

## PUNJAB AND HARYANA HIGH COURT

Oriental Building and Furnishing Co

Vs

Commissioner of Income-Tax Delhi

(Kapur, J.)

05.06.1951

### JUDGEMENT

**Kapur, J.**

( 1. ) THIS is an application under Section 66 (2) of the Indian Income-tax Act, 1922, hereinafter referred to as the Act, asking the Court to direct the Income-tax Appellate Tribunal to state the case and refer for decision to this Court the questions specified hereunder : "1. When in the absence of a stock account an Income-tax Officer makes an assessment under the first part of Section 13, read with Section 23 (3) of the Act, following the accounts, closed on inventory basis, adding to the declared income unproved items of expenditure and in appeal before the Appellate Assistant Commissioner out of such unproved items those that are found vouched are eliminated, is it open to the Tribunal to hold that the accounts should have been rejected and assessment made under the proviso to Section 13, because a stock register has not been maintained by the assessee and profit disclosed by his Trading Account is low?

( 2. ) WHETHER under the circumstances of this case, when items of expenditure aggregating to Rs. 40,000/- were added back by the Income-tax Officer (as unproved items) and in appeal before the Appellate Assistant Commissioner, on proof being furnished by the applicant, Rs. 38,000/-out of Rs. 40,000/- were excluded from the assessed income, was the Bench justified in effecting add back of Rs. 30,000/-? Is there any material on record supporting the estimate of Rs. 30,000/-? Whether the finding that the margin of profit on good quality furniture is higher than that disclosed by the applicant's Trading Account is based on any material on records?" 2. The material facts may be summarised as follows: The assessee is a furniture maker and a contractor for the supply of furniture to Government. For the 1942-43 assessment the assessee declared a profit of Rs. 48,591/- on sales of Rs. 4,83,596/ -. The Income-tax Officer disallowed rs. 40,000/- on account of unproved purchases and inflation in the Wages Account. On appeal the Appellate Assistant Commissioner reduced the add back to a lump sum of Rs. 2,000/ -. From the order passed by the Appellate Assistant Commissioner, the Department went up on appeal to the Income-tax Appellate Tribunal and the Tribunal upon examination of the assessee's method of

accounting and the records placed before the Income-tax authorities came to the conclusion that inasmuch the assessee did not maintain Stock Account it was not possible to accept that the assessee had brought in the books sales of furniture made by the assessee for which expenses had been claimed. On this finding the Tribunal held that the basis of computation adopted by the income-tax authorities was faulty. Finding then that the account books did not reflect correct income, profits and gains, the Tribunal directed that the add back of Rupees 2,000/- made by the appellate Assistant Commissioner be increased to Rupees 30,000/-. 3. In arguing the case counsel for the assessee urges two points for our consideration. Firstly, it is said that inasmuch as the assessment made by the Income-tax Officer was within the main provision of Section 13 read with Section 23 (3) of the Act, the Tribunal was not competent in law to compute the income of the assessee under the proviso to Section 13 of the Act, and, secondly, that there was no material on the record justifying the add back of Rs. 30,000/-. 4. In order to appreciate the powers of the Tribunal it is necessary to take into consideration section 33 (4) of the Act and Rule 12 of the Appellate Tribunal Rules, 1946, made under Section 59 of the Act. Section 33 (4) reads : "33 (4) The Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, 'pass such orders thereon as it thinks fit', and shall communicate any such orders to the assessee and to the Commissioner. " Rule 12 provides : "12. The appellant shall not, except by leave of the Tribunal, urge or be heard in support of any ground not set forth in the memorandum of appeal; but the Tribunal, in deciding the appeal, shall not be confined to the grounds set forth in the memorandum of appeal or taken by leave of the tribunal under this rule. Provided that the Tribunal shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of being heard on that ground. " Mr. Kirpa Rani Bajaj urges that for reasons given in question No. 1 set forth here inbefore the tribunal was not competent in law to compute the income of the assessee under the proviso to section 13 of the Act. In other words counsel for the assessee challenges the jurisdiction of the tribunal to pass the order that it did on appeal. In plain English Section 33 (4) of the Act empowers the Tribunal to pass appropriate orders on an appeal from an order passed by the Appellate Assistant Commissioner either under Section 28 or Section 31 of the Act. Clearly, the Tribunal's power of dealing with an order passed by an appellate Assistant Commissioner is plenary and has been expressed in Section 33 (4) of the Act as widely as can be conceived. From the language used in Section 33 (4) of the Act it is plain that in an appeal under Section 33 of the Act the Tribunal is competent to decide facts as well as law and possesses authority to substitute its own order of assessment for the order under appeal. For an authority on this point 'commissioner of Income-tax and Excess Profits Tax, Bihar and Orissa v. S. Sen', (1949) 17 ITR 355 (Orissa), may be seen.

( 3. ) BUT it is said that the Tribunal was not-competent to rest its decision on a ground not set forth in the memorandum of appeal prescribed under Section 33 (3) of the Act. In the memorandum of appeal the grounds specified hereunder are set forth: "1. That the learned Appellate Assistant Commissioner has erred in allowing a reduction of rupees 38,000/- in the assessed income and the evidence not produced before the Income-tax officer ought not to have been admitted in appeal. 2. That the learned Appellate Assistant Commissioner failed to

appreciate that the expenditure under 'wages' was disproportionately high and that the profit shown was low as compared with other cases. " Now, it is true that the decision of the Tribunal proceeds upon a ground not set forth in the memorandum of appeal but there is no complaint that the Tribunal has based its decision on that ground without affording sufficient opportunity to the assessee of being heard on that ground. Rule 12 provides that in proceedings under Section 33 of the Act the appellant may, with the leave of the Tribunal, urge or be heard in support of any ground not set forth in the memorandum of appeal and that the Tribunal, in deciding the appeal, shall not be confined to the grounds set forth in the memorandum of appeal or taken by leave of the Tribunal under that rule. In these proceedings there is no complaint that the assessee has not had sufficient opportunity of being heard on the ground on which the decision of the Tribunal rests. That being so, I have no doubt that the argument raised under Rule 12 has no force. For the reasons given above, I do not accede to the argument raised that on facts and circumstances of the case the Tribunal was not competent in law to compute the income of the assessee under the proviso to Section 13 of the Act. I now pass on to examine whether there is no material on the record justifying the add back of rs. 30,000/ -. In ordering the add back of Rs. 30,000/- the Tribunal said: "in a business like the one which is carried on by the assessee it is very essential that there should be a proper Stock Account. No Stock Account is being maintained by the assessee. In the absence of Stock Account it is not possible to say whether the assessee has brought in the books sales of furniture made by him and for which expenses have been claimed. The assessee may be able to prove that a particular expenditure has been incurred, but this is not enough. He has to prove that such furniture has also been brought into the books, either in the closing stock or in the sales. This cannot be done as there is no Stock Account. In good quality furniture, which assessee says he makes, the margin of profit usually is higher than what is disclosed by his books of account. On this defect alone we think the Income-tax Officer should have rejected the assessee's books of account and made an estimate under the proviso to Section 13. " ;