Income Tax Officer, Distt. ... vs Shri Mani Ram Etc on 20 August, 1968

Equivalent citations: 1969 AIR 543, 1969 SCR (1) 724, AIR 1969 SUPREME COURT 543

Author: V. Ramaswami

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

PETITIONER:
INCOME TAX OFFICER, DISTT. II(ii),KANPUR ANDOTHERS

Vs.

RESPONDENT:
SHRI MANI RAM ETC.

DATE OF JUDGMENT:
20/08/1968

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

CITATION:
1969 AIR 543 1969 SCR (1) 724

ACT:
Indian Income-tax Act 1922, s. 18A(3)--Word 'assessed' in section whether confined to regular assessment or includes provisional assessment-Relevance of corresponding provision in Indian Income Tax Act 1961 for construing earlier Act.

HEADNOTE:
The respondents flied returns for the year 1953-54 and they were provisionally assessed on 14-10-1954, and regular assessment was. made on 27-2-58. For the next four succeeding years the respondents filed returns, and for all the years the regular assessments under s. 23 of the Income Tax Act, 1922 were made after 27-2-58. SinCe no estimate of the tax payable on their income as required by s. 18A was seat nor the in advance paid, the Income Tax Officer while

assessing them under s. 23 held that they were liable to pay interest under s. 18A(8) and in addition he applied the provisions of s. 18A(9)(b) and imposed a penalty for each year of assessment by virtue of s. 28 read with s. 18A(9)(b). The respondents preferred appeals to the Appellate Assistant Commissioner on the ground that the levy of interest and penalty 'was unauthorised. The appeals were dismissed, and the respondents went :in revision, which was also dismissed. Thereupon, the respondents filed writ petitions in the High Court to quash the order and succeeded. The High Court held that s. 18(3) of the Act did not apply to the facts of the case as there had been a provisional assessment under s. 23B of the Act in 1954. In appeals to this Court, by the Revenue the question for consideration was whether the expression "any person who has not hitherto been assessed" in s. 18A(3) of the Indian Income-Tax Act, 1922 after the all Income Tax Amendment Act 67 of 1949 should be interpreted so as to 'include a person who has only been provisionally assessed under s. 23B ,of that Act.

HELD :--The appeals must be dismissed. Even when the tax is provisionally assessed, there necessarily has to be a determination of the total income of the assessee. The only difference is that under section 23 the total income is determined after the Income Tax Officer has satisfied himself fully about the correctness of the return fled by taking steps, if necessary, under sections 22(4) and 23(2) of the Act. In the case of a provisional assessment under section 23B. of the Act, the powers under sections 22(4) and 23(2) of the Act are not to be exercised and the Income Tax Officer has to determine the tax on the basis of the return filed by the assessee after taking into consideration the accounts and documents available, if any, and after giving effect to certain allowances and losses. In other words, what the Income Tax Officer has to do is to assess provisionally the total income of the assessee and thereafter he has to determine the tax payable on the basis of that provisionally assessed income. [731 A-D]

It is important to notice that in section 18A(1) the expression "assessed" is used without any qualification or restriction as to whether the assessment should be a regular assessment or any other type of assessment

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under the Act. It is also manifest that in section 18A sub-section (5) the two expressions "provisional assessment" and "regular assessment" are expressly mentioned. The expression "regular assessment" is also repeatedly used in s. 18A, sub. s. 6, 7, 8 and 9. There is therefore, no warrant for restricting the meaning of the word "assessed" in section 18A(1) so as to include only a "regular assessment" under section 23 of the Act. There is no reason why Parliament did not add the word "regularly" in the sub-section so as to qualify the word "assessed". Since there

is no such qualification, the word "assessed" in section 18A(3) should be read in its ordinary sense as including every kind of assessment including a provisional assessment under section 23B of the Act. [732 A-C]
There is nothing in the 1961 Act to suggest that Parliament intended to explain the meaning or clear up doubts about the meaning of the word "assessee" in section 18A(3) of the earlier Act. Generally speaking a subsequent Act of Parliament affords no useful guide to the meaning of another Act which came into existence. before the later one was ever framed. Under special circumstances, the law does however admit of a subsequent Act to be resorted to for this purpose but the conditions under which the later Act may be resorted for the interpretation of the earlier Act are strict; both must be laws on the same subject and the part of the earlier Act which it is sought to construe must be ambiguous and capable of different meanings. [733 F-H]
Kirkness (Inspector of Taxes) v. John Hudson & Co. Ltd., [1955] A.C. 696; In re MacManasway, [1951] A.C. 161 and Inland Revenue Commissioners v. Dowdall, O'Mahonay & Co. Ltd., [1952] A.C. 4431, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 314 to 322 of 1966 Appeals by special leave from the judgment and order dated April 25, 1963 of the Allahabad High Court in Special Appeals Nos. 662, 663, 679, 664, 665, 667, 666, 669 and 671 of 1962 respectively.

S.K. Aiyer and R.N. Sachthey, for the appellant (in all the appeals.) J.P. Goyal, Sobhag Mal Jain and P.N. Pachauri, for the respondents (in all the appeals).

The Judgment of the Court was delivered by Ramaswami, J. In these appeals which have been heard together a common question of law arises for determination, that is, whether the. expression "any person who has not hitherto been assessed" in section 18A(3) of the Income Tax Act, 1922 (hereinafter called the Act) after the Income Tax Amendment Act (Act 67 of 1949) should be interpreted so as to include a person who has only been provisionally assessed under section 23B of that Act.

The respondents in these appeals are four persons--Mani Ram, Jagmohan, Kishandas, Bhagirathmal--partners of Shri Kishan Das, DhankUtti, Kanpur. They were members of a joint Hindu farmily carrying on business until they became divided in the middle of assessment year 1953-54. Thereafter they were carrying on the business in partnership. For the year 1953-54, the firm submitted a return showing loss. But in the next succeeding year 1954-55 it disclosed a profit and submitted a return. All the four partners filed returns individually on 27-9-1954 and they were provisionally assessed on their returns on 14-10-1954. But the regular assessment was made for this year only on 27-2-1958. The ,firm continued to make profits in the subsequent years 1955-56,

1956-57, 1957-58 and 1958-59 and the partners filed returns for their income for each of these years and were regularly assessed for these years under s. 23 sometime after 27-2-1958. The assessment order for 1958-59 was in fact made on 19-2-1959. It is not disputed that none of the four partners sent any estimate of the tax payable on their income as required by section 18A of the Income Tax Act, 1922 or pay the tax in advance. Therefore, the Income Tax Officer, Kanpur while assessing them under section 23 of the Act held that they were liable to pay interest under section 18A(8) and determined the amount payable by each in respect of each of the years on the basis of the income found taxable in the regular assessment. In addition, he applied the provisions of section 18A(9)(b) and imposed a penalty for each year of assessment by virtue of section 28 read with section 18A(9)(b) of the Act. The four partners preferred appeals to the Appellate Assistant Commissioner on the ground that the levy of interest and penalty was unauthorised. But the appeals were dismissed. The partners applied in revision to the Commissioner of Income Tax under section 33A(2), but the revision applications were dismissed. The respondents thereafter moved the Allahabad High Court for grant of a writ to quash the orders of the Income Tax Officer and of the Appellate Assistant Commissioner in appeal. The applications for writ were allowed by Mr. Justice S.C. Manchanda who held that section 18A(3) could not apply to the facts of the case as there had been a provisional assessment under section 23B in the year 1954. Against the decision of the Single Judge the appellants preferred appeals before the Division Bench. These appeals were dismissed by a common judgment of the Allahabad High Court dated 25th March, 1963. The present appeals are brought to this Court by special leave from the judgment of the Allahabad High Court dated 25th March, 1963 in the batch of appeals affirming the judgment of the Single Judge dated 25th May, 1956 in C.W.M. No. 1591 of. 1962 and the connected writ applications.

It is necessary at this stage to set out the provisions of seetions 18A, 23 and 23B of the Income Tax Act, 1922 as they stood at the material time:

> "18A (1) (a). In the case of income in respect of which provision is not made under section 18 for deduction of income-tax at the time of payment, the Income Tax Officer may, on or after the 1st day of April in any financial year, by order in writing, require an assessee to pay quarterly to the credit of the Central Government on the 15th day of June, 15th day of September, 15th day of December and 15th day of March in that year, respectively, an amount equal to onequarter of the income-tax and super-tax payable on so much of such income as is included in his total income of the latest previous year in respect of which he has been assessed, if that total income exceeded the maximum amount not chargeable to tax in his case by two thousand five hundred rupees. Such income-tax and super-tax shall be calculated at the rates in force for the financial year in which he is required to pay the tax, and shall bear to the total amount of income-tax and super-tax so calculated on the said total income the same preparation as the amount of such inclusions bears to his total income or, in cases where under the provisions of sub-section (1) of section 17 both income-tax and super-tax are chargeable with reference to the total world income, shall bear to the total amount of income. tax and super-tax which would have been payable on his total world income of the said previous year had it been.his total income the same proportion as the amount of such inclusions bears to his total world income.

> (3) Any person who has not hitherto been assessed shall, before the 15th day of March in each financial year, if his total income of the period which could be the previous year for an assessment for the. financial. year next following is likely to exceed the maximum amount not chargeable to tax in his case by two thousand five hundred rupees, send to the Income Tax Officer an estimate of the tax payable by him on.

that part of his income to which the provisions of section 18 do not apply of the said previous year calculated in the manner laid down in sub-section (1), and shall pay the amount, on such of the dates specified in that subsections as have not expired, by installments which may be revised according to the proviso to sub-section (2).

Sup. C.I/68--16 (6) Where in any year an assessee has paid tax under sub-section (2) or sub-section (3) on the basis his own estimate, and the tax so paid is less than eighty per cent of the tax determined on the basis of the regular assessment, so far as such tax relates to income to which the provisions of section 18 do., not apply and so far as it is not due to variations in the rates of tax made by the Finance Act enacted for the year for which the regular assessment is made, simple interest at the rate of Six per cent per annum from the 1 st day of January in the financial year in which the tax was paid up to the date of the Said regular assessment shall be payable by the assessee upon the amount by which the tax so paid falls short of the said eighty per cent.

(8) Where on making the regular assessment, the Income Tax Officer finds that no payment of tax has been made in accordance with the foregoing provisions of this section, interest calculated in the manner laid down in sub- section (6) shall be added to the tax as determined on the basis of the regular assessment.

(9) If the Income Tax Officer, in the course of any proceedings in connection with the regular assessment, is satisfied that any assessee-

(a) has furnished under sub-section (2) of subsection (3) estimates, of the tax payable by him which he knew or had reason to believe to be untrue, or

(b) has without reasonable cause failed to comply with the provisions. of sub-section (3), the assessee shall be deemed, in the case referred to in clause (a), to have deliberately furnished inaccurate particulars of his income, and in the case referred to in clause (b) to have failed to furnish the return of his total income; and the provisions of section 28, so far as may ;be, shall apply accordingly.

23. (1) If the Income Tax Officer is satisfied without requiring the presence of the assessee or the production by him of any evidence that a return made under section 22 is correct and complete, he shall assess the total income of the assessee, and shall determine the sum payable by him on. the basis of such return.

(2) If the Income Tax Officer is not satisfied without requiring the presence of the person who made the return or the production of evidence that a return made under section 22 is correct and complete, he shall serve on such person a notice either to attend at the Income Tax Officer's Office or to produce, or to cause to be there produced, any evidence on which such person may rely in support of the return..

(3) On the day specified in the notice issued under sub-section (2), or as soon afterwards as may be, the Income Tax Officer, after hearing such evidence as such person may produce and such Other evidence as the Income Tax Officer may require, on specified points shall, by an order in writing, assess the total income of the assessee and determine the sum payable by him on the basis of such assessment.

(4) If any person fails to make the return required by any notice given under sub-section (2) of section 22 and has not made a return or a revised return under sub-section (3) of the same section or fails to comply with all the terms of a notice iSsued under sub-section (4) of the same section or, having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of this section, the Income Tax Officer shall make the assessment to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment and, in the case of a firm, may refuse to register it or may cancel its registration if it is already registered.

23B (1) The Income Tax Officer may, at any time after the receipt of a return made under section 22 proceed to make in a summary manner, a provisional assessment of the tax payable by the assessee, on the basis of his return and the accounts and documents, if any, accompanying it, after giving due effect to

(i) the allowance referred to in paragraph (b) of the proviso to clause (vi) of sub-section (2) of section 10, and (ii) any loss carried forward under sub-section (2) of section 24. (2) A partner of a firm may be provisionally assessed under sub-section (1) in respect of his share in the firm's income, profits and gains; if its return has been received, although the return of the parroter himself may not have been received, (3) A firm may be provisionally assessed under sub-section (1) as if it were an unregistered firm, unless the firm fulfils such conditions as the Central Government may, by notification in the official Gazette, specify in that behalf.

(4) There shall be no right of appeal against a provisional assessment made under sub- section (1).

(5) For the avoidance of doubt, it is hereby declared that the provisions of section 45 (except the first proviso) and section 46 apply in relation to any tax payable in pursuance of a provisional assessment made under sub-section (1) as if it were a regular assessment made under section 23.

(6) Income-tax paid or deemed to have been paid under section 18 or section 18A in respect of any income provisionally assessed under sub-section (1), shall be deemed to have been paid towards the provisional assessment. (7) After a regular assessment has been made under section 23, any amount paid or deemed to have been paid towards a provisional assessment made under sub-section (1), shall be deemed to have been paid towards the regular assessment; and where the amount paid or

deemed to have been paid towards the provisional assessment, exceeds the amount payable under the regular assessment, the excess shall be refunded to the assessee. (8) Nothing done or deferred by reason or in consequence of any provisional assessment made under this section shall prejudice the determination on the merits, of any issue which may arise in the course of the regular assessment under section 23".

It was argued on behalf of the appellants that a mere provisional assessment under section 23B of the Act will not satisfy the requirements of section 18A(1) of the Act because the language of section 18A(1) shows that the provisions of that subsection only apply when the amount of tax to be deposited in advance is determined on the basis of the assessee's total income of previous year to which he has been assessed. It was contended that in the case of a provisional assessment under section 23B of the Act, there is no computation of the total income of the previous year and that under section 23B of the Act all that is done is to determine provisionally the income-tax payable on the basis of the return filed without properly going through the process of assessing the total taxable income. It is not possible to accept this argument because even when the tax is provisionally assessed, there necessarily has to be a determination of the total income of the assessee. The only difference is that under section 23 the total income is determined after the Income Tax Officer has satisfied himself fully about the correctness of the return flied by taking steps, if necessary, under sections 22(4) and 23(2) of the Act. In the case of a provisional assessment under section 23B of the Act, the powers under sections 22(4) and 23(2) of the Act are not to be exercised and the Income Tax Officer has to determine the tax on the basis of the return filed by the assessee after taking into consideration the accounts and documents available, if any, and after giving effect to certain allowances and losses. In other words, what the Income Tax Officer has to do is to assess provisionally the total income of the assessee and thereafter he has to determine the tax payable on the basis of that provisionally assessed income. The argument was next stressed that section 18A(1) was introduced into the Act when section 23B did not exist at all and consequently no inference should be drawn that the word "assessed" used in section 18A(1) was meant to cover a provisional ' assessment under section 23B of the Act also. In other words, the argument of the appellants was that when the word "assessed" was used in section 18A(1) of the Act Parliament could not have contemplated that this word would cover a case of provisional assessment as no section relating to provisional assessment existed in the Act at that time. We are unable to accept this argument as correct. It should be noticed that the Parliament introduced certain amendments in section 18A of the Act consequential to the introduction of section 23B of the Act. There is a reference to the provisional assessment made under section 23B in sub-section (5) of section 18A, but Parliament took no step to restrict the meaning of the word "assessed" in. section 18A(3) so as to exclude a reference to provisional assessment under section 23B of the Act. If Parliament contemplated that section 18A(3) should apply only in the case of a "regular assessment", there was no reason why it did not put 'some qualifying words or expressions before or after the word ,"assessed" in section 18A(1). It is not possible to accept the submission of the appellants that Parliament in fact intended to bring about such a decision but only accidentally omitted to do so. On the other hand, the language of section 18A(1) as it stands, can only lead to interpretation that the provisions contained in it Would become applicable whenever a person has been assessed whatever be the nature of the assessment--whether it be a regular assessment or a provisional assessment.

It is important to notice that in section 18A (1) the expression "assessed" is used without any qualification or restriction as to whether the assessment should be a regular assessment or any other type of assessment under the Act. It is also manifest that in section 18A sub-section (5) the two expressions "provisional assessment" and "regular assessment" are expressly mentioned. The expression "regular assessment" is also repeatedly used in section 18A, sub-section 6, 7, 8 and 9. We see, therefore, no warrant for restricting the meaning of the word "assessed" in section 18A(1) so as to include only a "regular assessment"

> under section 23 of the Act. There is no reason why Parliament did not add the word "regularly" in the sub- section so as to qualify the word "assessed". Since there is no such qualification. the word "assessed" in section 18A(3) should be read in its ordinary sense as including every kind of assessment including a provisional assessment under section 23B of the Act.
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> In the last place, counsel on behalf of the appellants referred to the language of sections 210 and 212(3) of the Income Tax Act, 1961 which state:
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> "210. Order by Income Tax Officer :--(1) Where a person has been previously assessed by way of regular assessment under this Act or under the Indian Income Tax Act, 1922 (11 of 1922), the Income Tax Officer may, on or after the 1st day of April in the financial year, by order in writing, require him to pay to the credit of the Central Government advance tax determined in accordance with the provisions of sections 207, 208 and 209.
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> (2) The notice of demand issued under section 156 in pursuance of such order shall specify the installments in which the advance tax is payable under section 211.
>
> (3) If, after the making of an order by the Income Tax Officer under this section and before the 15th day of. February. of the Financial year tax is paid by the assessee under section 140-A or a regular assessment or a provisional assessment under section 141 of the assessee or of the registered firm of which he is a partner is made in respect of a previous year later than that referred to in the order of the Income Tax Officer, the Income Tax Officer may make an amended order queering the assessee to pay in one installment on the specified date. or in equal instalments on the specified dates. if more than one, falling after the date of the amended order, the advance tax computed on the basis of the total income on which tax has been paid under section 140-A or in respect of which the regular assessment or, the provisional assessment aforesaid has been made as reduced by the amount, if any, paid in accordance with the original order
>
> 213. Estimate by assessee,-(1) .....

(3) Any person who has not previously been assessed by way of regular assessment under this Act or under the Indian Income Tax Act, 1922 (11 of 1922) shall, before the first day of March in each

financial your, if his total income exclusive of capital gains of the period which would be the previous year for the immediately following assessment year is likely to exceed the maximum amount not chargeable to income-tax in his case by two thousand five hundred rupees, send to the Income Tax Officer-

(i) an estimate of the total income exclusive of capital gains of the said previous year;

(ii) an estimate of the advance tax payable by him calculated in the manner laid down in section 209: and shall pay such amount as accords with his estimate, on such of the dates specified in section 211 as have not expired, by instalments which may be revised according to sub-section (2)".

The argument was that these sections apply to a case of a regular assessment and the enactment of these sections should be' treated as a Parliamentary exposition of section 18A(3) of the earlier Act as referring only to a case of regular assessment.We are unable to accept this argument as correct. There is nothing in 1961 Act to suggest that Parliament intended to explain the meaning or clear up doubts about the meaning of the word "assessed" in section 18A(3) of the earlier Act. Generally speaking, a subsequent Act of Parliament affords no useful guide to the meaning of another Act which came into existence before the later one was ever framed. Under special circumstances, the law does however admit of a subsequent Act to be resorted to for this purpose but the conditions under which the later Act may be resorted for the interpretation of the earlier Act are strict; both must be laws on the same subject and the part of the earlier Act which it is sought to construe must be ambiguous and capable of different meanings. For example, in Kirkness (Inspector of Taxes) v. John Hudson & Co. Ltd.(1) it was held by the (1) [1955] A.C. 696.

House of Lords that the ordinary meaning of the word "sale" importing a consensual relation is to be attributed to the use of it in the context of section 17(1)(a) of the Act of 1945. Since there was no ambiguity in the section, it was not permissible to seek guidance in its construction from later Finance Acts, although it was directed by Parliament to be construed as one with them. At page 714 of the Report Viscount Simonds states:

> "I have looked at the later Acts to which the Attorney General referred to in order to satisfy myself that they do not contain a restrospective declaration as to the meaning of the earlier Act. They clearly do not, and I do not think that it has been contended that they do. At the highest it can be said that they may proceed upon an erroneous assumption that the word "sold" in section 17(1)(a) of the Income Tax Act, 1945, has a meaning which I hold it has not. This may be so and, if so, it is an excellent example of the proposition to which reference was made in the report of the Committee of the Privy Council in In re MacManasway(1) and again by my noble and learned friend Lord Radcliffe in Inland Revenue Commissioners v. Dowdall, O'Mahoney & Co. Ltd. (2) that the beliefs or assumptions of those who frame Acts of Parliament cannot make the law".

For the reasons expressed above, we hold that the judgment of the High Court dated 25th March, 1963 is right and these appeals must be dismissed with costs. One set of hearing fee.

Y.P. Appeals dismissed.

(1) [1951] A.C. 16L (2) [1952] A.C. 401.