Seetharama Lakshmi Rice and Groundnut Oil Mill Contractors Co. Vs. Income-tax Officer, K-ward and ors.

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Court : Andhra Pradesh

Decided On : Mar-30-1977

Reported in : [1978]111ITR212(AP)

Judge : A. Sambasiva Rao, Actg. C.J. and ;Amareswari, J.

Acts : Income Tax Act, 1961 - Sections 271, 271(1), 271(2), 272 and 275; Constitution of India - Article 226; Taxation Laws (Amendment) Act, 1970

Appeal No. : Writ Petition No. 6134 of 1975

Appellant : Seetharama Lakshmi Rice and Groundnut Oil Mill Contractors Co.

Respondent : income-tax Officer, K-ward and ors.

Advocate for Def. : P. Rama Rao, Adv.

Advocate for Pet/Ap. : Dasaratharama Reddy, Adv.

Judgement :

A. Sambasiva Rao, Actg. C.J.

Two questions of some importance relating to the imposition of penalty on an income-tax assessee are raised in this writ petition. One relates to the period of limitation for such imposition and the other relates to the quantum of such penalty.

2. It is not as if the petitioner has not gone through the usual exercises of appeal and second appeal as provided in the Income-tax Act, 1961. He preferred an appeal to the Appellate Assistant Commissioner against the imposition of penalty and when he failed there, he filed a second appeal to the Income-tax Appellate Tribunal. There also he was unsuccessful. Then he has filed this writ petition.

3. The two questions, which are raised in the writ petition and urged before us, were not raised before the Appellate Assistant Commissioner or the Tribunal. That is why Sri P. Rama Rao, learned standing counsel for the income-tax department, raised a preliminary objection as to the maintainability of the writ petition. He contended that the failure to raise these contentions before the appropriate authority and the Tribunal would be a bar to the maintainability of the present writ petition. We are not inclined to agree with Sri Rama Rao. It is for the reason that these two questions, particularly the one relating to the limitation, go to the very root of the matter. If we accept the petitioner's contention as to the bar of limitation, then the very imposition of penalty would become time barred and illegal. Therefore, we will proceed to

consider the writ petition on its merits.

4. The amount of penalty imposed on the petitioner is Rs. 9,168 and was imposed for filing of the return for the assessment year 1965-66 late. In this petition a writ of certiorari quashing the order imposing the penalty is sought.

5. For the assessment year 1965-66 the Income-tax Officer made the assessment on 27th of December, 1969, fixing the income at Rs. 1,34,390. Simultaneously, he also initiated penalty proceedings by issuing a notice. The petitioner-assessee thereupon preferred an appeal against the assessment to the Appellate Assistant Commissioner who set aside the order of the Income-tax Officer and remitted back the case for fresh assessment. This order was on 23rd of October, 1970. It was also communicated to the Commissioner of Income-tax who received it on 23rd of November, 1970. After remand, the Income-tax Officer made a fresh assessment on 25th of July, 1972, whereunder he reduced the total taxable income to Rs. 85,770 and levied a tax of Rs. 5,234. This amount of tax was paid by the assessee. On the date of the fresh assessment, once again the Income-tax Officer issued a notice calling upon the assessee to explain why penalty should not be imposed. After hearing the explanation he passed a final order on 23rd of December, 1972, imposing a penalty of Rs. 9,168. As we have said earlier, the assessee's appeal to the Appellate Assistant Commissioner against the imposition of penalty and a further second appeal to the Income-tax Appellate Tribunal were unsuccessful. Thereupon, the present writ petition has been filed.

6. While commending the writ petition for our acceptance Sri Dasaratharama Reddy pressed two points. The first of them relates to limitation as we have already indicated. In his submission Sub-clause (ii) of Section 275(a) would apply to the case since the penalty was imposed on 23rd of December, 1972, much more than six months after the order of the Appellate Assistant Commissioner was received by the Commissioner on November 23, 1970. On the other hand, Sri Polavarapu Rama Rao, learned standing counsel for the department, maintained that the case comes within the ambit of sub-Clause (i) of Section 275(a), since there has been an appeal and the proceedings, in which the action for imposition of penalty had been instituted, were completed on 25th of July, 1972, when the Income-tax Officer made a fresh assessment after remand. The question, therefore, is whether the imposition of penalty is barred by limitation under Section 275.

7. Section 275 was substituted by the Taxation Laws (Amendment) Act, 1970, with effect from April 1, 1971. Earlier it was not so elaborate as the present provision ; it contained only one provision which is practically the same as the present Clause (b) excepting the words 'from the end of the financial year'. Under the old section two years' period was fixed from the time when the proceedings, in the course of which action for imposition of penalty was initiated, have been completed. It can easily be seen that it was in general terms, possibly covering within its sweep many possibilities. Evidently Parliament, while recasting the section, was anxious to plug very many loop-holes and escape valves for imposition of penalty. That is why in the present section it has endeavoured to make a detailed provision. It is better to extract the section first. It is as follows:

'No order imposing a penalty under this Chapter shall be passed-

(a) in a case where the relevant assessment or other order is the subject-matter of an

appeal to. the Appellate Assistant Commissioner under Section 246 or an appeal to the Appellate Tribunal under Sub-section (2) of Section 253, after the expiration of a period of-

(i) two years from the end of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed, or

(ii) six months from the end of the month in which the order of the Appellate Assistant Commissioner or, as the case may be, the Appellate Tribunal is received by the Commissioner,

whichever period expires later ;

(b) in any other case, after the expiration of two years from the end of the financial year in which the proceedings; in the course of which action for imposition of penalty has been initiated, are completed.'

8. It is immediately seen that it divides cases into two categories, one category covering cases where the relevant assessment or other order is the subject-matter of an appeal and all other cases coming under the second category. Clause (a) deals with the first category and Clause (b) with the second category. In order to bring a case within the ambit of Clause (a) there should have been an appeal to the Appellate Assistant Commissioner under Section 246 or an appeal to the Appellate Tribunal under Section 253(2). Section 246 covers many cases including orders of assessment, reassessment or recornputation and an order imposing a penalty under Section 271 and other provisions. In its turn, Section 253 provides for appeals to the Appellate Tribunal against orders passed by the Appellate Assistant Commissioner in regard to the matters mentioned therein. If there has been an appeal against the assessment or other order, the period of limitation for imposing penalty under Clause (i) is two years from the end of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed. Since this condition is satisfied and there was an appeal to the Appellate Assistant Commissioner who remanded the matter back to the Income-tax Officer, it was contended for the department that the present case comes within Clause (i). On the other hand, learned counsel for the assessee asserted that the relevant assessment order postulated by Clause (a) is the original assessment and not the later assessment order passed by the Income-tax Officer after remand. Since the original assessment order was made on 27th of December, 1969, the imposition of penalty on 23rd of December, 1972, is clearly barred by limitation. He further pointed out that Clause (i) has no application because there was no further appeal against the remand order. That is why, he argued, Clause (ii) would apply to the case. He placed reliance on Sarangpur Cotton . v. Commissioner of Income-lax : [1957]31ITR698(Bom) K. Gopalaswami Mudaliar v. Fifth Additional Income-tax Officer : [1963]49ITR322(Mad) and Shadilal Sugar and General Mills v. Union of India : [1972]85ITR363(All) in support of his contention that it was the first assessment that was postulated by Clause (a).

9. A broad analysis of the section would show that wherever there has been an appeal against the assessment or other order, be it an appeal to theAppellate Assistant Commissioner or to the Appellate Tribunal, as the case may be, and if the matter reached a finality with the order of either authority, the period as fixed by Sub-clause (ii) of Clause (a) is six months from the end of the month in which the aforesaid final order is received by the Commissioner. The Commissioner being in overall

superintendence over these matters and since he can examine the regularity of these proceedings, six months' time was fixed from the end of the month in which the order was received by him. In cases where the proceedings are not completed with the order of the Appellate Assistant Commissioner or the order of the Appellate Tribunal, patently Clause (ii) would have no application. Supposing the Appellate Assistant Commissioner or the Appellate Tribunal has remanded the case back to the Income-tax Officer and that officer completes the proceeding, as it has happened in this case, then it would be unreasonable to bring such a case within the scope of Sub-Clause (ii). No doubt, Sri Dasaratharama Reddy argued that even where the matter was remitted back to the Income-tax Officer, he was expected to complete the proceeding within six months and that is the very purpose for which that period has been fixed. Otherwise, so the learned counsel urged, it would result in giving unlimited time to the Income-tax Officer to complete a proceeding and such a situation could never be the intention of Parliament. There is no reason to suppose that the Income-tax Officers would unnecessarily and unduly delay the disposal of assessments and other cases pending before them. On the other hand, quick disposal of such cases appears to be the intention of the entire Act. Where in the appeal the appellate authority sends back the matter to the Income-tax Officer, then the case squarely walks into the ambit of Sub-clause (i). In such a case all the requirements of Sub-clause (i) of Clause (a) are satisfied. The relevant assessment order has been the subject-matter of an appeal, action for imposition of penalty has been initiated in the course of the assessment proceedings and those proceedings have been completed by the Income-tax Officer. In such a case, the imposition can be levied within a period of two years from the end of the financial year in which the proceedings are completed. It is important to note that Sub-clause (i) uses the words 'the, proceedings.....are completed'. The contrast betweenthese words and the words 'assessment or other order' should be particularly noted. Clause (a) and Sub-clause (ii) use the word 'order' while Sub-clause (i) keeps the position in a broad manner by what we feel the deliberate use of the words 'the proceedings.....are completed'. It isreasonable to gather the intention of Parliament from this that not merely passing an order but the completion of the proceeding as such is the crucial aspect, and the period of limitation under Sub-clause (i) starts from the end of the financial year in which these proceedings reached the stage of completion. Thus, Sub-clauses (i) and (ii) provided for two classes of cases where there has been an appeal. It is also worthy of note that after the two Sub-clauses, the words 'whichever period expires later' occur. Evidently, Parliament thought that certain matters may be governed by both the sub-clauses and in such an eventuality the longer period must be taken. The cases where there has been no appeal are governed by Clause (b). We are not much concerned in this case with the import of the Explanation to the section.

9. Applying the above analysis to the facts of the present case, there has been an appeal preferred by the assessee against the first 'assessment, thereby satisfying the requirement of main Clause (a). The assessment proceedings, in the course of which action for imposition of penalty has been initiated, were completed only when the Income-tax Officer made a fresh assessment on 25th of July, 1972. By no stretch of imagination could it be said that they ware completed by the original assessment order of 1969 or the order of the Appellate Assistant Commissioner remitting the matter back to the Income-tax Officer. The statement of facts disclose that there was no further appeal against the assessment made by the Income-tax Officer after remand. Logically, it should follow that the assessment proceedings were completed on 25th July, 1972, on which day the fresh assessment was made.

10. In this connection, it would be material to note that the Appellate Assistant Commissioner, while allowing the appeal, completely set aside the original assessment made by the Income-tax Officer and sent back the matter. With the result, the original assessment, was no more in existence and a new assessment came into being after remand on 25th of July, 1972. Section 251 confers the power of annulling an assessment while disposing of an appeal. It was this power that the Appellate Assistant Commissioner exercised while setting aside the assessment made by the Income-tax Officer. Clause (a) of Section 251 further empowers the Appellate Assistant Commissioner to refer the case to the Income-tax Officer for making fresh assessment and the Income-tax Officer shall thereupon proceed to make such fresh assessment and determine, where necessary, the amount of tax payable an the basis of such fresh assessment, In this case when the Income-tax Officer made a fresh assessment after remand, the proceeding came to an end and there was no further appeal. We are thus satisfied that this matter is covered by Sub-clause (i) and not by Sub-clause (ii). Sub-clause (ii) would have applied had the matter ended with the Appellate Assistant Commissioner finally disposing of the case.

11. Even supposing for argument's sake that the expression 'the relevant assessment order' occurring in Clause (a) refers to the second and fresh assessment made by the Income-tax Officer after remand, since there was no appeal there against, the case must then walk into the realm of Clause (b), in which eventuality also the imposition of penalty would be within the limitation because that was done after the expiration of two years from the end of the financial year in which the proceedings are completed. In such a case, the proceedings are completed with the fresh assessment order. Either way, we are satisfied that there is no bar of limitation for the imposition of penalty.

12. The three cases relied on by Sri Dasaratharama Reddy have no material bearing on the question. All of them are based on the specific language of Section 18A(5) relating to the advance payment of tax and the assessment that has to be made under Section 23 of the Indian Income-tax Act of 1922. Sub-section (5) of section 18A provides for payment of interest in certain cases relating to advance tax. If there was no provisional assessment, interest is payable up to the date of the assessment made under Section 23. The section itself calls this as the 'regular assessment'. Since Section 18A(5), in clear terms, refers to the assessment under Section 23 as the date up to which interest is payable, the above three decisions lay down that the original assessment made by the Income-tax Officer under Section 23 would be the crucial date and not any other date. It is obvious that these cases were decided on the specific language of Section 18A(5) read with Section 23 of the 1922 Act. There is no such inhibition in Section 275. Therefore, we see no possibility of the assessee deriving any support from these decisions.

13. The second question relates to the quantum of penalty. A sum of Rs. 9,168 was imposed as penalty. The amount was fixed as per the provisions of Section 271(1)(a)(i) read with Section 271(2). Since this is a penalty referable to Clause (a) of Section 271(1), a sum equivalent to 2 per cent, of the tax for every month during which the default continued but not exceeding in the aggregate 50 per cent. of the tax may be imposed as penalty. The petitioner is a firm and, therefore, the department invoked Sub-section (2) of Section 271 while imposing the penalty. That Sub-section says:

'When the person liable to penalty is a registered firm or an unregistered firm which has been assessed under Clause (b) of Section 183, then, notwithstanding anything

contained in the other provisions of this Act, the penalty imposable under Sub-section (1) shall be the same amount as would be imposable on that firm if that firm were an unregistered firm.' So, even if the firm is a registered one, for the purpose of imposing penalty it will have to be treated as an unregistered firm. The Income-tax Act provides for different rates of tax for registered and unregistered firms, the rate on the unregistered firms being much higher. The tax now imposed is Rs. 5,234. But when it is treated as an unregistered firm as required by Section 271(2), it would come to Rs. 36,672. At the rate of 2 per cent. per month for the delay of 12 months the Income-tax Officer levied a penalty of Rs. 9,168. Sri Dasaratharama Reddy for the petitioner contended that the tax levied was only Rs. 5,234 and the maximum penalty that could be imposed as per Clause (i) of Section 271(1)(a) could only be Rs, 2,617. He emphasised on the word 'tax' occurring in Sub-clause (i) and, therefore, what the Income-tax Officer could levy was only 2 per cent. of the tax for every month, the aggregate not exceeding 50 per cent. of the tax levied. According to him, Sub-section (2) shall not be applied. We see no force in this contention. Sub-section (2) is an integral part of Section 271. It has made a special provision in regard to firms, registered or otherwise, for levying penalty. That such a provision is not repugnant to Article 14 was held by the Supreme Court in fain Brothers v. Union of India [1910] 77 ITR 107. Therefore, Section 271(l)(a)(i), when, it is applied to a firm, will have to be applied along with Sub-section (2). The non obstante clause occurring in Sub-section (2) is very significant. According to it, notwithstanding anything contained in the other provisions of the Act, the penalty imposable under Sub-section (1) of Section 271 shall be the same amount as would be imposable on that firm if that firm were an unregistered firm. Therefore, whatever be the effect of the other provisions, including the use of the word 'tax' in Sub-clause (i), the penalty will have to be imposed as if the petitioner were an unregistered firm. That is what precisely the department did. We see nothing wrong in it.

14. These are the only two points that were raised and urged before us and we find no substance in either of them. The writ petition is accordingly dismissed with costs. Advocate's fee Rs. 150.