M/S. Jaipur Udyog Ltd. & Anr vs Commissioner Of Income-Tax, Delhi, ... on 24 September, 1968

Equivalent citations: 1969 AIR 470, 1969 SCR (2) 193, AIR 1969 SUPREME COURT 470

Author: J.C. Shah

Bench: J.C. Shah, V. Ramaswami, A.N. Grover

PETITIONER:
M/S. JAIPUR UDYOG LTD. & ANR.

Vs.

RESPONDENT:
COMMISSIONER OF INCOME-TAX, DELHI, RAJASTHANAND ANOTHER

DATE OF JUDGMENT:
24/09/1968

BENCH:
SHAH, J.C. (CJ)
BENCH:
SHAH, J.C. (CJ)
RAMASWAMI, V.
GROVER, A.N.

CITATION:
1969 AIR 470 1969 SCR (2) 193

ACT:
Income-tax Act (43 of 1961), ss. 72, 80, 141 and 210(3)-Provisional assessment under s. 141-If income-tax officer can determine disputed claims-Whether s. 80 applies to provisional assessments-S. 210 (3)-Advance tax payable on the basis of 'provisional assessment'-Refers to valid provisional assessment.

HEADNOTE:
The appellant filed its returns for the assessment years 1954-55 to 1964-65. The Income-tax Officer passed orders of assessment for the years 1954-55 to 1959-60. While the appeals to the Appellate Assistant Commissioner for those years, and the, assessment proceedings before the Income-tax Officer for the years 1960-61 to 1962-63, were still

pending, for the assessment year 1963-64 (the return for which was flied under s. 139 of the Income-tax Act, 1961), the Income-tax Officer made a provisional assessment under s. 141. He held that the appellant was not entitled to deduct the aggregate amount of losses as claimed by it during the previous years and allowed only a much smaller sum as loss which could be carried forward from the earlier years. For the assessment year 1964-65, the Income-tax Officer made a provisional assessment without allowing any deduction of loss claimed by the appellant; and for the assessment year 1965-66 the Income-tax Officer called upon the appellant to pay a certain sum as advance tax under s. 210(3). The appellant filed writ petitions in the High Court for quashing the orders of the Income-tax Officer for each of the three years, but the petitions were dismissed. The High Court held: (1) that under s. 141 the provisional assessment of tax must also be made in accordance with and subject to the provisions of the Act, and that the combined effect of ss. 72 and 80 was that a business loss can be carried forward to subsequent assessment years only when it has been determined in pursuance of a return flied under s. 139; and (2) that under s. 210(3) as inserted by Act 13 of 1963 and modified by Act 31 of 1964, the Income-tax Officer was entitled to make an order for payment of advance tax for 1965-66 on the provisional assessment for the year 1964-65.

In appeal to this Court,

HELD: (1) Section 141 bars an enquiry, at the stage of making a provisional assessment, into disputed questions of law and fact: it is immaterial that the dispute raised is complicated or easy. Therefore the Income-tax Officer was not justified. in ignoring the appellant's claim.

[198 D-F]

Under s. 80 loss of a previous year under the head of income from profits and gains may be carried forward only if it has been determined in pursuance of a return filed under s. 139; that is, if it is not so determined it cannot be carried forward and set off against the profit of the subsequent year or years. But the section applies only to a regular assessment. In the case of 'a provisional assessment under s. 141, if there has been such a determination of the allowances mentioned in sub-s. 2 in a regular assessment for an earlier year, then under s. 141(2)

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the income-tax officer must whether the assessee has claimed or not give effect to the allowances so determined. But he has no power to adjudicate upon a claim for deduction made by the assessee when making a provisional assessment.

[196 G; 197 A--198 B; 199 B-C]

The section has been enacted with the object of expediting collection of tax on the basis of the return made by the assessee. The assessment so made is summary and is based only on the return and the accounts and documents

filed by the assessee. If there be discrepancy between the return made and the accounts and documents accompanying the return the Income-tax Officer may ask the assessee to explain the discrepancy but he must make a provisional assessment on the basis of the return initially filed or clarified, but cannot hold that certain claims made by the assessee are in law unjustified. The provisional assessment does not bind the assessee nor the department and the tax paid pursuant to such provisional assessment is liable to be adjusted in the light of the final order in the regular assessment, and it is open to the Income-tax Officer to impose a penalty in appropriate cases after the regular assessment is completed. If it is held that the Income-tax Officer has jurisdiction to hold an enquiry into disputed matters, the expression 'provisional assessment' loses all significance: the Income-tax Officer. may, under such a summary assessment, without giving an opportunity to the assessee to explain his claim negative it and the assessee has no redress under the Act against any erroneous or arbitrary action because, the Income-tax OffiCer is not bound to give notice to the assessee or hear witnesses and an appeal against a provisional assessment is expressly barred.

[196 D-E; 198 B-C; B-C;199

(2) Under s. 210(3) the Income-tax Officer is entitled to make an order for payment of advance-tax on the basis of provisional assessment under s. 141, but it predicates a valid provisional assessment. Since the provisional assessment in the present case, for the year 1964-65 is invalid, an order for payment of advance-tax or the year 1965-66 could not be made. [200 A-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 586588 of 1967.

Appeals from the judgment and order dated April 20, 1965 of the Rajasthan High Court in D.B. Civil Writ Petitions Nos. 51 F of 1964, and 26 and 67 of 1965.

M.C. Chagla, Bishambar Lal, H.K. Puri, M.K. Garg and K.K. Jain, for the appellants.

S.T. Desai, N.D. Karkhanis, R.N. Sachthey and B. D. Sharma, for the respondents.

The Judgment of the Court was delivered by Shah, J. Jaipur Udyog Ltd.--a Company--registered under the Indian Companies Act, 1913, established in 1953 a cement factory at Sawai Madhopur in the State of Rajasthan. From time to time the Company filed its returns under the Income- tax Act, 1922, and after the repeal of that Act under the Act of 1961. The following chart sets out the income or loss returned by the Company for the years 1954-55 to 1964-65 and the income or loss computed

for the years by the Income-tax Officer on assessment:

> Year of Income or loss returned Income or loss compu- Assessment by the Companyted by the1. ted bythe T.o. 1954-55 61,24,270 (Loss)22,53,457(LOSS) 1955-56 14,59,963(Profit)19,84,447(Profit) 1956-57 12,92,958(Profit)16,88,480(Profit) 1957-58 23,05,305(Loss)12,53,222(Loss) 1958-59 46,44,779(Loss)31,48,707(Loss) 1959-60 28,77,487(Loss)20,62,180(Loss) 1960-61 11,35,365(Loss)Assessmentpending.
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> 1961-62 66,086 (Loss) 1962-63 44,93,236 (Profit) 1963-64 7452402 (Profit) 1964-65 59,89,757 (Profit) Against the orders of assessment made by the Income-tax Officer for the years 1954-55 to 1959-60 determining its net income or loss as set out in the chart the Company appealed to the Appellate Assistant Commissioner, and the appeals were pending at the dates of commencement of the petition, in the High Court of Rajasthan which give rise to the proceedings in this Court. Assessments for the years 1960- 61, 1961-62, 1962-63, 1963-64 and 1964-65 were however then not completed. In its return of income for the assessment year 1963-64 the Company claimed to set off against the income returned Rs. 1,03,03,935 being the aggregate amount of loss which it claimed it had suffered in the previous years and was entitled to set off against the income of that year. The Income-tax Officer made a provisional assessment of tax under s. 141 of the Incometax Act, 1961, and against the income returned by the Company he allowed deduction of Rs. 39,89,731 as loss carried forward from the earlier years, and made a demand for Rs. 8,73,873 as tax provisionally due and Rs. 87,387 as penalty for default in compliance with the demand. The Company moved petition No. 51 of 1964 in the High Court of Rajasthan and challenged the order claiming that the Income-tax Officer was bound to accept the return made by the Company and could not assess it to tax on income not admitted.

For the assessment year 1964-65 the Company returned a net income of Rs. 59,89,757 as profit, and claimed to set off against that amount Rs. 36,01,735 as loss of the previous years and paid Rs. 12,12,596-65 as tax due by it in accordance with s. 140A (1) of the Act. But the Income-tax Officer made a provisional assessment and computed the tax on the total income of Rs. 59,89,757 returned by the Company without allowing any deduction claimed and ordered the Company to pay an additional amount of Rs. 17,32,768-60. Against that order the Company moved petition No. 26 of 1965, for an order quashing the demand of tax and for an injunction restraining the Income-tax Officer from enforcing the demand.

For the assessment year 1965-66 the Income-tax Officer relying upon s. 210(3) of the Act called upon the Company to pay Rs. 29,45,365-25 as advance-tax. The Company moved petition No. 67 of 1965 in the High Court of Rajasthan, for an order quashing the demand. The High Court rejected the three petitions. Against the orders passed by the High Court, these three appeals have been preferred by the Company.

Section 141 of the Income-tax Act, 1961, authorises the Income-tax Officer to make a provisional assessment of the income of the assessee on the basis of the return made under s. 139 and the accounts and documents, if any, accompanying the return. The assessment so made is summary and is based only on the return and the accounts and documents filed by the assessee. The Income-tax Officer is not bound to make any enquiry before making a provisional assessment: he is not bound even to give to the assessee any notice of his intention to make a provisional assessment, nor to hear the assessee.. He may, if he desires, call upon the assessee to elucidate the return or the entries posted in the accounts and documents, but he is not obliged to do so. Section 141 has been enacted with the object of expediting collection of tax on the basis of the return made by the assessee. The Act contains several provisions for collection of tax before regular assessment, e.g. payment of advance-tax, deduction of tax at source from salary and dividends, provision for self-assessment etc. The object of these provisions is to collect tax on certain classes of income before regular assessment. The provisional assessment does not bind the assessee nor the Department: the quantum of tax computed and levy thereof are not binding upon the assessee and the Revenue. Tax paid pursuant to provisional assessment is liable to be adjusted in the light of the final order in the regular assessment. An appeal against the order is expressly prohibited. The Income-tax Officer must, however, apply the rate operative in the assessment year by virtue of the Finance Act and give effect to the allowances mentioned in sub-s. (2) of s. 141 whether the assessee has claimed them or not. But the assessee has no right to be heard or to explain or elucidate and has no right of appeal against the computation or the levy of tax.

The Company claimed that it was entitled to deduct the aggregate of losses which it had suffered since the year 1954-55 year after year from the profits of the year 1963-

64. It is true that the loss returned by the Company year after year was in excess of the amount of loss determined by the Income-tax Officer. But in respect of the orders of assessment appeals were pending. Counsel for the Revenue concedes that assessment under s. 141 being provisional, the Income-tax Officer cannot make an enquiry into disputed questions of fact or law, but he submits, relying upon sub-s. (2) of s. 141, that the assessee cannot claim, and the Income-tax Officer cannot allow, loss in respect of previous years in excess of the loss certified by the Income-tax Officer. That he says is the effect of ss. 72 and 80 of the Income-tax Act, 1961. Section 72 provides:

> "(1) Where for any assessment year, the net result of the computation under the head "Profits and gains of business or profession" is a loss to the assessee, ... and such loss cannot be or is not wholly set off against income under any head of income in accordance with the provisions of section 71, so much of the loss as has not been so set off or, ... or where he has no income under any other head, the whole loss shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year, and---
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> (i) it shall be set off against the profits and gains, if any, of any business or profession carried on by him and assessable for that assessment year:

> Provided that the business or profession for which the loss was originally computed continued to be carried on by him in the previous year relevant for that assessment year; and
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> (ii) if the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on.
>
> (3) No loss shall be carried forward under this section for more than eight assessment years immediately succeeding the assessment year for which the loss was first computed."

Section 80 of the Act provides:

> "Notwithstanding anything contained in this Chapter, no loss which has not been determined in pursuance of a return filed under section 139, shall be carried forward and set off under sub-section (1) of section 72 or "

Under s. 72(1) read with s. 80 loss of a previous year under the head of income from profits and gains of business, profession or vocation may be carried forward to the next succeeding year only if it has been determined in pursuance of a return filed under s. 139. If it is not so determined in the assessment of the subsequent year the loss cannot be carried forward and set off against the profit of the subsequent year or years. By sub-s. (2) of s. 141 the Income-tax Officer is enjoined to give effect to the loss so certified and carried forward. But it does not follow therefrom that when the assessee claims that out of the income of the year returned by him certain amounts are liable to be deducted in computing the taxable total income, the Income-tax Officer may adjudicate upon the validity of the claim in making a provisional assessment. In our judgment, if it be granted that the Income-tax Officer has jurisdiction to hold an enquiry into disputed matters, the expression "provisional assessment" may lose all significance: the income-tax Officer may under a summary assessment without giving an opportunity to the assessee to explain his claim negative it and the assessee has no redress under the Act against any erroneous or arbitrary action. The Court would not, unless compelled by the phraseology of the statute or by the clear implication arising therefrom, be justified in accepting that view. The clearest implication of s. 141 bars an enquiry at the stage of making a provisional assessment into disputed questions of law and fact: it is a matter of no moment that the dispute raised is complicated or is easy of solution. In our judgment, once a dispute is raised by the assessee the Income-tax Officer has no discretion. By sub-section (2) of s. 141 the Income-tax Officer is enjoined to give effect to the provisions of s. 32(2), 72(1), 73(2) and 74(1) of the Act:

> sub-s. (2) does not enlarge his jurisdiction under sub-s.
>
> (1).

The High Court was of the view that the basic scheme of the Act is that tax is to be charged at the rate or rates prescribed for the year on the total income of the assessee and in accordance with the

provisions of the Act, and that this basic scheme applies alike to a provisional assessment as to a regular assessment. Consequently in construing the provisions of s. 141 of the Act, assessment of tax must also be made in accordance with and subject to the provisions of the Act, i.e. in making u provisional assessment the "necessary facts" about the income of the assessee must be taken by the Income-tax Officer from the return and the documents accompanying it and he should not travel beyond, but in making the provisional assessment he cannot ignore the other statutory provisions: he must apply the law correctly to the admitted facts as per return. The High Court proceeded to observe:

> "The combined effect of the two sections, namely, sections 72 and 80 of the Act, is that a business loss can be carried forward to the subsequent assessment years only when it has been determined in pursuance of a return filed under section 139 of the Act."

The claim of the Company that it was entitled to the benefit of carry forward losses of previous years, merely because it had shown such losses in the returns, could not, in the view of the High Court, be accepted: to give effect to the claim of the Company, in the view of the High Court, will be to ignore the provisions of s. 80 which apply both to a regular assessment and a provisional assessment under s. 14]. We are unable to accept the opinion of the High Court. If it be assumed that provisional assessment has to be made in accordance with and subject to the provisions of the Act, distinction between a provisional assessment and a regular assessment gets completely blurred. The scheme of s. 141 is to call upon the assessee to pay tax provisionally at the appropriate rate on what he admits is his taxable income, subject to the benefit of the allowances under sub-s. (2). The section does not permit an enquiry to be made whether the total income returned by the assessee exceeds the amount admitted by him, nor whether the allowances or deductions claimed are admissible. If there be a discrepancy between the return made and the accounts and documents accompanying the return, the Income-tax Officer may ask the assessee to explain the discrepancy, but he must make a provisional assessment on the basis of the return initially made or clarified and the accounts and documents filed. He cannot make a provisional assessment by holding that certain claims made by the assessee are in law unjustified. If it transpires that the assessee has without reasonable cause concealed particulars of his income or has furnished inaccurate particulars of his income, it may be open to the Income-tax Officer to impose penalty upon him after the regular assessment is completed. But it is not open to him to determine whether there has been any concealment of particulars of income or to decide whether claims which have been made are unwarranted. In the view we have expressed, the Income-tax Officer was not justified in holding that the claim made by the Company for carrying forward and seeking to debit against Rs. 74 lakhs odd an amount of Rs. 103 lakhs odd was liable. to be rejected. For the same reasons in making the provisional assessment for the year 1964-65 the Income-tax Officer was not entitled to ignore the claim made by the Company that against the income of Rs. 59,89,757 returned, Rs. 36,01,735 should be permitted to be debited. The order demanding tax of Rs. 17,32,768-60 for the year 1964-65 also was, in our view, erroneous.

For the year 1965-66 the Income-tax Officer demanded payment of advance-tax on the provisional assessment for the year 1964-65. It is true that under subs. (3) of s. 210 as inserted by Act 13 of 1963

and later modified by Act 31 of 1964 the Income-tax Officer is entitled to make an order for payment of advance tax on the basis of provisional assessment made under s. 141, and he is not obliged to demand advance-tax only for the amount provisionally assessed by way of regular assessment in respect of any previous year. Sub-section (3) of s. 210, however, predicates a valid provisional assessment on the basis of which advance-tax may be demanded. But the provisional assessment for the year 1964- 65 made by the Income-tax Officer was invalid, and tax could not be demanded on that invalid assessment. No order for payment of advance-tax for the year 1965-66 could then be made, relying upon the provisional assessment for the year 1964-65.

The appeals will be allowed and the orders passed by the High Court set aside. The orders of provisional assessment made by the Income-tax Officer in respect of the years 1963-64 and 1964-65 will be set aside and the order for payment of advance-tax for the year 1965-66 is also set aside. There will be no order as to costs in these appeals. The order of penalty in respect of the year 1963-64 is also quashed.

V.P.S. Appeals allowed.