

Allahabad High Court

Jagannath Rameshwar Prasad vs Income-Tax Officer And Anr. on 25 January, 1973

Equivalent citations: 1974 93 ITR 16 All

Author: H Seth

Bench: S Chandra, H Seth

JUDGMENT H.N. Seth, J.

1. M/s. Jagannath Rameshwar Prasad, a Hindu undivided family, submitted a return of its income for the assessment year 1954-55.

The Income-tax Officer made a provisional assessment of tax under Section 23B of the Indian Income-tax Act, 1922 (hereinafter referred to as "the Act"), determining the tax payable at Rs. 2,592-3-0 which was duly paid. Thereafter, proceedings for regular assessment were initiated and an assessment order under Section 23(4) of the Act was passed on March 28, 1959, and a notice of demand was issued after adjusting the amount paid by the assessee in pursuance of the assessment under Section 23B of the Act. On a petition under Article 226 of the Constitution filed by the assessee, the assessment order dated March 28, 1959, was quashed by this court on the ground that as the assessee had filed a voluntary return, a notice under Section 22(4) could not be issued and the non-compliance with such a notice could not justify an assessment under Section 23(4) of the Act. Thereafter, the Income-tax Officer resumed the assessment proceedings and issued a notice under Section 23(2) on January 31, 1963. The assessee raised an objection that the assessment proceedings were barred by limitation. A prayer was also made for refund of the tax paid under Section 23B. The objections were overruled by the Income-tax Officer. The assessee again approached this court under Article 226 of the Constitution and Manchanda J., holding that the assessment proceeding was barred by limitation by his order dated May 16, 1963, quashed the order of the Income-tax Officer rejecting the objections of the assessee. We are informed that a special appeal filed by the Income-tax Officer against the order dated May 16, 1963, has been dismissed.

2. On July 27, 1964, the assessee applied to the Income-tax Officer for expediting the refund of the tax paid under Section 23B of the Act and referred to his earlier application in that behalf. The Income-tax Officer rejected the application on the ground that this court had merely set aside the assessment under Section 23(4) and had not declared the order under Section 23B invalid. The assessee then applied to the Commissioner of Income-tax under Section 33A(2) of the Act. The Commissioner by his order dated September 13, 1965, endorsed the view taken by the Income-tax Officer and declined to interfere. A petition under Article 226 of the Constitution challenging the orders of the Income-tax Officer and the Commissioner of Income-tax declining to refund the tax paid under Section 23B of the Act was dismissed by Pathak J. by his order dated March 23, 1967, and the correctness of that order has been challenged through this appeal.

3. The only question for consideration is whether the appellant is entitled to refund of the tax paid by him in pursuance of the notice of demand issued following the assessment under Section 23B of the Act. The contention raised by the appellant is that a provisional assessment of tax under Section 23B is merely a step in the process of making a regular assessment under Section 23 and its identity comes to an end as soon as the regular assessment is made. If the regular assessment is found to be

invalid, the assessee is not liable to pay any tax for that assessment year and any sum paid in pursuance of an assessment made under Section 23B must be refunded.

4. The scheme of the Act indicates that before making a regular assessment the Income-tax Officer is competent to make a provisional assessment under Section 23B on the basis of the return filed by the assessee and the accounts and documents, if any, accompanying the return. He is not bound to make any enquiry before making a provisional assessment. He is not bound even to give to the assessee any notice of his intention to make a provisional assessment nor to hear the assessee. He may, however, call upon the assessee to elucidate the return or the entries made in the accounts and documents accompanying the return, but he is not bound to do so. The object of enacting Section 23B is to expedite the collection of tax on the basis of return made by the assessee. The Act contains several such provisions for collection of tax before regular assessment, e.g., payment of advance tax, deduction of tax at source from salary and dividends, provision for self-assessment, etc. No appeal is provided against the order of provisional assessment, but by virtue of Sub-section (7) of Section 23B the quantum of tax computed under the provisional assessment is deemed to have been paid toward the regular assessment and is liable to be adjusted. In case the amount paid towards the provisional assessment exceeds the amount payable under the regular assessment, the excess amount is to be refunded to the assessee. Except for this limited purpose the provisional assessment is a distinct proceeding. It is described as a provisional assessment only for the purpose of indicating that it is provisional as to the amount of tax payable and that it does not preclude a regular assessment determining the tax liability finally.

5. The contention raised by the appellant is that by virtue of Subsection (7) of Section 23B of the Act the amount paid towards a provisional assessment assumes the character of a payment made towards a regular assessment as soon as a regular assessment is made under Section 23 of the Act and if the regular assessment is rendered invalid, the liability of the assessee to pay any tax ceases and he is entitled to refund of the amount paid in pursuance of the provisional assessment. We are unable to accept this contention. The provisional assessment does not merge in the final assessment. Moreover, if the regular assessment is a void proceeding and, therefore, non est, the amount paid towards the provisional assessment continues to bear that character and cannot be deemed to have been paid towards the regular assessment. In the present case this court has held that the regular assessment under Section 23(4) of the Act was without jurisdiction and a nullity. It did not exist in the eye of law. In such a situation the provisions of Section 23B(7) are not attracted as no regular assessment came to be made. The amount of tax paid by the appellant pursuant to the provisional assessment continues to bear that character. The order under Section 23B(1) has not been set aside and still remains a valid order and the amount paid by the assessee continues to be a valid payment. In these circumstances, the appellant is not entitled to a refund of that amount.

6. In the result the appeal fails and is dismissed with costs.

Appeal dismissed.