Juggilal Kamlapat Cotton Spinning And ... vs Commissioner Of Income-Tax, U. P. & C. P. ... on 17 December, 1954

Equivalent citations: [1955]28ITR78(ALL)

JUDGMENT

MOOTHAM, J. - This is a reference under section 66 of the Indian Income-tax Act, 1922, the assessee being a private limited company. The company held its annual general meeting on the 13th April, 1939, and on the 7th September following it filed a return in respect of the assessment year 1939-40 disclosing an assessable income of Rs. 42,510. The statement of the companys income was not however accepted by the Income-tax Officer, and as the company did not produce its account books when required to do so that Officer acted under section 23(4) of the Act and determined the sum payable by the assessee to be Rs. 8,17,137. This assessment order was made on the 29th June, 1942. Thereafter, on the 16th September, 1944, the Income-tax Officers successor-in-office, being of opinion that the assessee had in respect of the year in question distributed less than sixty per cent. of its assessable income, made with the previous approval of the Inspecting Assistant Commissioner an order under section 23A. Proceedings were subsequently instituted against the managing director of the assessee company under Chapter VIII of the Act, those proceedings being compounded upon payment of the sum of Rs. 7,50,000. It is in these circumstances that the following questions have been referred to this court :

> 1. Whether in the circumstances of the case proceedings under section 23A could be initiated by the successor-in-office to the Income-tax Officer who had made the assessment of the assessee company for the year 1939-40 ?
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> 2. Whether in the circumstances of the case the proceedings under section 23A were time-barred or were otherwise invalid having been made on the 16th September, 1944, while the assessment had been completed on 29th June, 1942 ?
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> 3. Whether the amount of composition money, namely Rs. 7,50,000 paid by the assessee, should have been taken into consideration at the time proceedings under section 23A were taken, that is, whether that amount can rightly go to reduce the figure of "assessable income" referred to in that section ?
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> 4. Whether the assessable income of the applicant company for the purpose of section 23A is the income disclosed by the books of account of the applicant, viz., Rs. 42,510, or it is the amount determined to be the income by the Income-tax Officer for the purpose of the assessment to income-tax, viz., Rs. 8,17,137 ?

The first question suggests that the point raised before the Tribunal was that proceedings under section 23A can be initiated only by the Income-tax Officer who had made the assessment order. In view of the provisions of section 64(4) which provides that.

> "Notwithstanding anything contained in this section every Income-tax Officer shall have all the powers conferred by or under this Act on an Income-tax Officer in respect of any income, profits or gains accruing, or arising or received within the area for which he is appointed."

Learned counsel now state that the first and second questions may be deemed to involve only one matter, namely whether an order under section 23A can be passed after an assessment order had been made under section 23(4). The assessment order in the present case was made on the 29th June, 1942, and the argument for the assessee is that no order under section 23A could be passed read as follows :

> Section 23A so far as is relevant read as follows :
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> "Where the Income-tax Officer is satisfied that in respect of any previous year the profits and gains distributed as dividends by any company up to the end of the sixth month after its accounts for that previous year, as reduced by the amount of income-tax and super-tax payable by the company in respect thereof he shall, unless he is satisfied that having regard to losses incurred by the company in earlier years or to the smallness of the profit made, the payment of a dividend or a larger dividend than that declared would be unreasonable, make with the previous approval of the Inspecting Assistant Commissioner an order in writing that the undistributed portion of the assessable income of the company of that previous year as computed for Income-tax purposes and reduced by the amount of income-tax and super-tax payable by the company in respect thereof shall be deemed to have been distributed as dividends amongest the shareholders as at the date of the general meeting aforesaid, and thereupon the proportionate share thereof of each shareholder shall be included in the total income of such shareholder for the purpose of assessing his total income."

The opening words of the section enact that the Income-tax Officer must be satisfied in respect of "any previous year" that the profits and gains distributed as dividend "for that previous year" are less than sixty per cent. Of the assessable income of the company. In our opinion the section makes it quite clear that an order under it may be made on the basis of a failure by the assessee to distribute a dividend of the minimum amount in a year which has already passed, and we can find nothing elsewhere in the Act which places the restriction on the power of the Income-tax Officer for which the assessee contends. An order cannot be made under this section before the end of a period of six months from the date upon which the accounts from the year in question are laid before the assessee company in general meeting and after the Income-tax Officer has taken into account the amount of profit made, has considered whether the payment of a larger dividend would be unreasonable and has obtained the previous approval of the Inspecting Assistant Commissioner, and where the assessee company has distributed not less than 55 per cent. of its assessable income then under the second proviso to sub-section (1) notice of the proposed order has to be served upon the company and on order cannot be made within three months of the receipt of such notice. It is manifest that the construction sought to be placed upon the section by the assessee would make the

section largely unworkable. It has indeed been held by the Bombay High Court in Sir Kasturchand Limited v. Commissioner of Income-tax, Bombay City, that the Act lays down no period of limitation for an order made by an Income-tax Officer under this section. The answer to the first question must be in the affirmative and to the second question in the negative.

It is convenient now to consider the fourth question referred to this court. The section provides that an order thereunder cannot be made by the Income-tax Officer unless he is satisfied, inter alia, that the profits and gains distributed as dividends by the company are less than sixty per cent. of "the assessable income of the company..... as reduced by the amount of income-tax and super-tax payable by the company in respect thereof" and that the order which he may make will relate to the undistributed portion of "the assessable income of the company..... as computed for income-tax purposes and reduced by the amount of income-tax and super-tax payable by the company in respect thereof" and the argument on behalf of the assessee is that whereas the phrase "assessable income", where it first appears, means the income of the company as disclosed in its balance sheet and accounts, it means, when used on the second occasion, the companys assessed income. We do not think this argument can be sustained. "Assessable income" in our opinion means income assessable to income-tax under the Indian Income-tax Act and has the same meaning wherever it is used in this sub-section.

The distinction sought to be made by the assessee is based on the phrase "as computed for income-tax purposes" which follows the expression "assessable income" where it is used for the second time. No such distinction can in our judgment be validly drawn. If "assessable income" means, as we think it does, income assessable to tax under the Act, then it must remain the same when a computation is made for income-tax purposes. Assessable income in the case of certain companies, for example companies which derive their entire income from property, may be a notional income which may be greater than the profits that had been actually earned by the company. It is for that reason that the Income-tax Officer has been given the power, where the profits are small and, compared to the profits actually made, the dividend declared is not unreasonable, not to take action under the provisions of section 23A of the Act. There is in our opinion no warrant for the suggestion that the words "assessable income" in the first part of that section mean income which the company considers to be its assessable income and treats it as such in its balance-sheet and accounts. This view involves an artificiality in the section and means that the Income-tax Officer would, for the purposes of the section, have to accept the assessees own figure of his profit although that figure may have been computed otherwise than in accordance with the provisions of the Act. It is more reasonable to hold that "assessable income" means what the words convey, namely that income which is assessable to income-tax under the Indian Income-tax Act. No hardship can be caused to the assessee by this interpretation as it is abundantly clear that a dividend has to be declared out of the actual profits and not out of what may be the notional income for the purposes of assessment. Sri G. S. Pathak who appeared for the assessee invited our attention to the cases of Sir Kasturchand v. Commissioner of Income-tax, Bombay City, to which we have already referred, and Ezra Pro-Prietary Estates Ltd. v. Commissioner of Income-tax West Bengal. Both these case were concerned with the circumstances which are to be taken into account by the Income-tax Officer in deciding whether an order should be made under section 23A, and the observations made by the learned Judges, so far as they are relevant at all, are against the

submission made on behalf of the assessee, for in neither case is there any suggestion to be found that the expression "assessable income" as used in section 23A (1) has more than one meaning.

The assessee did not challenge the finding of the Income-tax Officer that its assessable income was Rs. 8,17,137, and our answer to the fourth question is that that is the assessable income of the assessee for the purposes of section 23A.

The third question has not been well framed. Learned counsel are agreed that the real question is whether the sum of Rs. 7,50,000 is an allowable expenditure under section 10(2) (xii) of the Indian Income-tax Act with the result that the assessable income of the company was really Rs. 8,17,137 less Rs. 7,50,000, that is Rs. 67,137. Section 10 (2) (xii) of the Act at the material time provided for the deduction from the profits and gains of an assessee of any expenditure not being in the nature of capital expenditure or personal expenses of the assessee "laid out or expended wholly and exclusively" for the purpose of such business, profession or vocation.

The assessee had submitted a return showing its assessable income as Rs. 42,510. The Income-tax Officer found that the assessable income was Rs. 8,17,137. The managing director of the assessee company was thereafter served with notice to show cause why criminal proceedings should not be taken against him. The assessee thereupon paid a sum of Rs. 7,50,000 to compound the offence and the Inspecting Assistant Commissioner under section 53(2) of the Act agreed to the offence being compounded on payment of this amount. We are clearly of opinion that this payment cannot be said to have been made wholly and exclusively for the purpose of the business. In In re Gabdulal Tulsiram where the assessee had compounded a criminal offence on payment of Rs. 11,265 it was held that this was money wholly and exclusively expended for the purposes of the business and it was not therefore a permissible deduction, and in Commissioner of Income-tax, West Bengal v. H. Hirjee the Supreme Court held that money spent in defending criminal proceedings was similarly not an expenditure laid out or expended wholly and exclusively for the purpose of the business of the assessee. Our answer to the third question, therefore, is in the negative.

The assessee must pay the costs of this reference which we assessee at Rs. 500.

Reference answered accordingly.