Commissioner Of Income-Tax, Kerala vs M/S. Manick Sons on 14 February, 1969

Equivalent citations: 1969 AIR 1122, 1969 SCR (3) 708, AIR 1969 SUPREME COURT 1122

Author: J.C. Shah

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

PETITIONER:
COMMISSIONER OF INCOME-TAX, KERALA

Vs.

RESPONDENT:
M/S. MANICK SONS

DATE OF JUDGMENT:
14/02/1969

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

CITATION:
1969 AIR 1122 1969 SCR (3) 708
1969 SCC (1) 671

ACT:
Income-tax Act, 1922, s. 33-Tribunal's powers--Tribunal cannot amalgamate income of two assessment years and divide it equally between them--Cannot take undertaking from assessee to file fresh return for earlier year and direct Income-tax Officer to make assessment accordingly-Cannot make allowance for 'intangible additions' without giving reasons.

HEADNOTE:
For the assessment year 1952-53 the Income-tax Officer added a certain amount to the assessee's returned income as income from undisclosed sources. For the assessment year 1953-54 a still larger amount was added on account of unexplained cash

credits. The Income-tax Appellate Tribunal when considering the appeal for 1953-54 took the view that since the income assessed in 1952-53 was much less than in earlier years some of the undisclosed income of that year must have gone into the cash credits disclosed in 1953-54. It therefore calculated the income for both the assessment years 1952-53 and 1953-54 together and after making some allowance for 'intangible additions' in each year, determined the amalgamated income for the two years at Rs. 1,00,000 as a round figure. On this basis the assessment for 1953-54 was reduced to Rs. 50,000 from the higher figure determined by the Appellate Assistant Commissioner. In respect of the year 1952-53 an undertaking was taken from the assessee to file a fresh voluntary return for Rs. 50,000 in place of the much lower income originally assessed. At the instance of the department a reference was made to the High Court, and Tailing there, the department appealed to this Court.

HELD : The appeal must be allowed.

Under s. 33(4) of the Income-tax Act, 1922, the Income-tax Appellate Tribunal may after giving both parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power conferred by that sub-section is wide, but it is still a judicial power which must be exercised in respect of matters that arise in the appeal and according to law. The Tribunal in deciding an appeal before it must deal with questions of law and fact which arise out of the order of assessment made by the Income-tax Officer and the order of the Appellate Assistant Commissioner. It cannot assume powers which are inconsistent with the express provisions of the Act or its scheme. [712 E-F]

In the present case the Tribunal was entitled to enquire whether the source of cash credits was explained : if it held that they represented capital or income of earlier years it could exclude them from income liable to be taxed in the year to which the appeal related. But the Tribunal had no power to find on amalgamation of income an average of more years than one, and to divide it for the purpose of assessment between the two years 1952-53 and 1953-54--equally. [712 G; 714 D]

In working out the amalgamated income for the two assessment years in question the Tribunal could not without giving any reasons, and without supporting evidence, make allowance as it did for "intangible add'tions". [714 G]

709

The Tribunal hearing an appeal may give directions for reopening assessment of the year to which the appeal relates : it cannot give any directions to reassess in case of a period not covered by that year. There was no sanction in law to enforce the undertaking given by the respondent when urging his appeal in respect of the year 1953-54, to make a voluntary return for the year 1952-53; and even if the respondent carried out that undertaking the assessment of

1952-53 could not be reopened otherwise than in the manner prescribed by the Act. The undertaking must therefore be ignored. The implied direction given by the Tribunal to the Income-tax Officer to reassess the income for year 1952-53 was without jurisdiction. [712 D-E; 714 A]
The questions raised on behalf of the revenue clearly flowed from the contentions raised before the Tribunal and enquiry into those questions was not barred. [712 D-E; 714 A]
Commissioner of Income-tax, Madras v. S. Nelliappan, 66 I.T.R. 722, distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2459 of 1966.

Appeal by special leave from the judgment and order dated August 2, 1965 of the Kerala High Court in Income-tax Referred Case No. 20 of 1964.

Sukumar Mitra and B. D. Sharma, for the appellant. S. Swaminathan and R. Gopalakrishnan, for the respondent. The Judgment of the Court was delivered by Shah, J. For the assessment year 1952-53 respondents M/s. Manick & Sons were assessed to tax in the status of a registered firm and their income was computed at Rs. 15,331 inclusive of Rs. 15,000 being undisclosed income. For the assessment year 1953-54 the respondents returned Rs. 40,887 as their income from business. The Income-tax Officer discovered an aggregate amount of Rs. 74,692 as "cash credits" which, in his view, were not satisfactorily explained by the respondents. The Income-tax Officer accordingly brought to tax a total income of Rs. 1,31,179 being Rs. 56,487 as income from business and Rs. 74,692 as income from "other sources" and assessed the respondents as an unregistered firm. The Appellate Assistant Commissioner in appeal reduced the income of the respondents from business to Rs. 38,420 and income from "other sources" to Rs. 46,620. In second appeal the Tribunal reduced the income from business to Rs. 28,820 and confirmed the finding that the source of the cash credits aggregating to Rs. 46,620 had remained unexplained. But the Tribunal observed that "there were certain special features in the case which needed proper consideration in determining the final assessment." The Tribunal then aggregated the income for the assessment years 1952-53 and 1953-54 for the two years, which he rounded off at Rs. 1,00,000 and apportioned in equal shares in the two years. For the assessment year 1952-53, the Tribunal recorded that the respondents had given an undertaking to file a voluntary return for assessment on the basis of total income of- Rs. 50,000. At the instance of the Commissioner of Income-tax, four questions were referred to the High Court of Kerala :

> "(1) Whether it was not beyond the jurisdiction of the Appellate Tribunal to reopen the concluded assessment for assessment year 1952-53 and to direct that the income should, be revised in that year at Rs. 50,000 as against Rs. 15,331 already fixed ? (2) Whether on the facts and circumstances of the case and the evidence on record, the Tribunal was justified in directing that any portion of the cash credits be assessed to income-tax in any year other than the assess- ment year 1953-54 ?

(3) Whether on the facts and circumstances of the case and evidence on record, the Tribunal was-,justified in finding that a portion of the cash credits were covered by the intangible additions made in 1952-53 and 195354 assessment ?

(4) Whether on the facts and circumstances of the case and the evidence on record, the Tribunal *as justified in directing that the income under the head 'business' for the assessment year 1953-54 be reduced to Rs.

50,000 ?"

The High Court declined to answer questions (1)_& (2) and answered questions (3) & (4) in the affirmative. The Commissioner appeals with special leave. The judgment of the Tribunal is not a reasoned decision on the questions arising before it; it is cryptic and in parts obscure, and gives no grounds for its conclusion. The judgment again lends countenance to a method of assessment which the Indian Income-tax Officer aggregated to Rs. 74692 which amount was the Tribunal observed that the cash credits discovered by the Income-tax Officer aggregated to Rs. 74692 which amount was reduced by the Appellate Assistant Commissioner to Rs. 50,620. (It is common ground that the correct figure should be Rs. 46,620.) The Tribunal then observed that on the evidence on record "these residuary items must remain unexplained." But the Tribunal thought that because in the assessment year 1952-53 the total income of Rs. 15,331 was comparatively small compared to the income of the earlier years "some of that year's profits must have come into the profits of the next year". The Tribunal then set out a consolidated statement of account for two years :

"1. Trade profits assessed for assessment Rs.

year 1952-53 15,331

2. Trade profits on the basis of books and without the estimates and additions impugned in this appeal (Rs. 56,487 less Rs. 45,600)40,887

3. Trading deficiency:

(a) Palluruthy branch 1,000

(b) Pavaratty branch 5,000 6,000

4. Unexplained cash Credits 50,620 Less set off-

Intangible addition for 1952-53 Rs. 15,000 Intangible addition for 1953-54 as above.

Rs.	6,000	21,000	29,620
			91,838"

and observed

The assessee has undertaken to file a voluntary return for assessment year 1952-53 on the basis of a total income of Rs. 50,000. In these circumstances, the total business income of the assessee for the year under appeal is reduced to Rs. 50,000 only."

The unexplained cash credits found by the Appellate Assistant Commissioner and accepted by the Tribunal were Rs. 46,620. The total income of the two years on the basis adopted by the Tribunal was therefore Rs. 87,838. But the income of the two years was rounded off at Rs. 1,00,000 and divided equally between the two years. For making up a consolidated statement of account the Tribunal gave no reasons nor did it give any reasons "for debiting the intangible additions" of Rs. 15,000 and Rs. 6,000 against the cash credits. Counsel for the respondents suggested that the Tribunal was presumably of the view that Rs. 15,000 brought to tax as business income in the assessment in 1952- 53 must have been entered in the books of account of the next year and that Rs. 6,000 called "trading deficiency" in the two branches was entered as cash credit. The appeal before the Tribunal raised a simple question-- whether the cash credits aggregating to Rs. 46,620 or any part thereof were liable to be taxed as income of the respondents in the year 1953-54. For that purpose the, Tribunal had to consider whether the respondents furnished any explanation leading to a justifiable inference that the amount or a part thereof did not represent income of the respondents In the view of the Tribunal the cash credits had remained unexplained. But the Tribunal still reduced the cash credits by Rs. 21,000, and then proceeded to amalgamate the income for the two years and to divide it equally. For reducing the cash credits by Rs. 21,000 no reasons have 'been given, and amalgamation of the income for the two years and apportionment is without authority of law. An assessment which has become final may be reopened in appeal by the Appellate Assistant Commissioner or the Tribunal or in revision by the Commissioner, or under an order of rectification of mistake, or pursuant to a notice of reassessment. The Tribunal hearing an appeal may give directions for reopening assessment of the year to which the appeal relates : it cannot give any directions to reassess in case of a period not covered by that year.' There is no sanction in law to enforce the undertaking given by the respondent-when urging his appeal in respect of the year 1953-54, to make a voluntary return for the year 1952-53; and even if the respondents carried out that undertaking the assessment of 1952-53 could not be reopened otherwise than in the manner prescribed by law. The undertaking must therefore be ignored. Under S. 33(4) of the Income-tax Act, 1922, the Income-tax Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power conferred by that sub-section is wide, but it is still a judicial power which must be exercised in respect of matters that arise in the appeal and according to law. The Tribunal in deciding an appeal before it must deal with questions of law and fact which arise out of the order of assessment made by the Income-tax Officer and the order of the Appellate Assistant Commissioner. It cannot assume powers which are inconsistent with the express provisions of the Act or its scheme.

The Tribunal was entitled to enquire whether the source of the cash credits was explained: if it held that they represented capital or income of earlier years, it could exclude them from income liable to be taxed in the year to which the appeal related. But the Tribunal had no power to find on amalgamation of income an average of more years than one, or to give credit for what is called

intangible additions, without explaining why credit was given. There is no warrant for the claim made by counsel for the respondents that the order passed by the Tribunal was by consent. The Tribunal has not stated so, and if the order was made by consent of the departmental 'authorities and the respondents, the objection should have been prominently raised when the Commissioner asked for a reference to the High Court. Counsel urged that the final order passed by the Tribunal operates to the prejudice of the respondents, and the Commissioner is not aggrieved by that order. Counsel said that even though the Tribunal has found that the total income for the two years in question was approximately Rs. 91,838 (which if a correction account had been made would have been Rs. 87,838), the Tribunal has directed assessment of Rs. 50,000 in the year 1952-53 and another Rs. 50,000 in the year 1953-54. But this is only a superficial way of looking at the matter. In the assessment year 195253 the respondents were assessed in the status of a registered firm and the income of the firm had to be distributed amongst the partners, and the shares of the partners could be assessed to tax in their hands. The rate of tax on this income unless the partners have large individual income would be comparatively low. In the year 1953-54 the respondents were an unregistered firm and the total income of the unregistered firm was liable to be taxed.

It was also coin-tended that the arguments raised before this Court were never set up either before the Tribunal or before the High Court and should not be permitted to be raised. The question raised clearly flow from the contentions raised before the Tribunal and contemplate an enquiry into matters urged by counsel by the Commissioner.

The decision of this Court Commissioner of Income-tax, Madras v. S. Nelliappan(1) on which reliance was placed by counsel for the respondents has little bearing in this case. In S. Nelliappan's case(2) it was held that the conclusion whether a cash credit in the books of account of an assessee is properly explained is one on a question of fact on which no reference can be made to the High Court under s. 66 of the Indian Income-tax Act. The Court in that case did not lay down that it is open to the Tribunal to make a consolidated assessment of tax in respect of the assessment of income for the two years and then divide the income in equal shares.

Turning then to the questions : counsel for the respondents conceded that the Tribunal had no Jurisdiction to direct the Income-tax Officer to reopen the assessment for the year 195253. He submitted however that the Tribunal did not give any such directions : it merely recorded an undertaking given by the respondents that they will voluntarily submit a return for Rs. 50,000 for the year 1952-53. But the context in which the statement recording the undertaking occurs in paragraph 7 of the (1) 66 I.T.R. 722.

judgment of the Tribunal and the direction given in paragraph 8 leave no room for doubt that the Tribunal did give a direction to the Income-tax Officer to reassess the income for the year 1952-53. On the answer to the first question no further enquiry need be made on the second question.

The Tribunal has given no reasons in support of the view that the "intangible additions" of Rs. 21,000 covered a part of the cash credits. Our attention has also not been invited to any evidence which establishes a connection between the cash credits for Rs. 21,000 and the additions of Rs. 15,000 made in the assessment for 1952-5.3 and Rs. 6,000 added in 1953-54.

The fourth question contemplates an inquiry whether the Tribunal was justified in directing that the income under the head "'business" for the assessment year 1953-54 be reduced to Rs. 50,000. The question is somewhat misleading. The direction of the Tribunal was that the total income of the respondents be reduced to Rs. 50,000 for the year 1953- 54, the business income being Rs. 28,820 and the balance being income from other sources. For reasons already set out the Tribunal had no jurisdiction to proceed to combine the income for the two years 195253 and 1953-54 and to divide it for the purpose of assessment between the two years equally. The Tribunal had to assess the income for the year in question.

The appeal is allowed, and the answers to the questions re- corded by the High Court are discharged. The answers to the questions will be as follows :

> Q. (1)-Tribunal had no jurisdiction. Q. (2)-Tribunal had no jurisdiction. Q. (3)-in the negative.
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> Q. (4)-in the negative.
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> There will be no order as to costs in this appeal.
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> G.C. Appeal allowed.