Supreme Court of India
Jyoti Sarup And Anr. vs Board Of Revenue, Uttar Pradesh on 5 September, 1960
Equivalent citations: 1962 44 ITR 489 SC
Author: S Das
Bench: J Shah, K Dasgupta, M Hidayatullah, N R Ayyangar, S Dass
JUDGMENT S.K. Das, J.

1. These two appeals and the connected writ petitions have been heard together. This judgment will govern them all.

2. The two appellants, who are brothers, held agricultural lands in the district of Pilibhit and were liable to pay agricultural income-tax under the provisions of the U. P. Agricultural Income-tax Act (U. P. Act III of 1949), hereinafter called the Act. Section 5 of the Act provides for a determination of agricultural income, and section 6 provides for the computation of such income in two alternative ways : one method proceeds on the basis of a certain multiple of rent and the other on the gross proceeds of sale of the produce of the lands. The section, as it stood at the relevant time, reads as follows :

"6. (1) The agricultural income mentioned in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1) of section 2 shall, at the option of the assessee, be computed in accordance with clause (a) or clause (b) of sub-section (2) :

Provided that an assessee who has once exercised his option shall not be entitled to vary the method of computation except with the permission of the Board of Revenue.

(2) (a). Subject to such deduction in respect of agricultural calamities as may be prescribed, the income shall be deemed to be such multiple, not exceeding 7 1/2 per cent. of the rent of the land, calculated at the latest sanction rent rates applicable to hereditary tenants of similar class of soil as the Board of Revenue may fix for each district or portion thereof :

Provided that the Board of Revenue may direct that the multiple for calculating income from land newly brought under cultivation shall for the specified number of years be such lower figure as may be specified, or

(b) the income shall be the gross proceeds of sale of all the produce of the land subject to the following deductions (then the deductions are stated)."

3. The appellants sent their returns computing their agricultural income for the assessment years 1948-49 and 1949-50 according to the method of computation provided by clause (b) of sub-section (2) of section 6, that is, on the basis of the gross proceeds of sale of all the produce of the lands under their cultivation, subject to the deductions stated therein. For the assessment year 1950-51 the appellants moved the Board of Revenue for permission to change the method of computation to the multiple method provided by clause (a) of sub-section (2) of section 6. The Board of Revenue rejected their applications. The appellants then moved two writ petitions in the High Court of

Allahabad, praying for (1) a writ of mandamus to be issued against the Board of Revenue and the Collector of Pilibhit, respondents herein, directing them to issue suitable forms to the appellants for submitting returns of their agricultural income as per the method of computation proved by clause (a) of sub-section (2) of section 6 for the year 1951-52 and (2) a writ of certiorari quashing the order of the Board of Revenue refusing permission to the appellants to vary the method of computation under the proviso to sub-section (1) of section 6. The two writ petitions were heard together and dismissed by the High Court by its judgment and order dated September 9, 1952. The appellants then asked for and obtained certificates of fitness under article 133 (1) (c) of the Constitution. The two appeals have been brought on those certificates.

4. The appellants have also filed in this court two writ petitions under article 32 of the Constitution. In these petitions the appellants have stated the facts relating to the writ petitions filed in the High Court, and have added that during the pendency of the said writ petitions the time for filing the returns of agricultural income for the year 1952-53 also came, and the appellants again made an application for permission to file returns according to the method provided in clause (a) of sub-section (2) of section 6. This permission was not granted, and the appellants then filed the two writ petitions in this court praying for the issue of a similar writ of mandamus as was asked for in the High Court, as respects the year 1952-1953.

5. We may state here that by the U. P. Agricultural Income-tax (Amendment) Act, 1953 (U. P. Act XIV of 1953), the proviso to sub- section (1) of section 6 was deleted and a new proviso substituted therefore, the effect of which, it is stated, was to give to the assessee full freedom to choose any of the two methods of computing his agricultural income in each assessment year. It is conceded, however, that the relevant provisions of this amending Act which came into force on July 1, 1953, after the close of the year 1952-1953 (the year closing at the end of June) have no effect on the assessment of 1952-53. We are not, therefore, called upon to examine the position under the amending Act, and the appeals as also the two writ petitions must be decided on the basis of the provisions of section 6 as it stood before the coming into force of Act XIV of 1953.

6. The main contention of the appellants in the two appeals is that the High Court did not correctly construe the proviso to sub-section (1) of section 6. The High Court said that the substantive part of sub- section (1) no doubt gave an unfettered right to an assessee to choose any of the two methods of computation; but this right was cut down by the proviso, which said that an assessee who had once exercised an option could not vary the method of computation except with the permission of the Board of Revenue. On behalf of the appellants it was contended that the restriction imposed by the proviso on variation in the method of computation was limited to any one year and the assessee was at liberty to vary the method in any other year without the permission of the Board. The High Court did not accept this as correct and held that there was no warrant for reading such a limitation in the proviso, the language of which was unqualified and meant what it said, that once the option was exercised, no variation could be made without the permission of the Board of Revenue.

7. We are in agreement with the view, expressed by the High Court. It is indeed true, as has been pointed out by learned counsel for the appellants, that the Act like the Indian Income-tax Act, 1922, contemplates as assessment for each year on the income of the previous year. That does not

necessarily mean that the restriction imposed by the proviso to sub-section (1) of section 6 is limited to one year only. The proviso must be construed with reference to the language used and the scheme of section 6. That section mentions two alternative methods of computation, and by the substantive part of sub-section (1) gives the assessee an option to adopt any one of the two methods; then comes the proviso which says that once the option is exercised, there can be no variation without the permission of the Board of Revenue. The appellants are seeking to read the words "in any one year" after the word "computation" in the proviso, and this they cannot be allowed to do. The scheme of the Act is that every assessee has to furnish a return by a prescribed date and once he has furnished the return, he can, under sub-section (4) of section 15, only correct the mistakes or fill in the omissions in the return and for that purpose submit a revised return; he has been given no right to vary the method of computation after he has filed a return for the year of assessment. If the proviso gave such a right of variation within the assessment year, one would expect this to be mentioned in section 15 (4). On the interpretation sought to be put upon the proviso by the appellants, there would be a conflict between the proviso and section 15 (4) of the Act.

8. On behalf of the appellants our attention has been drawn to the proviso to section 2 (11) (i) (a) and section 13 of the Indian Income- tax Act, 1922. We do not think that these provisions help us to determine the true scope and effect of the proviso to sub section (1) of section 6 of the Act. For one thing, the language is different; for another, the scheme and purpose of these different provisions is also not the same. Section 13 of the Income-tax Act refers to the method of accounting regularly employed by the assessee, and no question of option arises therein. The proviso to sub-clause (i) (a) of section 2 (11) enacts that once an assessee has been assessed in respect of a business, profession or vocation newly set up an assessee has exercised the option under sub-clause (c) although no assessment may have yet been made or could have been made as a result of the exercise of the option, the assessee cannot in respect of that source, business, profession or vocation change his previous year except with the consent of the Income-tax Officer and upon such conditions as the Income-tax Officer may impose. We do not see how this provision helps the appellants in the construction they are seeking to put upon the proviso to sub-section (1) of section 6 of the Act.

9. Next, it has been argued that the Board of Revenue did not apply its mind when it refused permission to the appellants. It appears that the application of the appellants was noted on by an officer of the Board of Revenue; this note was put up to the Deputy Secretary to the Board, who endorsed the note, with his own opinion, to the Senior Member of the Board. B. V. Bhadkamkar, who was then the Senior Member of the Board, signed below the endorsement of the Deputy Secretary in token of his approval of the orders proposed. The note stated that though the multiple method was easier and non-controversial, in some cases the assessee wanted a variation in order to reduce the amount payable to Government as tax in any one year. The administrative difficulties of such a variation were adverted to in the note. It is submitted that the Senior Member of the Board merely signed the note; he did not indicate what reasons led him to refuse permission to the appellants. The High Court has pointed out that when a senior officer signs a note submitted to him, it shows that he approves of it. In these circumstances we are unable to accept the contention that the Board failed to apply its mind when permission to vary the method of computation was refused to the appellants; on the contrary, the note shows that all the relevant considerations were kept in mind.

10. Lastly, it has been contended that the proviso to sub-section (1) of section 6 gives an unfettered discretion to the Board to give or refuse permission, and lays down no principles for its guidance; therefore, the proviso is capable of discriminatory application and is violative of the guarantee of equal protection of the laws in article 14 of the Constitution. We are unable to accept this contention as correct. In Matajog Dobey v. H. C. Bhari and Ram Krishna Dalmia v. Shri Justice S. R. Tendolkar this court had said that a discretionary power is not necessarily a discriminatory power and that abuse of power is not to be easily assumed where the discretions confided not to a petty official but to a high authority. Moreover, it appears to us that the provisions of section 6 themselves provide sufficient guidance to the Board of Revenue for the exercise of its discretion under the impugned proviso. These provisions lay down two alternative methods, with their advantages and disadvantages; the assessee has initially an option to choose one of the two methods; but once he has done so, he cannot vary it without the permission of the Board. Obviously, the Board in the exercise of its discretion must act reasonably and must take into consideration the relevant factors including the difficulties which a variation in the method of computation will give rise to. We do not, therefore, think that the discretion vested in the Board is per se discriminatory.

11. The appellants have asked for permission to adduce additional evidence at this stage in order to show that the Board had given permission to vary the method of computation in certain other case. The facts of those cases are not known to us, nor are we sitting in appeal over the Board of Revenue so that we may embark on an examination of the facts of each case. Accordingly, we have refused the permission asked for by the appellants.

12. For the reasons given above, the appeals fail and must be dismissed. The writ petitions must also share the same fate, for, in the views which we have expressed, no question of the infringement of any fundamental right arises. In the result the appeals and the connected writ petitions are all dismissed with costs; as all the four cases were heard together and there was only one argument, there will be only one set of hearing fee to be paid by the two appellants petitioners in equal shares.

13. Appeals dismissed.