the person making the return was a taxable income. No return, which in the opinion of the person making it was a return of loss was intended to be filed under section 22(1). Under section 22(2) the return that was required to be filed was in pursuance of the individual notice given by the Income-tax Officer. Since by this notice a return in the prescribed form was called for, it was permissible for the person to whom the notice was issued, to file a return whether it was of profit or loss. A loss return, therefore, could be filed in pursuance of a notice served under section 22(2) but not voluntarily.

11. Now, the return contemplated under section 22(1) was required to be filed within the time specified in the public notice and the return contemplated by section 22(2) was required to be furnished within the period specified in the individual notice. Under these provisions the assessee was required to file the returns specified therein within the prescribed time and if the returns were not so filed, there would be an omission or failure on his part to submit the returns. Under section 22(3), however a locus poenitentiae was given to the assessee permitting him, if he had failed to file the returns within the time prescribed by the notice under section 22(1) or within the time as required by the individual notice under section 22(2) to submit a return at any subsequent time before the assessment was made. It was, however, argued by the learned counsel for the revenue that returns, which could be filed under section 22(3) would be such returns as are permissible to be filed under section 22(1) or section 22(2) and therefore, a voluntary return, which could be filed under section 22(3) is a return contemplated under section 22(1) i.e., a return of a taxable income and not a return of loss. In the year 1953 by the addition of sub-section (2A), provision was made enabling the assessee even to file a voluntary loss return. The provision, however, was a limited provision and it permitted such return to be filed only within the time allowed by it. It

is, therefore, argued on behalf of the revenue that in the present case the loss returns, which admittedly did not comply with the provisions of sub-section (2A) were not good and valid returns, which were capable of being entertained and proceeded on to assessment.

12. Now, the view the section 22 of the Indian Income-tax Act as it stood before its amendment in 1953 did not provide for submitting a voluntary return of loss and, therefore, if such a voluntary return of loss was filed, the Income-tax Officer was not required to take action on the same and the assessee had not right to insist that action should be taken on such a return, was undoubtedly taken by some of the High Courts and notably by the Calcutta High Court in *Commissioner of Income-tax v. Govindalal Dutta*. It was held in that case that voluntary returns, which showed a loss were not returns at all and the Income-tax Officer was not required to make any assessment on them. The Madras High Court in *O. M. Ahamed Sahib v. Commissioner of Income-tax* had also observed that if the assessee carried on only one business and that business ended in loss, there was no machinery provided under the Act to have loss determined by the income-tax authorities and there was no observations compelling the income-tax authorities to do so. There were similar observations also in *Udaya Ltd. v. Commissioner of Income-tax*, which was a full Bench decision of the Madras High Court. It was observed :

"A person whose income in a particular year was below the assessable limit was not bound to submit a return and even if he submitted one, the Income-tax Officer was not bound to deal with it."

13. The view expressed in these cases was that an assessee, who had not made a profit at all, but on the contrary had incurred a loss, would have no right either to submit a return showing the loss or to insist that the amount of his loss should be ascertained and determined by the Income-tax Officer. A contrary view, however, was taken by this court in *Ranchhoddas Karsondas v. Commissioner of Income-tax* and in *P. T. Anklesaria v. Commissioner of Income-tax*. In the first case the return was a voluntary return of income, which was below the taxable limit, and in the second case, the return was a voluntary return of loss. It was held in these cases that a voluntary return, even of an income below the taxable limit or of a loss, would be a good and valid return under section 22(3) if it is made at any time before the assessment. In the latter case it was also observed that there was no provision whereby the Income-tax Officer could refuse to assess the loss shown in such a return. The decision of this court in *Ranchhoddas Karsondas v. Commissioner of Income-tax*, went to the Supreme Court. The decision of the Supreme Court in the said case is reported in *Commissioner of Income-tax v. Ranchhoddas Karsondas*. In that case the conflict between the views of the Bombay and the Calcutta High Courts was considered and the view taken by the Bombay High Court was accepted as the correct view. It was held by the Supreme Court :

"A return showing income below the taxable limit submitted voluntarily in answer to the general notice under section 22(1) of the Income-tax Act is a good return : it is return such as the assessee considers represents his true income.

A return in answer to the general notice under section 22(1) of the Income-tax Act, can under section 22(3), be filed at any time before assessment and for this there is no limit of time."

14. After having referred to the divergence of the views between the Bombay and the Calcutta High Courts, their Lordship observed :

"The Calcutta view, as shown above, really proceeds upon the wording of section 22(1). It lays down that the public notice requires only persons having an income above the taxable limit to make a return. A person who has no such income need not make a return, and if he does make a return, it is not a return which need be considered, being not a return in law.

It is a little difficult to understand how the existence of a return can be ignored, once it has been filed. A return showing income below the taxable limit can be made even in answer to a notice under section 22(2). The notice under section 22(1) requires in a general way what a notice under section 22(2) requires of an individual. If a return of income below the taxable limit is a good return in answer to a notice under section 22(2), there is no reason to think that a return of a similar kind in answer to a public notice is no return at all. The conclusion does not follow from the words of section 22(1). No doubt, under that sub-section only those person are required to make a return, whose income is a above taxable limits, but a person may legitimately consider himself entitled to certain deductions and allowances, and yet file a return to be on the safe side. He may show his income and the deductions and allowances he claims. But it may be that on a correct processing his income may be found to be above the exempted limit. No doubt, it is futile for a person not liable to tax to rush in with a return, but the return in law is not a mere scrap of paper. It is a return, such as the assessee considers represents his true income. We are unable (and we say this with due respect) to accept the view adumbrated in the Calcutta cases. The contrary view is expressed by the Bombay High Court in the earlier case of *Harakchand Makanji & Co. v. Commissioner of Income-tax* and in the judgment under appeal. That view was accepted by the Madras High Court in *P. S. Rama Iyer v. Commissioner of Income-tax* and also, in our opinion, is the sounder view of the two."

15. In view of this decision of the Supreme Court, it appears to us to be futile to contend that a voluntary return of loss submitted by the assessee under section 22(3) would not be a good and valid return. The argument, therefore, that under the provisions of section 22 of the Indian

Income-tax Act before its amendment in 1953 by the introduction of subsection (2A) there was no provision for filing a voluntary return of loss, and that if such a return was filed, no action was required to be taken on such a return, cannot be accepted.

16. Mr. Joshi, learned counsel for the revenue, has then argued that the Supreme Court decision to which we have referred, was a decision relating to the position as it obtained before the amendment of section 22 by the insertion of sub-section (2A). According to Mr. Joshi, whatever was possible to be said in favour of such a return being good and valid before the said amendment, at any rate, by reason of the said amendment, the position is made clear that no voluntary loss return, except as provided under section 22(2A) is capable of being filed by an assessee.

17. It our opinion, this argument cannot be sustained on a consideration of the provision of the said sub-section. That sub-section has provided that a voluntary loss return will have to be filled by the assessee within the time specified in the general notice given under sub-section (1) or within such further time as may be allowed by the Income-tax Officer in cases where the assessee has sustained a loss of profits or gains in any year under the head "Profits and gains of business, profession or vocation," and such loss or any part thereof would ordinarily have been carried forward under subsection (2) of section 24, if he wants himself to be entitled to the benefit of the carry forward of loss in any subsequent assessment. In the first place this provision has been made only in connection with the losses, which are entitled to be carried forward under the provisions of sub-section (2) of section 24. By the said provision which has been made to apply to certain specified cases, it cannot be implied that the right of the assessee to file a loss return, if it existed prior to the amendment in other cases, was sought to be done away with. As we have already pointed out, before the amendment of the section, it is clear, in view of the decision of the decision of the Supreme Court, that a voluntary return of loss could be filed by an assessee. There is no prohibition to the filing of such a return of loss contained in sub-section (2A). What can at best be urged is that the right of the assessee to have the benefit of carry forward of loss is ought to be regulated by providing that the said benefit will not be available unless the voluntary return of loss is submitted within the time prescribed in the said provision. The amended provision of sub-section (2A), therefore, in our opinion, does not warrant a conclusion that subsequent to the insertion of the said provision, a voluntary loss return is not capable of being filed by an assessee except as provided in sub-section (2A).

18. Mr. Joshi has then argued that although a voluntary return of an income below the taxable limit or of loss may be a good and valid return, it does not necessarily follow that the Income-tax Officer is bound to take up such return and proceed to pass an assessment order thereon. The Income-tax Act levies tax on incomes which are taxable under the Act and sets up machinery to

determine such tax and recover it. If a voluntary return is filed before the Income-tax Officer, which does not disclose a taxable income, nothing further need be done about it unless the Officer is of the opinion that further scrutiny of the return or inquiry into the case is likely to reveal a different state of affairs than what is disclosed in the return and the officer will be perfectly justified in filing such return since no useful purpose is likely to be served by proceeding solemnly to pass an assessment order thereon. In the present case also, says Mr. Joshi, even if the returns file by the assessee are taken to be good and valid returns, no useful purpose is likely to be served by entertaining them and the Income-tax Officer is, therefore, right in filing the said returns.

19. Mr. Dwarkadas, on the other hand, has contended that once a return is found to be good and valid, the duty of the Income-tax Officer is to proceed to make an assessment order thereon as provided by the Act. There is no provision in the Act, he says, which permits him to merely file the return. However, he says, that even if it is assumed that the Income-tax Officer may be excused if he merely files a return submitted to him without making an assessment order, where no useful purpose is likely to be served by making the assessment, such is not the position in the present case. He points out that the petitioners have alleged in their petition that the refusal of the Income-tax Officer to consider the returns filed by the 1st petitioner and passing the necessary orders thereon has greatly prejudiced the petitioners and is also likely to further prejudice them. They have stated that the petitioner firm was a registered firm, which was granted registration during the previous assessment year 1957-58. It has applied for renewal of registration for the assessment years 1958-59 and 1959-60 also and according to the petitioner firm, it is entitled to such registration during these years also. The assessment of the first petitioner firm, therefore, when made will require the Income-tax Officer making the assessment to apportion the loss between the partners and the partners will be entitled to have the benefit of setting off that loss in their individual assessments in the said year at any rate. The failure of the Income-tax Officer to make the assessment of the petitioner firm deprives the second and third petitioners of the benefit of that assessment. There is, therefore, prejudice caused to the petitioners from the failure of the Income-tax Officer to make assessment on the returns submitted by the first petitioner.

20. It seems to us unnecessary to deal with the submissions which are urged by the learned counsel on either side in the present case. What has happened in the present case is that the Income-tax Officer has at the very initial stage refused to entertain the returns on the ground that they are invalid. The view that he has taken is that a voluntary return of loss which is not filed within the time specified under section 22(2A) is an invalid return which cannot be acted upon. That view, in our opinion, is entirely wrong. Had he not proceeded on this wrong view of law but had after applying his mind to the said returns decided to file them because no useful purpose

was likely to be served by passing formal assessment orders, it would have been necessary to consider whether in the first place he was entitled to adopt such a course in view of the provisions of the Act and in the second place whether he was justified in adopting that course in the present case. In the circumstances of the present case, these questions do not arise and we do not propose to deal with them. Since the returns submitted by the first petitioner were good and valid returns, the Income-tax Officer was bound to act upon them and inasmuch as he has refused to do so, he has failed to discharge his legal duty. Mr. Dwarkadas says that if the Income-tax Officer had entertained the returns as he was bound to do in law, his clients would have been in a position to ask him to make proper orders of assessment on the said returns which would have entitled them to certain benefits under the Act and if he had refused to make such orders, they could have taken the order passed by him in appeal or revision to the higher authorities under the Act and the failure on the part of the Income-tax Officer to exercise the jurisdiction vested in him by law has, therefore, caused prejudice to his clients. Prima facie, the contention is not without substance. At any rate, it cannot be said that the position is so obvious or clear that no useful purpose can conceivably be served by entertaining the returns and acting upon them.

21. In our opinion, therefore, the respondent was wrong in intimating to the petitioners that the returns filed by the first petitioner firm being bad and invalid would not be acted upon and would only be filed. He was, in our opinion, under a duty to take up the said returns and consider them in accordance with law. The petitioners, therefore, will be entitled to a writ in the nature of mandamus requiring the respondent to take up the returns filed by the first petitioner firm and complete the assessments thereon before the 31st of March, 1963, and 31st of March, 1964, respectively.

22. Coming to the other writ, which has been prayed for by the petitioners, in view of the affidavit of the respondent that there are at present no applications for renewal of registration filed on behalf of the first petitioner firm, we do not think that it will be possible to issue a writ such as is prayed for by the petitioners requiring the respondent to consider the said renewal applications. The petitioners have stated that they have forwarded the renewal applications to another officer of the same ward at the suggestion of the predecessor of the respondent himself, who had indicated to them that their papers were being forwarded to the said Income-tax Officer. The petitioners, therefore, say that they cannot be blamed if the renewal applications made by them are not before the present respondent. It may be that the petitioners may not be blamed for submitting their applications for renewal of registration to some other Income-tax Officer, but the respondent cannot also be blamed if he has not considered the said renewal applications, since they are not before him. We cannot, therefore, issue any writ in the nature of mandamus to him in this regard.

23. Mr. Dwarkadas has then said that after the affidavit was filed by the respondent explaining that there were no renewal applications before him, his clients have made fresh applications before the respondent on the 22nd of March, 1963. He has requested us that we should ask the respondent to consider the said applications at any rate, which are now before him.

24. We have no reason to assume that if there are any applications made before the respondent, he will not consider them in accordance with law. We, therefore, see no reason in the circumstances of the case to grant the second prayer of the petitioners in the present petition.

25. In the result, therefore, we direct that a writ in the nature of mandamus be issued against the respondent directing him to take up the returns filed by the petitioners before him for the assessment years 1958-59 and 1959-60 and complete the assessments for the said years before the 31st of March, 1963, and 31st of March, 1964, respectively.

26. The second prayer of the petitioners, which relates to the applications for renewal of registration, which they had filed before the institution of the present petition, is rejected.

27. There will be no order as to costs.