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Court : Mumbai

Decided On : Mar-20-1973

Reported in : [1976]102ITR180(Bom)

Judge : R.M. Kantawala and ;V.D. Tulzapurkar, JJ.

Acts : [Income Tax Act, 1922](#) - Sections 18A, 18A(5), 18A(6), 18A(9), 28 and 34(1)

Appeal No. : Income-tax Reference No. 78 of 1964

Appellant : Deviprasad Kejriwal

Respondent : Commissioner of Income-tax (Central), Bombay

Advocate for Def. : R.M. Hajarnavis, Adv.

Advocate for Pet/Ap. : J.P. Pandit, Adv.

Judgement :

Tulzapurkar, J.

1. The question that has been referred to us by the Tribunal under section 66 (1) of the Indian Income-tax Act, 1922, for our opinion runs as under :

'Whether, on the facts and in the circumstances of the case, the order of the Income-tax Officer, dated 31st March, 1962, levying a penalty of Rs. 2,000 under section 18A (9) (a) read with section 28 for the assessment year 1948-49 was

valid in law ?'

2. The question arises in these circumstances :

The assessee is a Hindu undivided family and the assessment year in question is 1948-49. A notice under section 18A (1) was served on the assessee on 9th June, 1947, calling upon the assessee to pay advance tax of Rs. 18,967 for the assessment year 1948-49. The demand was based on the latest completed assessment which was for the year 1946-47. Initially, the assessee submitted an estimate of income on September 20, 1947, according to which no tax was payable because there was a loss. On December 18, 1948, the assessee submitted a return declaring an income of Rs. 7,752 plus share income from various partnership firms. On the basis of that return which was filed on December 18, 1948, the assessment was made on a total income of Rs. 54,369 on March 23, 1949. This assessment, it appears, was required to be reopened twice under section 34 of the Indian Income-tax Act, 1922. On the first occasion during reassessment proceeding the total income was determined at Rs. 94,802 on November 24, 1952, while on the second occasion the assessment was made on a total income of Rs. 2,38,440 on March 1, 1958. The assessee went in appeal and the final income as determined by the Commissioner of Income-tax under section 33A was Rs. 1,95,440. It was felt that the assessee had furnished the estimate of tax payable by him which he knew or had reason to believe to be untrue and, therefore, a notice under section 18A (9) (a) read with section 28 (3) was issued to the assessee and the same was issued before the second reassessment was completed and after giving the assessee an opportunity of being heard as required by law, the Income-tax Officer levied a penalty of Rs. 2,000 on the assessee under section 18A (9) (a) read with section 28. The assessee, thereafter, appealed to the Appellate Assistant Commissioner against the levy of penalty but ejective the only contention that was urged before him, namely, that the penalty proceedings, having been started at the time of reassessment, were invalid. The assessee preferred an appeal to the Tribunal and it was contended on his behalf that the penalty proceedings under section 18A (9) (a) read with section 28 (3) were invalid because they were not initiated in the course of any proceedings in connection with regular assessment as required

under section 18A (9) (a). The contention reliance was placed on the decision of this court in the case of Sarangpur Cotton . v. Commissioner of Income-tax and the decision of the Madras High Court in the case of M. RM. M. M. N. Natarajan Chetiar v. Income-tax Officer. It was also contended that in any case if there was any doubt in the interpretation of these crucial words occurring in section 18A (9) (a), the benefit of doubt should go to the assessee. The Tribunal rejected the contentions of the assessee. It took the view that having regard to the context in which the expression 'regular assessment' occur in section 18A (9) (a) and the general scheme and tenor of the section, that expression signified the assessment which determined the final liability as contrasted with advance assessment of tax levied by the department on the basis of the latest completed assessment or as estimated by the assessee according to his own record. The Tribunal distinguished the two decisions on which reliance was placed on behalf of the assessee on the ground that the expression 'regular assessment' which came up for consideration before this court and the Madras High Court had been used in the context of liability to pay interest either under section 18A (5) or section 18A (6) and the manner in which the expression has been interpreted by this court and by the Madras High Court in that context would not have any bearing on the question as to how the same expression should be interpreted in the context of section 18A (9) (a) of the Act. The Tribunal, therefore, held that the initiation of proceedings under section 34 for second reassessment was in accordance with law and penalty was properly levied on the assessee.

3. Therefore, at the instance of the assessee, the aforementioned question has been referred to this court.

4. Section 18A (9), which calls for proper construction, so far as is material, runs thus :

'18A. (9) If the Income-tax Officer, in the course of any proceedings in connection with the regular assessment, is satisfied that any assessee -

(a) has furnished under sub-section (2) or sub-section (3) estimates of the tax payable by him which he knew or had reason to believe to be untrue, or.....

the assessee shall be deemed, in the case referred to in clause (a), to have deliberately furnished inaccurate particulars of his income..... and the provisions of section 28, so far as may be shall apply accordingly.'

5. The real question that arises for our consideration is whether the expression 'regular assessment' occurring in section 18A (9) would cover reassessment proceedings under section 34 (1) of the Act or whether that expression should be interpreted to mean only the initial or original assessment made by the Income-tax Officer under section 23 of the Act. On this aspect of the matter the provisions of section 34 (1) under which reassessment proceedings were undertaken twice in the instant case, in our view, have a material bearing. It is well settled that the proceedings under section 34 (1) can be undertaken only if the conditions precedent mentioned either in clause (a) or clause (b) of that section are satisfied and it is only after such conditions are satisfied that the operative part of section 34 (1) comes into play. The operative part of section 34 (1) runs as follows :

'34. Income escaping assessment. - (1) If -.....

he (Income-tax Officer) may in case falling under clause (a) at any time and in cases falling under clause (b) at any time within four years of the end of that year, serve on the assessee, or, if the assessee is a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22 and may proceed to assess or reassess such income, profits or gains or recompute the loss or depreciation allowance; and the provisions of this Act shall, so far as may be, apply accordingly as if the notice issued under that sub-section'

6. The portion of the operative part which we have underlined above clearly suggests that if the conditions precedent mentioned in clause (a) or clause (b) of section 34 (1) are satisfied, the Income-tax Officer by serving a notice under this section so to say commences de novo assessment proceedings for the purpose of bringing to tax such income as has escaped assessment and such de novo assessment proceedings, as the portion underlined by us clearly suggests, will be governed by the provisions of the Act as far as possible. The last portion of the section underlined by us says that 'the provisions of this Act shall, so far as may

be, apply accordingly as if the notice were a notice issued under that sub-section' meaning sub-section (2) of section 22. This provision, in our view, clearly brings out the fact that notice issued under section 34 (1) is deemed to be a notice issued under section 22 (2) of the Act and thereafter further proceedings undertaken by the Income-tax Officer are proceedings to which the provisions of the Act, shall, so far as may be, apply accordingly. It clearly means that the provisions of the Act which are made applicable to such do novo proceedings would include section 18A (9) of the Act, for, if the provisions of section 18A (9) are applicable to assessment proceedings that are initially undertaken under section 23 of the Act, we fail to understand as to why the said provisions should not apply to the assessment proceedings that are undertaken upon issuing a notice under section 34 (1) which is deemed to be a notice under section 22 (2) and the proceedings thereunder are do novo proceedings as if undertaken under section 23 of the Act. Looked at from this angle, it seems to us very clear that the expression 'regular assessment' occurring in section 18A (9) of the Act would cover reassessment proceedings undertaken by the Income-tax Officer under section 34 (1) of the Act, if the provision of section 18A (9) are read in the context of the last portion of section 34 (1).

7. That the nature of the proceedings undertaken under section 34 is of the type as we have indicated above has been clearly stated by the Privy Council in Commissioner of Income-tax v. Mahaliram Ramjidas, where the Privy Council has observed as follows :

'The operative part of section 34 empowers the Income-tax Officer to proceed do novo under sub-section (2) of section 22, and that in turn leads, if there should still be a question of the accuracy of the return, to an enquiry under section 23 (2) and (3).....'

8. It is, therefore, clear to us that when reassessment starts with a notice under section 34 all the relevant provisions of the Act apply as effectively as where assessment starts with a notice under section 22 (2) and section 18A (9) would certainly be attracted. On a proper interpretation of the relevant provisions which are to be found in section 18A (9) and section 34 (1), therefore, we are clearly of

the view that the penalty proceedings which were initiated by the Income-tax Officer by issuing a notice under section 18A (9)(a) read with section 28 (3) of the Act after the first reassessment proceedings were completed but before the second reassessment proceedings were completed were perfectly valid in law.

9. Mr. Pandit, appearing for the assessee, has invited our attention to two decisions-one of this court in *Sarangpur Cotton Manufacturing Co. v. Commissioner of Income-tax* and the other of the Madras High Court in *Natarajan Chettiar v. Income-tax Officer*. In the first case the question arose under section 18A (5) and the question was up to what date interest was payable to the assessee by the Central Government on the advance tax paid by him under section 18A and the expression, 'the date of the assessment under section 23' was held to be referable to the date of the assessment under section 23 in fact and the mere fact that an assessment made under section 23 was set aside on appeal by the Appellant Assistant Commissioner and a fresh assessment was made at a subsequent date would not entitle the assessee to interest on the advance tax up to the date of the subsequent assessment. Chief Justice Chagla, who delivered the judgment, observed as follows :

'When one looks at the matter a little more closely, it becomes clear that when the Income-tax Officer made the order on the 30th of March, 1948, under the provision of this section, interest ceased to run. At that date the order made by the Income-tax Officer was the only effective and valid assessment. Can it be said that, if interest had ceased to run, the running of interest was revived when that order of assessment was set aside and a different terminus was fixed for the calculation of interest It seems to us that what the legislature contemplated in using the expression 'the date of the assessment' was the factual date of the assessment and it was not considering the legality or the validity of the assessment made. It wanted to fix two termini for the calculation of interest. With regard to one terminus there was no difficulty : that was the date of payment of advance tax by the assessee. The other terminus had to be fixed and the other terminus was the date when the regular assessment was made. That terminus having been fixed, it could not be altered by any subsequent event or by the vicissitudes through which the assessment order might pass'.

10. In other words, the expression 'the date of the assessment' (hereinafter called 'regular assessment') came up for interpretation before this court and this court took the view that the date of regular assessment could be the date when the Income-tax Officer had initially made the assessment order under section 23 and that date was not affected if there was further appeal against the said assessment order. The Madras decision on which reliance was placed by Mr. Pandit was the converse case dealing with liability of the assessee to pay interest and that arose under section 18A (6) of the Act and the Madras High Court, following the decision of this court in Sarangpur Cotton Manufacturing Co. v. Commissioner of Income-tax, took the view that the 'date of regular assessment' referred to the date of the initial assessment made by the Income-tax Officer under section 23 of the Act. What was urged by Mr. Pandit before us was that the same expression 'regular assessment' has been used in the several sub-section of section 18A and, according to the normal canon of construction, it should receive the same interpretation in all those sub-sections and, according to him, if the said expression has been interpreted to mean the initial or original assessment under section 23 by this court and by the Madras High Court for purpose of section 18A (5) and section 18A (6), the same interpretation should be put on that expression when it occurs in section 18A (9). He, therefore, urged that the expression 'regular assessment' occurring in section 18A (9) must be confined to the initial or original assessment made by the Income-tax Officer under section 23 of the Act. Now the canon of construction referred to by Mr. Pandit is based on the presumption that ordinarily the same meaning is implied by the use of the same expression in every part of the enactment but this presumption as to identical meaning is not of universal application, for the same expression may be used in different senses in the same statute and even in the same section. In other words, the presumption not being irrebuttable the canon of construction admits of exemptions, for instance, the context in which the expression has been used or the subject-matter dealt with by that particular provision which contains that expression may necessitate the adoption of a different meaning of that expression and the instant case, in our view, is an instance of such exemption. The subject-matter dealt with by the provisions contained in section 18A (5) and section 18A (6) is entirely different from the subject-matter dealt with in section 18A (9). Section 18A (5) and 18A (6)

deal with the liability to pay interest either on the part of the Central Government or on the part of the assessee in respect of the amount of advance tax and the purpose of using the expression 'regular assessment' in those provisions obviously is as has been clearly stated in *Sarangpur Cotton Manufacturing Co. v. Commissioner of Income-tax* to indicate two termini of the period for which interest should become payable. That is not the purpose for which the expression 'regular assessment' has been used in section 18A (9) of the Act. In section 18A (9) it is a question of levying the penalty on the assessee for having furnished estimates of the tax payable by him which he knew or had reason to believe to be untrue, which aspect, in a given case, could be brought home to the assessee only after proceedings under section 34 (1) for reassessment are commenced; moreover, the extent to which the estimates furnished earlier have been below the actual tax liability can be ascertained only during the reassessment proceedings. It is in that context that one has to consider and interpret the expression 'regular assessment' occurring in that aspects which are relevant for levy of penal interest would be different from the aspects that would be taken into account when the question is one of levying the penalty. In our view, the nature of the subject-matter dealt with by this provision and the purpose served thereby clearly necessitate the adoption of a different meaning of the expression 'regular assessment' occurring therein than the meaning attributed to it while considering the provisions of section 18A (5) and 18A (6). Having regard to the above discussion, it is clear that the expression 'regular assessment' occurring therein than the meaning attributed to it while considering the provisions of section 18A (5) and 18A (6). Having regard to the above discussion, it is clear that the expression 'regular assessment' occurring in section 18A (9) would cover the cases of reassessment undertaken under section 34 (1) of the Act. In our view, the two decisions on which reliance has been placed by Mr. Pandit are clearly distinguishable and they do not present any difficulty in interpreting 'regular assessment' occurring in section 18A (9) in the manner indicated above.

11. In the result, we are of the view that the question referred to us will have to be answered in the affirmative and against the assessee.

12. The assessee will pay the costs of this reference to the department.

13. Question answered in the affirmative.

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