Ratee Ram & Sons, Kanpur vs Commissioner Of Income-Tax, United ... on 12 October, 1950

Equivalent citations: [1951]19ITR233(ALL)

JUDGMENT

The questions referred by the Tribunal to this Court are printed at page 5 of the paper-book. Having given our thought to them we are of opinion that question No. (2) really does not raise any question of law and that the only point to be considered by us is what is contained in question No. (1). That question is :-

> "Whether the scheme of Income-tax Act, particularly the provisions contained in Section 14(2)(a), 23(5)(a) and their proviso to Section 30(1), Income-tax, are such as to bar the assessment of a partner in regard to his share of profits in a partnership business one of the partners of which had been subjected to assessment within the jurisdiction of an Income-tax Officer of a different circle ?"

The assessees in this case were a partner in two forests, one known as the Bandal and the other as Kankai forest. Their share in the former was ten out of sixteen annas and in the latter one-half. There is no dispute in this case with regard to the latter forest, Kankai. The point referred to is confined only to the Bandal forest. The assessment made by the Income-tax Officer was under Section 23(3) of the Act, the profits found being Rs. 20,000. This amount was reduced by the Tribunal to Rs. 12,000.

Information was received from the Income-tax Department, Delhi, that the other partner, Ramji Lal Sohan Lal Ltd., had been assessed in regard to the Bandal forest on an income of Rs. 8,117. The Tribunal, on the basis of this information an din view of the fact that the interest of the assessees was ten out of sixteen annas, put the assessable amount of income at Rs. 12,000.

The case of the assessees was that they could not be assessed at Kanpur as the other partner, Ramji Lal Sohan Lal Ltd., had been assessed at Delhi and they relied on the provisions of the various sections mentioned in question (1) referred by the Tribunal. We have considered these provisions and have come to the conclusion that the mere fact that a partner of a firm may have been assessed on his individual share in the income of the firm is no bar to an assessment made on the share of income of the other partner or partners. If the firm itself had been assessed, which is not the case here, the position may have been different. This being the true legal position, we think that no question really arose for our opinion on the facts of the present case. In this connection we may refer to the following observations of Rankin, C.J., in Neemchand Daga v. Commissioner of Income-tax, Bengal.

> "To collect the tax effectively, without unnecessary inconvenience to the subject, without inconsistency in result and without unnecessary duplication of work on the

> part of the Income-tax authorities, it is obvious that the profits of the registered firm should be ascertained as a whole before assessment is made upon the individual partners. But I can find nothing in the Act to say that the firm is to operate as a sort of estoppel in favour of the individual partners. In clause (b) of Section 14(2) the word is have not has. The language of this clause may be compared with that of clause (a) of the same sub-section and that of the proviso to Section 55. It seems to me to be free of any suggestion that the individual is never to be liable to pay on any portion of the profits of the firm."

Our answer to question No. (1), therefore, is that the assessees were not entitles to resist the assessment on the mere ground that the other partner had been assessed to income-tax on his own share in the income of the forest business.

We may mention that no one appeared in this Court on behalf of the assessees and we had to consider the case ex parte.

The Department is entitled to its costs which we assess at Rs. 200.

Reference answered accordingly.