

Deo Sharma vs Commr. Of Income-Tax, U.P., Lucknow on 9 January, 1953

Equivalent citations: AIR1953ALL482, [1953]23ITR226(ALL), AIR 1953 ALLAHABAD 482

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. Mr. Das on behalf of the opposite party has raised a preliminary objection and has pointed out that the order passed by the Income-tax Officer was under Section 18-A (6), Income-tax Act, The assessee having paid in advance less than eighty per cent, of the tax determined on the basis of the regular assessment he was made liable to pay simple interest at the rate of six per cent, per annum. Learned counsel has drawn our attention to the provisions of Section 30 (1), Income-tax Act and has pointed out that the order under Section 18-A (6) was not appealable. An appeal was however, riled by the assessee before the Appellate Assistant Commissioner but no objection was raised to the maintainability of the appeal and the Appellate Assistant Commissioner dismissed the appeal on the merits. Then there was a further appeal filed under Section 33 (1) before the Appellate Tribunal which also dismissed the appeal on the merits. Learned counsel has pointed out that the order of the Appellate Assistant Commissioner and the Tribunal been completely without jurisdiction, the order of the Appellate Tribunal cannot be deemed to be an order under Section 33. In case the Appellate Assistant Commissioner or the Appellate Tribunal, in the wrongful assumption of jurisdiction, had varied that order to the disadvantage of the assessee, it may have been possible to ask for a reference for the decision of the question whether they had any jurisdiction to do so; but, they having merely dismissed the appeals, the effect of the order of the Income-tax Officer remained and, as there was no appeal provided for against that order, the order of the Appellate Tribunal cannot be treated as an order under Section 33 against which a reference is provided for under Section 66. This reference cannot be entertained and is rejected.

2. We make no order as to costs.