State Of Assam And Another vs Deva Prasad Barua & Another on 14 August, 1968

Equivalent citations: 1969 AIR 831, 1969 SCR (1) 698, AIR 1969 SUPREME COURT 831

Author: A.N. Grover

Bench: A.N. Grover, V. Ramaswami

PETITIONER:
STATE OF ASSAM AND ANOTHER

Vs.

RESPONDENT:
DEVA PRASAD BARUA & ANOTHER

DATE OF JUDGMENT:
14/08/1968

BENCH:
GROVER, A.N.
BENCH:
GROVER, A.N.
RAMASWAMI, V.

CITATION:
1969 AIR 831 1969 SCR (1) 698
CITATOR INFO :
RF 1970 SC2057 (8)

ACT:
Assam Agricultural Income Tax Act, 1939, ss. 19(1), 20(1) and 30-Assessee filing return of agricultural income after issue of general notice under s. 19(1)-Assessment not made during the assessment year nor within three years specified in s. 30 but made thereafter-if valid or barred by time.-expression "at any time'' in s. 19(3)-Scope of.

HEADNOTE:
A general notice was issued on April 13, 1955 under s.. 19(1) 0 the Assam Agricultural Income Tax Act, 1939, for submission of the return for the assessment year 1955-56 for the purpose of agriculture income tax. The respondents filed a return on May 31, 1958 and April 7, 1959, the

Agricultural Income-tax Officer made an assessment under s. 20(1) of the Act and a notice of demand was issued under s. 32 on April 13, 1959. The respondents thereafter filed writ petitions under Arts. 226 and 227 challenging the assessments for that year and the subsequent year primarily on the ground that no individual notice had been served on them under s. 19(2) and therefore there was no jurisdiction in the Agricultural Income-tax Officer to pass an order of assessment' under s. 20(1) of the Act; and furthermore an assessment under s. relating to escaped income was barred by limitation. The High Court allowed the petitions holding, inter alia, that as the income received in the year 1954-55 had not been assessed in the financial year 1955-56, it had escaped assessment and could be assessed to tax only under s. 30; and the assessment in the present case was invalid as it was made beyond three years from the expiry of the financial year in which the income was received.

On appeal to this Court

HELDE: On the admitted fact that a general notice under s. 19(1) was published and that a return was filed by the respondents in respect 0 the assessment years in question, s. 30 did not become applicable at all Sub-section (3) of 's. 19 states in categorical terms that if any person has no furnished a return within the time allowed by or under subs. (1) subs. (2), he may furnish a return at any time before the assessment made and any return so made shall be deemed to be made in due time under the section. Where a voluntary return has been filed pursuant to general notice even after the expiry of the period mentioned in that notice the Income-tax Officer must proceed to assess the income by taking up that return. He cannot ignore that return and serve on the assessee notice under the provisions relating to escaped income such as s. 30 in the present case or s. 34 in the Income-tax Act. [701 G-H; 70:2 E-F]

The words "at any time" in subsection 3 of s. 19 of the Act be interpreted to mean that they are limited to the year of assessment. Section 19 is in pari materia with s. 22 of the Income-tax Act and the law which has been laid down by this Court while interpreting the provisions of that section must govern the construction of the provisions of s. 19 well. [702 H-703 B]

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The Commissioner of Income-tax, Bombay v. Ranchhoddas Karsondas Bombay, [1960] 1 S.C.R. 114; and Commissioner o! Income-tax, Madras, V.S. Raman Chettiar [1965] 1 S.C.R. 883; referred to.

JUDGMENT:

CIVIL APPELLATE JURISDITCION: Civil Appeals Nos. 808 and 809 of 1967.

Appeals from the judgment and order dated April 23, 1963 of the Assam High Court in Civil Rule Nos. 212 and 213 of 1962. Naunit Lal and Baharul Islam, for the appellants (in' both the appeals).

Sukumar Mitra and D.N. Mukherjee, for the respondents (in both the appeals) and the intervener (in C.A. No. 808 of 1967).

The Judgment of the Court was delivered by Grover, J. These are two connected appeals by certificate from a common judgment of the High Court of Assam and Nagaland allowing two petitions under Art. 226 of the Constitution and setting aside the assessments made in respect of the respondents for the assessment years 1955-56 and 1957-58 under the Assam Agricultural Income-tax Act, 1939, hereinafter called the Act.

A general notice was issued under s. 19(1) of the Act for submission of the return for the purpose of agricultural income tax on April 13, 1955 for the assessment year 1955-

56. According to the departmental authorities a notice was also issued under s. 19(2) on September 16, 1955 to the respondents by the Agricultural Income-tax Officer for submission of a return for the same year which was followed by reminders sent on April 30, 1956 and April 15, 1958. It is, however, not disputed that the respondents themselves filed a return on May 31, 1958 relating to agricultural income for the assessment year 1955-56. On April 7, 1959 the Agricultural Income-tax Officer made an assessment order under s. 20(1) of the Act and a notice of demand was issued under s. 33 on April 13, 1959. It is unnecessary to give the details about the proceedings relating to the assessment year 1957-58 in which the dates are naturally different but the position is identically the same. On June 4, 1962 the respondents filed two petitions under Art. 226 & 227 of the Constitution challenging the assessments which had been made primarily on the ground that no notice had been served under s. 19(2) and therefore there was no jurisdiction in the Agricultural Income-tax Officer to pass an order of assessment under s. 20 (1) of the Act and further that since no assessment order had been passed and no notice of demand had been made within the period of three years of the end of the relevant financial year the assessments were barred by time under s. 30 of the Act. In the return which was filed in the High Court to the writ petitions, it was asserted by the Assistant Commissioner of Taxes that the respondents had been served with a notice under s. 19(2) and the details of the notices and the reminders which were issued together with copies thereof were filed as annexures. It was maintained that even on the assumption that no notice under s. 19 (2) had been received by the respondents the submission of the return of agricultural income was in compliance with the terms of the notice issued under s. 19(1) and therefore the assessment order made under s. 20(1) was perfectly valid and no question arose of the applicability of s. 30 in such circumstances.

The High Court decided the petitions in favour of the respondents primarily on the following considerations: (1) Once agricultural income has escaped assessment in any financial year then such income could be assessed within the period prescribed or laid down in s. 30 namely, a period of three years by taking the steps indicated in that section. In the present case the agricultural income was received for the first year in the year 1954-55 and had to be assessed in the financial year

1955-56. Since no assessment had. been made in that financial year it had escaped assessment. Thus s. 30 was directly attracted. As. the assessment was made on April 7, 1959 which was beyond three years from the expiry of the last date of the financial year in which the income had been assessed the assessment was invalid. (2) As no notice either under s. 19(2) or under s. 30 had been shown to have been served the assessment should have been made before the expiry of three years from the last date of the financial year, namely, 1955.-56 which was not done. (3) The submission of a voluntary return by the assessee did not alter the situation as there is no provision in the Act which would help the department in that behalf. It was open to the department to have assessed the assessee before the expiry of the period of three years on receipt of the return but that was not done. Section 19 is. almost in the same terms as s. 22 of the Income tax Act, 1922, hereinafter called the Income-tax Act. Section 19(1) reads as follows :--

> "The Agricultural Income-tax Officer shall, on or before the first day of May or for the year commencing 1st April, 1939 any later day notified by Government in each ye ar, give notice by publication in the press and otherwise in the manner prescribed by rules., requiting every person whose agricultural income exceeds the limit of taxable income prescribed in section 6 to furnish, within such period not being less. than thirty days as may be specified in the notice, a return, in the prescribed form and verified in the prescribed manner, setting forth (along with such other particulars as may be required by the notice) his total agricultural income during the previous year :"

Section 20 of the Act is similar to s. 23 of the Income tax Act, Section 30 which deals with escapement of income tax is in the following terms :--

> "If for any reason any agricultural income chargeable to agricultural income tax has escaped assessment for any financial year, or has been assessed at too low a rate (or has been the subject of undue relief under this Act), the Agricultural Income-tax Officer may, at any time within three years of the end of that financial year, serve on the person liable to pay agricultural income tax on such agricultural income or, in the case of a company on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 19, and may proceed to assess or reassess such income, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that section:
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> Counsel for the appellant has raised two principal contentions before us, The first is that a notice had been served under s. 19 (2) of the Act on the respondents and therefore the reasoning of the High Court was based on an erroneous assumption that no such notice had been served. According to him in the return filed in the High Court it had been clearly asserted that such notices had been issued followed by reminders. No counteraffidavit, however, had been filed by the respondents in the High Court contradicting the statement in the return. Counsel further points out that the statement in the judgment of the High Court "but it is not disputed that the

notices under s. 19 (2) of the Act had not, in fact, been served on the petitioners", is based on some misunderstanding or misapprehension. The counsel for the appellant did not make any concession on the point before the High Court and at the earliest opportunity, in the petition which was filed for leave under Art. 133 of the Constitution, this matter was raised and the same assertions which were made in the return were reiterated. It seems to us that it is futile to go into this question because (a) it is substantially a question of fact.and (b) the present appeals can be decided on another ground which arises out of the second contention raised before us. On the admitted fact that a general notice under s. 19 (1) was published and that a return was filed 'by the respondents in respect of each of the two assessment years in question it is not possible to see how s. 30 would become, applicable at all. Sub-section 3 of s.

19 says in categorical terms that if any person has not furnished a return within the time allowed by or under sub- s. (1) or sub-s. (2) he may furnish a return at any time before the assessment is made and any return, so made shall be deemed to be made in due time under the section. In The Commissioner of Income tax, Bombay v. Ranchhoddas Karsondas, Bombay(1), a public notice

-under s. 22(1) of the Income tax Act was published on May 1, 1945. On January 5, 1950 the assessee submitted a voluntary return showing an income of Rs. 1,935 for the assessment year 1945-46 and added a footnote to his return that his wife had sold her old ornaments and deposited a sum of Rs. 59,026 with some Syndicate in which he was a partner. The Income-tax Officer ignored the voluntary return and in February 1950 issued a notice under s. 34(1) of that Act pursuant to which the assessee submitted a return in March 1950. The Income-tax Officer made the assessment in February 1951 including the sum of Rs. 59,026 in the total income of the assessee. The assessee ,contended that the assessment was invalid as it was completed more than four years after the end of the assessment year in violation of s. 34(1)(b). The department contended that the voluntary return was no return as it did not disclose any taxable income and the assessment was valid under the proviso to s. 34(3). It was held that the voluntary return filed by the assessee even though it did not disclose any taxable income was a good return. As such no question arose under s. 34(1) of income escaping assessment and the Income-tax Officer was not justified in issuing a notice under s. 34(1). The assessment which was therefore made pursuant to the notice under that section was barred by time, having been made beyond the period prescribed. The principle which has been settled by this decision is that where a voluntary return has been filed pursuant to a general notice even after the expiry of the period mentioned in that notice, the Income-tax Officer must proceed to assess the income by taking up that return. He cannot ignore that return and serve on the assessee a notice under the provisions relating to escaped income which was s. 34 in the Income-tax Act. This view also finds support from the decision of this Court in Commissioner of Income- tax, Madras v.S. Raman Chettiar(2) in which it was laid down, inter alia that s. 22(3) of the Income-tax Act, 1922 permitted an assessee to furnish a return at any time before the assessment was made, namely, before the time mentioned in s. 34(3) of that Act. In the present case it is not disputed and cannot indeed be disputed that if the word "at any time" in sub-s. (3) of s. 19of the Act has not to be limited to the year of assessment as has been contended by the learned counsel for the respondents, the present case would be governed by the principles laid down by this Court in the above decisions. It

has been urged that the words "at any time" should be given a limited meaning and should be confined to the year of assessment, namely, that the return should be made at any time within the year of assessment and not later in which case sub-s. (3) would not apply and the provision of s. 30 would (1) [1960] 1 S.C.R. 114.

(2) [1965] 1 S.C.R. 883.

be at once attracted. This contention has only to be stated to be rejected. In the first place if sub-s. (3) has to be read in the manner suggested it would become ambiguous and almost unintelligible. Secondly according to the ordinary cannons of interpretation the words employed must be given their proper and plain meaning. Moreover s. 19 is in pari materia with s. 22 of' the Income-tax Act and the law which has been laid down by this Court, while interpreting the provisions of that section, must govern the construction of the provisions of s. 19 as well. The High Court, in giving the reasons on which the petitions were allowed, was not alive to all these matters and the view taken by it is clearly unsustainable.

The appeals are consequently allowed and the writ petitions are directed to be dismissed. The appellants will be entitled to. one set of costs.

R.K.P.S. Appeals allowed.-