

**J. K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. Commissioner of Income Tax U. P.**

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**Court :** Allahabad

**Decided On :** Apr-11-1962

**Reported in :** [1963]47ITR906(All)

**Appeal No. :** Income-tax Reference No. 262 of 1953

**Appellant :** J. K. Cotton Spinning and Weaving Mills Co. Ltd.

**Respondent :** Commissioner of Income Tax U. P.

**Judgement :**

M. C. DESAI C.J. - This is a case referred to by the Income-tax Appellate Tribunal, Allahabad Bench, for answering the following two questions of law :

'(1) Whether, on the facts and in the circumstances of this case, the Income-tax Officer in making a fresh assessment in pursuance of the Income-tax Act, could include the dividend income deemed to have been received by the assessee in pursuance of an order under section 23A of the Income-tax Act and which could not be included in the total income at the time of the original assessment ?

(2) Whether, on the facts and in the circumstances of this case, the assessments made in pursuance of orders under section 31 of the Income-tax Act were not barred by limitation by virtue of the second proviso to section 34(3) of the Income-tax Act ?'

The facts giving rise to the reference are as follows :

The questions arise out of three orders passed by the Tribunal in respect of the three assessment years 1940-41, 1941-42 and 1942-43. The assessee is a company owning 150 ordinary shares in another company known as 'J. K. Jute Mills Company Ltd.'

J. K. Jute Mills Company Ltd., which will be referred to as 'the company' in this judgment, declared dividends in the assessment years 1940-41 to 1942-43 at a certain percentage of its profits on certain dates, on which the annual general meeting of the company was held and the Income-tax Officer passed orders under section 23A on certain dates by which the assessee was to be deemed to have received larger dividends in the assessment years 1941-42 to 1943-44. The following statement shows the companys assessment years and the dates on which the dividends were declared and on which the Income-tax Officer passed the orders under section 23A :

Assessment years

Dates on which dividends were declared

Dates of orders under section 23A

1940-41 (Accounting year 1939)

13-7-1940

14-3-1946

1941-42 (Accounting year 1940)

14-7-1941

31-1-1947

1942-43 (Accounting year 1941)

24-7-1942

29-11-1947

The assessee filed its returns for the assessment years 1941-42 to 1943-44. Its accounting years for the three assessment years were the calendar years 1940, 1941 and 1942. In its returns it showed the income from the dividends of the company at the amounts declared in the meetings of the company. The Income-tax Officer passed the orders under section 23A much after it had filed the returns and, therefore, it could not possibly show in them the dividends which it was deemed to have received under section 23A orders passed against the company. The Income-tax Officer passed assessment orders on the returns and the assessee preferred appeals on certain grounds, with which we are not concerned in this reference. These appeals were allowed by the Appellate Assistant Commissioner and he remanded all the three cases for fresh assessment by the Income-tax Officer. When the Income-tax Officer proceeded to reassess the assessee, he did so on the basis of the dividends it was deemed to have received in accordance with his section 23A orders. In other words, he assessed the assessee on larger incomes now than previously. The following statement gives the dates of the original assessments, of the Appellate Assistant Commissioners orders setting them aside and remanding the cases for reassessment, and of the reassessments :

Assessment year

Date of original assessment

Date of the order of A..A.C. setting aside assessment

Date of assessment

1941-42 (C. Y. 1940)

31-12-1945

31-3-1947

12-3-1949

1942-43 (C. Y. 1941)

6-3-1946

30- 1-1947

12-3-1949

1943-44 (C. Y. 1942)

22-3-1946

13-12-1946

21-3-1949

The assessee preferred appeals from the reassessment orders on the ground that they could not have been based on the income from dividends deemed to have been received in accordance with section 23A orders. This ground did not appeal to the Appellate Assistant Commissioner or to the Income-tax Appellate Tribunal. Then at the instance of the assessee the Tribunal referred the two questions.

The powers of an Appellate Assistant Commissioner hearing an appeal from an assessment order made by an Income-tax Officer are described in section 31(3). He can confirm, reduce or enhance the assessment, or

'(b) set aside the assessment and direct the Income-tax Officer to make a fresh assessment after making such further inquiry as the Income-tax Officer thinks fit or the Appellate Assistant Commissioner may direct, and the Income-tax Officer shall thereupon proceed to make such fresh assessment and determine where necessary the amount of tax payable on the basis of such fresh assessment.'

When an Income-tax Officer makes a fresh assessment in compliance with the Appellate Assistant Commissioners directions, he is of course bound by the directions, but, subject to them, he has the same powers as he had originally when making an assessment under section 23. The reassessment is nothing but a second assessment in substitution of the assessment made previously and set aside by the Appellate Assistant Commissioner on appeal. There are no restrictions at all on the powers of the Income-tax Officer when he proceeds to reassess the income; subject to the directions given in the Appellate Assistant Commissioners order, he has to proceed as if he were making an assessment under section 23 at the time when he proceeds to reassess. He is not bound or restricted by anything that had happened either when he made the original assessment or when the appeal was heard by the Appellate Assistant Commissioner; he is governed only by the findings of the Appellate Assistant Commissioner. He is not bound by his own findings arrived at in the original assessment; they do not operate as *res judicata* and undoubtedly have not the force of an order. The findings arrived at by the Appellate Assistant Commissioner and the directions given by him are binding on him, not as *res judicata*, but as orders

to which he is subject. He is free to take into consideration any relevant material that came into existence for the first time after the original assessment order was made by him. Consequently, the Income-tax Officer in the instant case was competent, when reassessing the income of the assessee, to consider the orders passed by him under section 23A and to treat the assessee as having derived larger income from the dividends than that shown by it in its returns and accepted as correct in the original assessment orders. He was free to take into account the materials which existed on the date of the reassessment and was not confined to those materials which existed on the date of the original assessment orders. His finding arrived at in the original assessment proceedings that the income from the dividends shown in the return was correct might have been correct but fell with the assessment order itself and was neither operative nor binding in the reassessment proceeding. By the time he came to reassess the assessee he had the section 23A orders before him under which the assessee was deemed to have received larger income from the dividends. The assessment for 1941-42 was based on the income of the accounting year 1940. The original assessment was made on December 31, 1945, and the order was set aside by the Appellate Assistant Commissioner on March 31, 1947. In the meantime, the section 23A order had been passed on December 14, 1946, and on March 3, 1949, on which the Income-tax Officer reassessed the assessee, he had to reassess him on the basis of the income deemed to have been received by it in accordance with the section 23A order. If he had not made the original assessment and was making the assessment for the first time on March 12, 1949, it cannot be disputed that he would make it on the basis that the assessee had received the larger income in accordance with the section 23A order and, when he is assessed it, he had the same jurisdiction as he would have if the reassessment were an assessment for the first time.

The section 23A order in respect of the divided income received in 1940 was made by the Income-tax Officer while the appeal from the assessment order for the assessment year 1941-42 was pending before the Appellate Assistant Commissioner. This order was brought to his notice and in his appellate order he gave a clear direction to the Income-tax Officer to consider the assessee's explanation for not being assessed on the larger dividend income which was to be deemed to have been received by it. Thus, apart from his own powers, the direction of the Appellate Assistant Commissioner itself conferred jurisdiction upon him to assess the assessee on the basis of the larger income. It may be mentioned here that the assessee submitted itself to the direction of the Appellate Assistant Commissioner by not preferring an appeal from his order containing it. Section 23A orders for the next two assessment years were passed by the Income-tax Officer after the Appellate Assistant Commissioner had ordered reassessment and, therefore, the Appellate Assistant Commissioner's orders did not contain any reference to them.

The first question must, therefore, be answered in the affirmative.

The second question raises the question of limitation. Section 34(3) provides that no order for assessment or reassessment (barring certain orders with which we are not concerned) can be made after the expiry of four years from the end of the year in which the income was first assessable. This bar is subject to two provisos, the second proviso being that it will not operate in a case of reassessment made in pursuance of an order under section 31. All the three reassessments were made after the expiry of four years from the last days of the assessment years and, but for the proviso they would have been all, barred by time, but since they were made in pursuance of the order given by the Appellate Assistant Commissioner they were not subject at any

time limit. All the reassessment orders were made in direct compliance with the directions contained in the Appellate Assistant Commissioners orders under section 31. He expressly called upon the Income-tax Officer to reassess the assessee and the reassessment was done in pursuance of the direction and was, therefore, not subject to the time limit contained in section 34(3).

There was an express direction in one order of the Appellate assistant Commissioner for reassessment on the basis of the assumed larger dividend income, but even in respect of the other two reassessment there does not arise any further question of limitation for reassessment on the assumed larger divided income. If the Income-tax Officer could reassess the assessee on the basis of the income shown in the return even after the expiry of four years, he could also reassess it on the basis of the deemed dividend income.

We accordingly answer the second question in the negative, i.e., we hold that none of the three reassessment orders was invalid on the ground that it was made more than four years after last day of the assessment year.

Let a copy of this judgment be sent under the seal of the court and the signature of the Registrar to the Appellate Tribunal as required by section 66(5).

The Commissioner of Income-tax shall be entitled to recover his costs, which we assess at Rs. 200, from the assessee.

Order accordingly.

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