Kalyan Kumar Ray vs Commissioner Of Income Tax, West ... on 6 August, 1991

Equivalent citations: AIR1992SC159, [1991]191ITR634(SC), 1992SUPP(2)SCC424

Author: S. Ranganathan

Bench: S. Ranganathan

ORDER

--Both need not necessarily be in the same order--Separate "Income-tax Computation form of form of Assessment of Tax Refund signed or initialled by assessing officer HELD:

> "Assessment" is one integrated process involving not only the assessment of the total income but also the determination of the tax. The ITO has to determine, by an order in writing, not only the total income by also the net sum which will be pay able by the assessee for the assessment year in question and that the demand notice under s. 156 has to be issued in consequence of such an order. The statute does not, however, require that both the computations (i.e., of the total income as well as of the sum payable) should be done on the same sheet of paper, the sheet that is super scribed "assessment order". It does not prescribe any form for the purpose. It will be appreciated that once the assessment of the total income is complete with indications of the deductions, rebates, reliefs and adjustments available to the assessee, the calculation of the net tax payable is a process which is mostly arithmetical but generally time-consuming. If, therefore, the ITO first draws up an order assessing the total incoem and indicating the adjustments to be made, directs the office to compute tht tax payable on that basis and then approves of it, either immediately or some time later, no fault can be found with the process, though it is only when both the computation sheets are signed or initialled by the ITO that the process described in s. 143(3) will be complete. The statutory provision has been duly complied with and that the assessment order was not, in any manner, vitiated.
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> ORDER
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> 1. Sri Kalyan kumar Ray, a tax lawyer from Calcutta, has preferred these petitions raising an attractive and ingenious but, in our opinion, technical and untenable plea. We, therefore, dismissed the petitions on 26-7-91 but stated we would give our reasons later. Hence this order.
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> 2. The petitions arise out of the petitioner's assessments under the Income-tax Act, 1961, ('the Act'). The point raised by Sri Ray, which is common to the two assessment

years 1981-82 and 1982-83, arises this way. For the assessment year 1981-82, the Income-tax Officer (I..T.O.) passed an "assessment order" in which he computed the assessee's total income for the year at Rs. 1,89,320.Then he added :

Assessed as above. The assessee paid Rs. 1,12,410 under Section 210 and Rs. 26,000 against C.D.S. Allow credit for T.D.S. of Rs. 768/-. Issue D.N. and Challan.

This was followed up by a demand notice Under Section 156 of the Act served on the assessee stating that, "for the assessment year 1981-82, a sum of Rs. 1,01,303, details of which are given on the reverse, have been determined as payable by you". This is somewhat inaccurate, for the back of the notice contained the following details :

Gross Demand Rs. 1,01,303 Less : Paid Under Section 210 Rs. 1,12,410 _____ Balance refundable = Rs. 11,107 Less : Adjusted with demand for A.Y. 1982-83 Rs. 2,120 _____ Balance refundable Rs. 8,987 Less : Adjusted demand for 1970-71 Rs. 2203 Add : 220(2) Int. Rs. 1189 Rs. 3,392 _____ Rs. 5,595 Less : Adjusted demand for 1968-69 Rs. 3237 Add : 220(2) Int. Rs. 1748 Rs. 4,985 _____ Rs. 610 Less : Adjusted demand for 1957-58 Rs. 610 _____ NIL _____ The position regarding assessment year 1982-83 was similar. The amount adjusted against the demand for this assessment year was the payment made under Sections 210 and 140A leaving a sum of Rs. 2,120/- which was adjusted against the refund due to the assessee for assessment year 1981-82. Both assessment orders and (nil) demand notice's were dated 30-8-83 and both were signed/ initialled by the I.T.O.

3. The assessee has not voiced any grievance against the computation and adjustments made except that he had not been awarded interest Under Section 214 of the Act. His short point is that, under the statute, the "assessment order" itself should contain the calculations of the tax, interest etc. and of the net sum payable by/refundable to the assessee. These details, he urges, cannot be relegated to the demand notice. Failing compliance with this statutory requirement, he contends, the assessment orders should be held to be void and of no effect and, consequently, anaulled. This contention was not accepted by the Commissioner (Appeals) and the Income-tax Appellate Tribunal. The assessee's applications under Section 256(1) and (2) of the Act were also dismissed. The assessee seeks special leave against the High Court's orders declining to call for reference and, by way of abundant caution, also files petitions for special leave to appeal to this Court which are naturally belated since the assessee awaited the outcome of his applications under Section 256-directly from the Tribunal's orders. We see no reason to entertain, the second set of appeals which are considerably beyond time. However, we are also of opinion that the Tribunal's decision is correct and that the High Court was also justified in declining to call for a reference.

4. Sri S. Padmanabhan, learned Counsel for the petitioner, invited attention to the language of Section 143(3) of the Act which mandates that the I.T.O. "shall, by an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him on the basis of such assessment". The Department pointing to the placement of a comma after the word "assessee" suggested before the Tribunal that an order in writing is required only for the assessment of the income or loss and that the determination of the sum payable can be an independent process not necessarily in writing. The suggestion seems plausible but is not really tenable. As pointed out for the petitioner, judicial decisions under the 1922 Act as well as the present Act have read both clauses together. Assessment is one integrated process involving not only the assessment of the total income but also the determination of the tax. The latter is as crucial for the assessee as the former. Section 144, which also describes the same process, makes no distinction as suggested. It will not be therefore correct to read the provision, as leaving undefined the process of determination of the net sum payable by the assessee. In our opinion, therefore, learned Counsel for the petitioner is right in his submission that the I.T.O. has to determine, by an order in writing, not only the total income but also the net sum which will be payable by the assessee for the assessment year in question and that the demand notice under Section 156 has to be issued in consequence of such an order.

5. The statute does not, however, require that both the computations (i.e. of the total income as well as of the sum payable) should be done on the same sheet of paper, the sheet that is super scribed "assessment order". It does not prescribe any form of the purpose. It will be appreciated that once the assessment of the total income is complete with indications of the deductions, rebates, reliefs and adjustments available to the assessee, the calculation of the net tax payable is a process which is mostly arithmetical but generally time consuming. If, therefore, the I.T.O. first draws up an order assessing the total income and indicating the adjustments to be made, directs the office to compute the tax payable on that basis and then approves of it, either immediately or some time later, no fault can be found with the process, though it is only when both the computation sheets are signed or initialled by the I.T.O. that the process described in Section 143(3) will be complete.

6. In this context, one may take notice of the fact that, initially, Rule 15(2) of the Income-tax Rules prescribed form No. 8, a sheet containing the computation of the tax, though there was no form prescribed for the assessment of the income This Sub-rule was dropped in 1964. Thereafter, the matter has been governed by departmental instructions. Under these, two forms are in vogub. One is the form of, what is described as, the "assessment order", (I.T. 30 or I.T.N.S. 65).-The other is what is described the "Income- tax Computation Form" or "Form for Assessment of Tax/Refund" (I.T.N.S. 150). The practice is that after the "assessment order" is made by the I.T.O., the tax is calculated and the necessary columns of I.T.N.S. 150 are filled up showing the net amount payable in respect of the assessment year. This form is generally prepared by the staff but it is checked and signed or initialled by the I.T.O.

and the notice of demand follows thereafter. The statute does not in terms require the service of the assessment order or the other form on the assessee and contemplates only, the service of a notice of demand. It seems that while the "assessment order" used to be generally sent to the assessee, the other form was retained on file and a copy occasionally sent to the assessee. I.T.N.S. 150 is also a form for determination of tax payable and when it is signed or initialled by the I.T.O., it is certainly an order in writing by the I.T.O. determining the tax payable within the meaning of Section 143(3). It may be, as stated in CIT v. Himalaya Drug Co. (All) only a tax calculation form for departmental purposes as it also contains columns and code numbers to facilitate computerization of the particulars contained therein for statistical purposes but this does not detract from its being considered as an order in writing determining the sum payable by the assessee. We are unable to see why this document, which is also in writing and which has received the imprimatur of the I.T.O., should not be treated as part of the assessment order in the wider sense in which the expression has to be understood in the context of Section 143(3). There is no dispute in the present case that the I.T.O. has signed the form I.T.N.S. 150. We, therefore, think that the statutory provision has been duly complied with and that the assessment order was not in any manner vitiated.

7. A brief reference may be made to the decisions on the issue. In Shushil Chandra Ghose v. I.T.O. , the assessee was served, apart from the assessment order, with a copy of the form known as I.T.N.S. 150 which was not signed by the I.T.O. but the Court upheld the assessment because the original thereof had been duly signed. In Mubarik Shah Naqshbandi v. CIT , the "assessment order" did not determine the tax payable and there was no other paper or form containing the computation except the notice of demand. In Gopal Ramnarayan v. I.T.O. , the Tribunal had annulled an assessment because the tax calculations had been made on a separate sheet of paper but the Department could not raise this issue before the High Court because it had not challenged the Tribunal's order in appropriate proceedings. The Karnataka High Court, however, did have occasion later to consider the question directly and upheld an assessment made in similar circumstances in CIT v. Giridhar , even though the separate sheet containing the tax computations had not been signed by the I.T.O. The Punjab & Haryana High Court has also taken the same view in Karuna Rani Jain v. CIT . In CIT v. Krishwanti Punjabi , Form No. I.T. 30 served on the assessee was not signed and the Court remitted the matter back to find out if any determination of tax had been made before the expiry of the period of limitation prescribed under the Act for the completion of an assessment. All these decisions emphasise that all that is needed is that there must be some writing initialled or signed by the I.T.O. before the period of limitation prescribed for completion of the assessment has expired in which the tax payable is determined and not that the form usually styled the "assessment order" should itself contain the computation of tax as well.

8. For these reasons, we see no reason to grant leave in these petitions which are, consequently, dismissed. We should, however, like to observe that to avoid

unnecessary controversies like this, the department should, in future, adopt the salutary and useful practice of incorporating the entire tax calculations in I.T.N.S. 65 form itself or, in the alternative, make the I.T.N.S. 150 an annexure to form part the assessment order, have it signed by the I.T.O. and have it served on the assessee along with the I.T.N.S. 65. That will enable the assessee to have the full details necessary to enable him to file a proper appeal, if needed, against the order and demand. If these safeguards are not taken, there is a danger of the tax calculations being left entirely to the subordinate staff, the I.T.O., contenting himself with a cursory glance thereat. Though, largely, the tax calculations are only matters of detail and arithmetic, there do arise sometimes difficult questions of interpretation of the provisions relating to tax rates, additional tax, interest! and so on and the assessee should, in all fairness, have full details regarding the computation to enable him to take further steps in the matter. We should indeed like to add that the petitioner, Shri Ray, has indeed done a great service to the public by bringing this issue up to this Court. We hope that the observations made by us would ensure, at least in future, that ITOS do not allow themselves to be indifferent to this part of the process of assessment or shirk the responsibility of verifying and authenticating the correctness of the tax computations resulting in the demand raised against the assessee.