The Commissioner Of Income-Tax, West ... vs M/S. Vegetables Products Ltd on 29 January, 1973

Equivalent citations: 1973 AIR 927, 1973 SCR (3) 448, AIR 1973 SUPREME COURT 927, 1973 (1) SCC 442, 1973 TAX. L. R. 595, 1973 (1) SCWR 347, 1973 SCC (TAX) 282, 1972 S C C (TAX) 282, 1973 3 SCR 448, 88 ITR 192

Author: K.S. Hegde

Bench: K.S. Hegde, P. Jaganmohan Reddy, Hans Raj Khanna

PETITIONER:
THE COMMISSIONER OF INCOME-TAX, WEST BENGAL I,CALCUTTA

Vs.

RESPONDENT:
M/S. VEGETABLES PRODUCTS LTD.

DATE OF JUDGMENT29/01/1973

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
REDDY, P. JAGANMOHAN
KHANNA, HANS RAJ

CITATION:
1973 AIR 927 1973 SCR (3) 448
1973 SCC (1) 442
CITATOR INFO :
R 1976 SC 313 (27)
D 1989 SC 501 (16)

ACT:
Income Tax Act (43 of 1961), ss. 143, 156 and 271(1)(a)(i)-Penalty-Whether related to tax assessed or tax payable.

HEADNOTE:
The assessee failed to furnish the return of its income within the time allowed but submitted the return after a notice under s. 28(3) of: the Income-tax Act, 1922, was served on him. A provisional assessment was made by the Income-tax Officer under s. 23B of the 1922-Act and the assessee deposited the amount. The Income-tax Act, 1961 ,

having come into force thereafter, the Income-tax Officer the assessment under the provisions of that Act, determined the tax due and the penalty payable by the assessee. In doing so, he did not take, into consideration the amount deposited by the assessee, that is, he took into consideration not the amount demanded under s. 156 of the 1961-Act but the amount assessed under s. 143. The Appellate Assistant Commissioner confirmed the order; but the Tribunal held that the penalty under s. 271 (1) (a) (1) is to be levied on the tax assessed minus the amount paid under the provisional assessment order, and the High Court, on reference, agreed with the Tribunal.

Dismissing the- appeal by the Revenue to this Court,

HELD : (1) The acceptance of one or the other interpretation sought to be placed on s. 271(1) (a) (1) by the parties would lead to some inconvenient result; but the duty of. the Court is to read the section, understand its language and give effect to it. If the language is plain, the fact that the consequence of giving effect to it may lead to some absurd result is not a factor to be taken into account in interpreting a provision. It is for the Legislature to step in and remove the absurdity. On the other hand, if two reasonable constructions of a taxing provision are possible that construction which favours the assessee must be adopted. [451D-F]

(2)Section 271(1) (a) (i) stipulates that the Income-tax Officer may direct that the assessee shall pay by way of penalty, "in addition to the amount of tax, if any, payable by him a sum equal to two per cent of the tax for every month..... Quantification of the tax payable is always referred to in the Act as a tax "assessed". A tax payable is not the same thing as tax assessed. The tax payable is that amount for which a demand notice is issued under s. 156. Hence, there can be no doubt that the expression 'the amount of tax, if any, payable by him' referred to in the first part of the section refers to the tax payable under a demand notice. The definite article 'the' in the words "the tax" in the latter part of the provision, shows that it refers to the tax, if any, payable by the assessee, mentioned in the first part of the section. [452D-G; 453A-B]

(3)At any rate, the provision is capable of more than one reasonable interpretation, and since the provision, is not merely a tax provision but a penalty provision as well the interpretation in favour of the assessee must be accepted. [453B-D]

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M. M. Annaiah v. Commissioner of Income-tax, Mysore, 76, I.T.R. 582, approved.

Vir Bhan Bansi Lai v. Commissioner of Income-tax, Punjab, 6 I.T.R 616 and Commissioner of Income-tax, Delhi v. Hindustan Industrial Corporation, 86 I.T.R. 657, disapproved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : CIVIL APPEAL No. 497 of 1970. Appeal by Certificate from the Judgment and order date June 26, 1969 of the Calcutta High Court in Income-tax Reference No. 145 of 1966.

S. C. Manchanda, T. A. Ramachandran, S. P. Nayar and R. N. Sachthey, for the appellant.

B. Sen, S. Sadhu Singh, J. M. Khanna and S. Ramachandran, the respondent.

S. V. Gupte, T. S. Viswanatha Rao and A. T. M. Sampat, for the intervener.

The Judgment of the Court was delivered by HEGDE, J.-This appeal by certificate arises from the decision of the Calcutta High Court in a case stated by the Income-tax Appellate Tribunal, 'B' Bench, Calcutta. After setting out the relevant facts, the Tribunal solicited the opinion of the High Court on the following question of law :

> 'Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that in calculating the penalty leviable under section 271 (1) (a) of the Income-tax Act, 1961 the amount paid by the assessee under the provisional assessment under section 23B of the Indian Income-tax Act, 1922, was to be deducted from the amount of tax determined under section 23(2) of that Act in order to determine the amount of tax on which the computation of the penalty was to be based and in reducing the amount of the penalty imposed on the assessee to Rs. 2,737/-."
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> The High Court answered that question in the affirmative and in favour of the assessee. Aggrieved by that decisions the Commissioner has brought this appeal.
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> Let us now proceed to state the facts relevant for deciding the point in issue, as could be gathered from 'the statement of the case.
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> In this case we are concerned with the assess's assessment for the assessment year 1960-61, the relevant account year ending on December 31, 1959. In that regard the Income-tax Officer issued a notice under s. 22(2) of the Indian Income- tax Act, 1922 (to be hereinafter referred to as the "1922 Act") on June 1, 1960. The same was served on the assessee on June 13, 1960. That notice required the assessee to submit its return on or before July 18, 1960. On July 18, 1960, the assessee moved for extension of time for submitting its return. The Income- tax Officer extended the time by two months and at the same time the informed the assessee that no further time would be allowed. The assessee failed to furnish its return within the extended time. Thereafter a notice under s.28(3) of the 1922 Act was served on' the assessee on January 16, 1961. On the very next day viz. January 17, 1961, the assessee filed its return for the

assessment year in question. The assessment was completed by the Income-tax Officer only on October 31, 1962. Meanwhile on April 1, 1961 the Income-tax Act, 1961 to be hereinafter referred to as the "Act") came into force. As under the provisions of s.297(2) (g) of the Act the proceedings for the imposition of the penalty had to be initiated and completed under the Act, a fresh notice under s. 274(1) of the Act was served on the assessee. The assessee objected to the validity of the notice but that objection was overruled. At present we are not concerned with that objection. We are also not concerned with the other objections taken by the assessee which were negatived by the Tribunal. The Income-tax Officer determined the tax due from the assessee for the assessment year at Rs. 1,25,512/10 P. and on that basis, the penalty payable by the assessee was fixed at Rs. 12,7 3 4 / IO P. At this stage it may be mentioned that on February 2,1961, a provisional assessment was made by the Income-tax Officer under s. 23B of the 1922 Act. Immediately thereafter the, assessee deposited Rs. 92,294/55 P. In determining the penalty due from the assessee, the Income-tax Officer took into consideration not the amount demanded under s. 156 of the Act but the amount assessed under s. 143 of the Act. In appeal, the Appellate Assistant Commissioner confirmed the order of the Income-tax Officer. On a further appeal, the Tribunal came to the conclusion that the penalty under s.271 (1) (a) (i) is to, be levied on the tax assessed minus the amount paid under the provisional assessment order namely Rs. 92,294/55 P. On the basis of that finding, it determined the penalty payable by the assessee at Rs. 2,737/44 P. The conclusion of the Tribunal was accepted as correct by the High Court.

Learned Counsel for the Revenue, Mr. Manchanda contended that on a proper construction of s. 27 1 (1) (a) (i) it would be seen that the penalty had to be determined on the basis of the tax assessed under s. 143 of the Act. Counsel urged that if that is not the true construction then 'the effectiveness of the section may be taken away by the assessee paying the tax due by him a day before the demand notice is served on him. In support of the interpretation placed by him, Mr. Manchanda relided on the decisions of the Lahore High Court in Vir Bhan Bansi Lal v. Commissioner of Income-tax, Punjab(1) and the decision of the Delhi 6 I.T.R. 616.

High-Court in Commissioner of Income-tax, Delhi v. Hindustan Industrial Corporation(1). The Delhi High Court followed the decision of the Lahore High Court. On the other hand, it was urged by Mr. B. Sen, learned Counsel for the assessee and Mr. S. V. Gupta, learned Counsel for the interveners that. on a proper interpretation of the provision mentioned earlier, it would be, clear that the penalty can be only imposed on the amount payable under s. 156.In support of their contention, they relied on the decision of the Mysore, High Court in M. M. Annaiah v. Commissioner of Income-:tax, Mysore(2). They further urged that if ,interpretation placed by the Revenue on s. 271 (1) (a) (i) is accepted as correct, the result would be that the advance tax paid or taxes deducted at the source cannot be taken into consideration in determining the penalty payable. If that be true, the Counsel urged that even if the assessee had paid more tax than he need have paid, but had not submitted his return within the time fixed, he would be liable to pay penalty on the entire amount assessed. According to them the law cannot be presumed to be so harsh at that. There is no doubt that the acceptance of one or the other interpretation sought to be placed on S. 271 (1) (a) (i) by the

parties would lead to some inconvenient result, but the duty of the court is to read the section, understand its language and give effect to the same. If the language is plain, the fact that the consequence of giving effect to it. may lead to some absurd result is not a factor to be taken into account in interpreting a provision. It is for the legislature to step in and remove the absurdity. On the other hand, if two reasonable constructions of a taxing provision are possible that construction which favours the assessee must be adopted. This is a well 'accepted rule of construction recognised by this Court in several of its decisions. Hence all that we have to see is, what is the true effect of the language employed in s. 271 (1) (a)

(i). If we find that language to be ambiguous or capable of more meanings than one, then we have to adopt that interpretation which favours the assessee, more particularly so because the provision relates to imposition of penalty. Let us now read section 271 (1)(a) (i). The section to the extent material for our present purpose reads :

> "It the Income-tax Officer or the Appellate Assistant Commissioner in the course of 'any proceedings under this Act, is satisfied that any person-
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> (a) has without reasonable cause failed to furnish the return of total income which he was required to furnish..... by notice given under sub-
>
> (1) 86. I.T.R. 657. (2) 74 I.T.R. 582 section(2) of section 139. . .. . ., Dr has without reasonable cause failed to furnish it within the time allowed and in the manner required... by such notice he may direct that such person shall pay by way of penalty-
>
> (i) in the casts referred to in clause (a), in addition to the amount of the tax, it any, payable by him a sum equal to two per cent, of the tax for every month during which the default continued, but not exceeding in the aggregate fifty per cent, of the tax."

(emphasis supplied) Section 271(1)(a)(i) stipulates that the Income-tax Officer may direct that the assessee shall pay by way of penalty, in cases similar to the one that we are considering "in addition to the amount of the tax, if any, payable by him a sum equal to 2 per cent of the tax for every month during which the) default continued but not exceeding in the aggregate 50 per cent of the tax".

We must first determine what is the meaning of the expression "the amount of the tax, if any, payable by him"

> in 271 (1) (a) (i), Does it mean the amount of tax assessed under s. 143 or the amount of tax payable under s. 156. The word "assessed" is a term often used in taxation laws. It is used in several provisions in the Act. Quantification of the tax payable is always referred to in the Act as a tax "assessed". A tax payable is, not the same thing as tax assessed. The tax payable is that amount for which a demand notice is issued under s. 156. In determining the tax payable, the tax already paid has to be deducted. Hence there can be no doubt that the expression "the amount of the tax, if any, payable by him" referred to in the first part of s. 271 (1) (a) (i) refers to the tax payable under a

demand notice. We next come to the question what is the meaning to tic attached to the words "the tax" found in the latter part of that provision. It may be noted that the ex- pression used is not "tax" but "the tax". The definite article "the" must have reference to something said earlier. It can only refer to the tax, if any, payable by the assessee mentioned in the first part of s. 271 (1) (a) (i). It is true the expression "tax" is defined in s. 2(43) thus :

" "tax" in relation to the assessment year commencing on the 1st day of April, 1965 and any subsequent assessment year means income- tax chargeable under the provisions of this Act. and in relation to any other assessment year income-tax and super-tax chargeable under the provisions of this Act prior to the aforesaid date."

But the difficulty in this case is, as mentioned Carrier the expression used is not "tax" but "the tax". That expression can be reasonably understood as referring to the expression earlier used in the provision namely "the amount of the tax, if any payable' by the assessee. At any rate, the provision in question is capable of more than one reasonable interpretation. Two high courts namely Calcutta and Mysore have taken the view 'that the expression tithe tax" in s. 271(1) (a) (i) refers to "the tax, if any, payable" (by the assessee) mentioned in the earlier part-of the section. It is true that Lahore and Delhi High Courts have taken a different view. But the view taken by the Calcutta and Mysore Hi,-,It Courts cannot be said to be untenable view. Hence, particularly in view of the fact that we are interpreting, not merely a taxing provision but a penalty provision as well, the interpretation placed by the Calcutta and Mysore High Courts cannot be rejected.. Further as seen earlier, the consequences of accepting the interpretation placed by the Revenue may lead to harsh results. For the reasons mentioned above, this appeal is dismissed with, costs.

V.P.S. Appeal dismissed.