

Income Tax Appellate Tribunal - Nagpur

Commissioner Of Income-Tax C.P. & ... vs Achrulal. on 22 March, 1938

Equivalent citations: 1938 6 ITR 255 Nag

JUDGMENT On 19-9-1934 Niyogi, Additional Judicial Commissioner, as he then was, directed the Commissioner of Income-tax, to state a case and refer the following question under section 66(3) of the Income-tax Act :

"Whether regard being had to the regular method of accounting followed by the assessee in respect of transactions relating to gold and to silver, it was open to the Commissioner of Income-tax to assess under the proviso to Section 13 of the Income Tax Act."

2. In our opinion, the only answer possibly to this question in the form in which it is couched is yes. Section 13 states that.

"Income, profits and gains shall be computed for the purposes of Sections 10, 11 and 12 in accordance with the method of accounting regularly employed by the assessee."

The question as framed assumed that there was a regular method accounting. if that is so, then clearly the assessment can and must be under this section. But that does not reflect the dispute between the parties nor indeed is the question discussed in the body of the order. If the considerations with which Niyogi, A.J.C., was dealing are correct, then the assessment must be taken to have been not under Section 13 but under the proviso to it and the question will then be not whether there the proviso to it and the question will then be not whether there was regular mode of accounting but whether, in the opinion of the Income-tax Officer, it was possible to deduce the income, profits and gains properly from the method of accounting actually employed, nor would that end the matter, for if, in the opinion of the Income-tax Officer, that was not possible, then the further question would have arisen, namely, whether his opinion was final.

3. The Income-tax Commissioner has felt a like difficulty in stating a case and has asked us to reframe the question. We agree that it will be necessary to do so. The Madras High Court acted similarly in commissioner of Income-tax v. Chengalvaraya Chetti (I.L.R. 48 Mad. 836 at 839).

4. As regards the underlying assumption in the question proposed, namely that there is "regular mode of accounting" in this case, that again is not what Section 13 deals with. A mode of accounting might be perfectly regular in the sense that it follows one of standard methods and yet not be the one regularly employed by the assessee, and that is what we have to see under Section 13. See Commissioner of Income-tax v. Ahmedabad New Cotton Mills Co. Ltd. (I.L.R. 54 Bom. 213 at 216) and Commissioner of Income-tax v. Sarangpur Cotton Manufacturing Co. Ltd. (A.I.R. 1938 P.C. 1). This is a matter which Niyogi, A.J.C. has not considered and as the Commissioner of Income-tax questions it, we must examine it now.

5. The Income-tax Commissioners statement disclosed that the assessee produced no accounts before 1930-31 but produced accounts for the first time in that year. They were not accepted because there were certain defects in them, but it is clear from the description given that they were made up

according to the mercantile system. Accounts were again produced in 1931-32 and, according to the Commissioner again there were not enough details to enable the authorities to check the accuracy of the closing stock. 1932-33 is the year in dispute. The only defect so far as the present reference is concerned is the under valuation (according to the defendant) of the closing stock. The Commissioner's order dated 7-8-1933 describes the position in these words :-

"the whole question is whether or not the closing stock is properly valued and whether the income made by the business in gold is somehow or other absorbed in the under-valuation of the closing stock."

On these facts it is clear that the assessee adopted in the year 1932-33 the method of accounting which he had used in the two previous years and that, in our opinion, is enough to attract the provisions of Section 13.

6. That being so, it was incumbent on the Income-tax Officer next to determine whether the income, profits, and gains for purposes of section 13 could be properly deduced from these accounts. In our opinion if the closing stock was undervalued, as the Commissioner states it was, then that was not possible and so it became the duty of the Income-tax Officer to proceed under the latter half of the proviso to Section 13. The position is exactly the same as the one in Commissioner of Income-tax, Bombay v. Sarangpur Cotton Manufacturing Co. Ltd. But the Commissioner states that this was not what the Income-tax Officer did. He says the assessment was made under Section 23(3) and not under the proviso to Section 13. If that is so, then the Income-tax Officer or the Assistant Commissioner on appeal have not proceeded according to law. They have not applied their minds to the only provision under which they had power to proceed and the Income-tax, Bombay v. Sarangpur Cotton Manufacturing Co. Ltd. (A.I.R. 1938 P.C. 1 at 3).

Section 23 deals with matters of assessment and not with the "computation of the income, profits and against for the purposes of Sections 10, 11 and 12". It deals with the "return" and not primarily with accounts. Under Section 22(1) the return has to be in a prescribed form and this form provides separately for the heads of assessable income detailed in section 6. Three of them, namely business, professional earnings and other sources are covered by Sections 10, 11 and 12. If the return is "correct and complete" then the Income-tax Officer has to "assess the total income of the assessee" and determine the sum payable by him "on the basis of such return". He has bound to do this and has no option to anything else.

8. Since the Commissioner of Income-tax is clear that the Income-tax Officer has not acted under the proviso to Sec. 13, it will now be for him to proceed to the proper discharge of his duty under that provision of law. It is in the circumstances unnecessary for us to decide whether we could have interfered if he had acted under the proviso and had still applied a flat rate, but we would draw attention to the remarks of their Lordships of the Privy Council in Commissioner of Income-tax, Bombay v. Sarangpur cotton Manufacturing Co. Ltd. (A.I.R. 1938 P.C. 1 at 3) :

"The judgment of the Income-tax Officer under the proviso must properly be exercised. It is misleading to describe this duty of the Income-tax Officer as a discretionary power."

We would also refer to the cases which state that the application of at flat rate is not always proper when a truer state of the income can be ascertained without much trouble. It will be for the Income Tax Officer to consider whether it would not fairer and more proper to apply the rate obtaining at the relevant date for the best quality of gold to the quantity given in the accounts rather than to resort arbitrarily to a flat rate.

9. As regards the argument of the assessee that the Income Tax Officer having accepted the accounts in respect of the transactions in silver though they contained some defects, he was therefore bound to accept those relating to the gold as well, we need only say that, in our opinion, there is no such obligation.

10. The costs of this reference will be paid by the applicant, the Commissioner of Income-tax.

Order accordingly.