Supreme Court of India

Delhi Cloth & General Mills Co. Ltd vs State Of U.P. & Ors on 18 October, 1978

PETITIONER:
DELHI CLOTH & GENERAL MILLS CO. LTD.

Vs.

RESPONDENT:
STATE OF U.P. & ORS.

DATE OF JUDGMENT18/10/1978

BENCH:

ACT:
U.P. Agricultural Income tax Act, 1948-5. 6(1) scope of - Assessee given option to select one of the two alternative methods of computation of agricultural income-Option exercised with the return changed when filing revised return-If permissible.

HEADNOTE:
Section 6(1) of the U.P. Agricultural Income tax Act, 1948 gives an option to an assessee to select one of the two alternative methods of computation of agricultural income as provided in s. 6(2), whichever is more advantageous to him. Such option is required to be indicated along with his return submitted under s. 15 of the Act.

While submitting its return for the assessment year 1954-55 the assessee chose the option to be assessed under s. 6(2) (b) of the Act. It later submitted a revised return under s. 15(4) but stuck to the option to be assessed under s. 6(2) (b) . The assessing authority, notwithstanding the filing of these two returns by the assesses, called upon it to file a return of the income computed under s. 6(2)(a). Thereafter the assessing authority served a notice on the assesses requiring it to produce evidence in support of it return. After the assesses produced the required evidence, the assessing authority issued a notice to the effect that certain income escaped assessment and called for its objections, if any. The assesses asked for inspection of records; but it was refused. At the instance of the assesses the Revision Board directed true assessing authority to permit inspection of the record. After inspection of the record he assesses filed a fresh (third) return. At this stage the assesses preferred the method of computation of income provided under s. 6(2)(a) instead of s. 6(2)(b) which it chose earlier.

Without deciding the question as to whether the assesses was entitled to change the option, the assessing

authority made a best judgment assessment under s. 6(2)(b). On appeal the Commissioner directed the assessing authority to first decide the question relating to change of option whereupon the assessing authority held that the assesses had no right to change its earlier option. On further appeal the Revision Board upheld the order of the assessing authority.

In the assessee's writ petition challenging the order of the assessing authority a single Judge of the High Court held that it was open to the assesses to change its option at the time of filing a subsequent or fresh return. But the Division Bench was of the view that the assesses had no right to change its option.

In its appeal the assessee contended before this Court that (1) it is open to the assessee to change its option not merely every year but during the year by filing a fresh return or a revised return provided it is done before tho assessment is completed (2) although the assessee filed its first return and the
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revised return, the assessing authority issued a notice under 8. 15(3) along with a statement of provisional estimate computed in accordance with s. 6(2) (a) pursuant to which the assessee filed the third return exercising the option for computation in accordance with s. 6(2) (a) and, therefore, the assessing authority had to make the assessment in accordance with s. 6(2) (a) and (3) in any event since the assessing authority had proceeded to make a best judgment assessment under s. 16(4) it had no option but to make the assessment with due regard to the provisional estimate served under s. 15(3B) notwithstanding any option exercised under s. 6(1) of the Act.
Allowing the appeals,
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HELD: The Division Bench of the High Court was wrong in holding that when once the option is exercised by an assessee by filing the requisite declaration he will have no right to change the option by filing a fresh return or revised return before the assessment is made for that year. [121 Cl

1. Whatever restrictions had been imposed on the change of option by the original proviso to s. 6(1) had been removed and the concept of "first return' was deleted from r. 5 That being so, the expression "his return of income" occurring in r. S would apply to any of returns contemplated under s. 15, In fact r. 5 is obligatory and makes it incumbent upon an assessee to file, along with his return, a, declaration indicating his option under s. 6(1). The exercise of such option. including a change of option indicated in the declaration filed along with a subsequent return or a fresh return or a revised return, will be valid provided the return itself is validly submitted. [120 G-H]

2. If the return was filed under s. 15(4), then in order to avail of the change of the option the assessee will

have to show that it was really a revised return in the sense that the same had been filed because of a wrong statement discovered in the earlier returns. Clearly the third return was filed in response to) the notice issued by the assessing authority under s. 15(3). This return was rejected by the assessing authority not on the ground that it had been filed beyond time but on the ground that the assessee had no right to change its option which suggests that the return was treated by the assessing authority as having been filed within time but was rejected on merits holding that the assessee was not entitled to change its option. Therefore the third return was not a revised return under s. 15(4) but a fresh return filed within time in response to the notice under s. 15(3) and as such the assessee was entitled to change its option and have the computation made in accordance with s. 6(2) (a). The fact that the assessee had produced come evidence in pursuance to the notice in relation to its earlier returns or that it took inspection of the records cannot and does not amount to acquiescence or waiver of its right to file a declaration indicating its option afresh along with the return validly filed in response to the notice under s. 15(3) of the Act. [121 F-G;122D; G-H]

3. Moreover, irrespective of whatever option might have been exercised by the assessee the best judgment assessment has to be made by the assessing authority by having due regard to the statement of provisional estimate of agricultural income made in accordance with s. 6(2) (a). Under s. 16(4) whenever the assessing authority proceeds to make the assessment the same is required to be made "with due regard to the statement, if any, sent under
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s. 15(3-B) notwithstanding any option exercised under s. 5(1)." The scheme of s. 16(4) clearly shows that in regard to the best judgment assessment there is nothing sacrosanct about the option exercised by the assessee under s. 6(1); equally it can be said that in regard to the assessments other that best judgment assessments under the scheme of s. 15 there is nothing sacrosanct about tho particular option previously exercised by the assessee and he need not be held bound by it provided he changes the option by filing a subsequent or a fresh or a revised return in accordance with the applicable provisions in s. 15. So far as the assessing authority is concerned such option, whether original or subsequent, would be binding on it. [124F; H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1249 of 1968 and 1946 of 1972.

From the Judgment and order dated 27-9-1965 of the Allahabad High Court in Special Appeal No. 95/62.

V. S. Desai and Rameshwar Nath for the Appellant (In CA 1946/ 72) .

G. N. Dikshit and O. P. Rana for the Respondent in C.A. 1946/ 72. D The Judgment of the Court was delivered by TULZAPURKAR, J.- These appeals by certificate under Art. 133(1) of the Constitution raise an important question whether an assessee having once exercised the option regarding the method of computation of his agricultural income by filing the requisite declaration along- with his return is entitled to change the option under the U.P. Agricultural Income Tax Act, 1948 ?

The appellant-assessee (The Delhi Cloth and General Mills Company Limited, Delhi) is a company registered under the Indian Companies Act and has certain agricultural farms at Daurala in Meerut District from which it derives agricultural income chargeable to levy of agricultural income-tax and super tax under s. 3 of the U.P. Agricultural Income-Tax Act, 1948 (hereinafter called 'the Act'). Section 6(2) of the Act provides two alternative methods of computation of agricultural income, (a) Rental method (multiple of Annual Rental income) mentioned in clause (a) or (b); Produce method (subject to deductions) mentioned in clause (b) and under s. 6(1) an option is given to the assessee to select one or the other method whichever may be advantageous to him. Such option is required to be indicated ill a Declaration in the prescribed Form No. A.I.T.-2 to be submitted under Rule S of the U.P. Agricultural Income-tax Rules, 1949 alongwith his return under s. 15 of the Act. For the assessment year 1954-55 a return of the agricultural income for the relevant previous year ending June 30, 1954 (1361 Fasli) was filed under s. 15(2) of the Act on November 27, 1954 by the appellant-assessee, returning a net income of Rs. 1,06,664. Alongwith the return a declaration in Form No. A.I.T.-2 was also filed indicating the option to be assessed in accordance with s. 6(2) (b) of the Act. On April 4, 1955 the appellant-assessee discovering some mistake in the said re-turn filed a revised return under s. 15(4) of the Act showing the net income at Rs. 98,854 and explaining that the difference was due to certain further deductions that were claimed on account of expenses, and while filing such revised return the option unders.s-2 (b) was adhered to. However, notwithstanding the filing of the aforesaid two returns, one on November 27, 1954 and the revised return on April 4, 1955, on April 7, 1955 the Assessing Authority served upon the appellant- assessee a notice under s.15(3) requiring the latter to furnish within period specified in the notice a return in the prescribed form and verified in the prescribed manner setting forth its total agricultural income in the previous year relevant to the assessment year 1954-55 and alongwith such notice a provisional estimate of the assessee's. agricultural income for the previous year (i.e. 1361 Fasli) computed under s.6(2)(a) was also furnished as required by s. 15(3-B) of the Act; the provisional estimate made in accordance with s.6 (2) (a) of the Act showed the income of the assessee at Rs. 2,07,923/9/-.

It appears that neither the original return filed on November 27, 1954 nor the revised return filed on April 4, 1955 was found to be correct or complete by the Assessing Authority and, therefore, on April 14, 1955 the Assessing Authority served a notice under s.16(2) of the Act on the appellant-assessee requiring it to produce evidence in support of its return; in reply the assessee produced some evidence in the form of accounts and vouchers and details of the various expenses were also supplied. On September 29, 1955, however, another notice was given to the appellant- assessee

stating that its income had escaped assessment to the tune of Rs. 38,947/- and objections were invited. Thereupon, the appellant-assessee applied for inspection of the record before the Assessing Authority, but the application was rejected on October 18, 1955 against which a revision was filed by the appellant before the Revision Board and on April 29, 1958 the Board allowed the revision application and the Assessing Authority was directed to permit the inspection of the record. Thereupon the appellant took inspection of the record, but on November 8, 1958, being the date fixed for the hearing of the objections, the appellant filed a fresh return (third return) in respect of its agricultural income for the self-same previous year (1361 Fasli) and this was done in response to the notice dated April 7, 1955 that had been served upon it by the Assessing Authority under s. 15(3-B) of the Act and along-

with this return, which showed the net income of Rs. 1,79,543/5/9, a declaration in the prescribed Form No. A.I.T.-2 selecting the method of computation. Of agricultural income under s.6(2) (a) was also filed and the appellant prayed that it should be allowed to change the option and have its income computed under s.6(2) (a) instead of under s. 6(2) (b) as previously intimated.

The Assessing Authority without first deciding the question whether the appellant was entitled to change the option as sought, by its order dated March 27, 1959 made a best judgment assessment in accordance with the method under s.6(2) (b) of the Act and assessed the appellant's income at Rs. 4,82,231.05 nP on which the tax liability was assessed at Rs. 2,88,488.46 nP. The appellant challenged the assessment order ill an appeal to the Commissioner who by his order dated July, 1, 1959 allowed the appeal, set aside the assessment and remanded the case back to the Assessing Authority with a direction that he should first dispose of the question relating to change of option which the appellant had claimed he was entitled to have and then make the assessment in accordance with law after allowing the appellant an opportunity to lead evidence in support of its return. The Assessing Authority thereupon went into the question of change of option and by its order dated November 17, 1959 held that the appellant had no right to change its option and that the assessment had to be made in accordance with s.6(2) (b) of the Act. The appellant went in revision before the Agricultural Income-Tax Revision Board challenging the said order of the Assessing Authority but the Revision Board by its order dated January 27, 1960 upheld the decision of the Assessing Authority. The Board took the view that an assessee having exercised the option once in Form No. A.I.T.-2 filed alongwith the original return could not change that option subsequently while filing another return or revised return under the Act.

By a Writ Petition, being Civil Misc. Writ No. 1382 of 1960 filed in the Allahabad High Court the appellant challenged the validity of the two orders, one of the Assessing Authority and the other of the Revision Board and sought a mandamus directing the Assessing Authority to assess the appellant's tax liability after computing its agricultural income for the relevant previous year in accordance with s.6(2)(a) of the Act instead of under s.6(2)(b) of the Act. The learned Single Judge who heard the writ petition by his judgment and order dated October 13, 1961 accepted the contention of the appellant that it was open to it to change its option with the filing of a subsequent or fresh return with the result that the impugned orders were quashed and he issued a direction to the Assessing Authority that it shall proceed to assess the appellant-assessee in accordance with the option expressed by it on November 8, 1958. The respondents preferred an appeal to the Division

Bench of the High Court being Special Appeal No. 95 of 1962 and the Division Bench allowed the appeal, set aside the decision of the learned Single Judge and restored the orders passed by the Assessing Authority and the Revision Board. In its judgment dated September 27, 1965, the Division Bench took the view that the assessee had no right to change the option.

Initially the appellant preferred an appeal. to this Court being Civil Appeal No.1249(NT) of 1968 on the strength of a certificate issued by the Allahabad High Court under Art. 133(1)(a) of the Constitution but at the time of the hearing of that appeal this Court accepted the preliminary objection raised by the respondents to the maintainability of the appeal on the ground that the High Court was not competent to grant the certificate under Arts. 133 (1) (a) in as much as the issue before the High Court was incapable of valuation and the order appealed against could not come within the scope of the said provision; this Court, therefore, revoked the said certificate and sent the case back to the High Court for fresh consideration inasmuch as the appellant's prayer for grant of certificate in the High Court was made both under Arts. 133(1) (a) and 133(1) (c) of the Constitution and directed the High Court to consider the prayer for grant of the certificate under the latter provision. Thereafter the High Court by its order dated April 18, 1972 granted the certificate under Art. 133(1) (c) on the ground that the question of law involved was of substantial importance and also of great public importance and it is on the strength of such certificate that was issued by the High Court that the Civil Appeal No.1946 (NT) of 1972 has been filed by the appellant in this Court. However, in both the appeals the principal question raised is whether an assessee who has once exercised his option in regard to the method of computation of his agricultural income by filing the requisite declaration in the prescribed Form No. A.I.T.-2 alongwith his first or initial return can change the option under the Act?

In may be stated at outset that after the judgment was delivered by the learned single Judge of the Allahabad High Court on October 13, 1961 answering the point in favour of the assessee, the Assessing Authority, since no stay was obtained during the pendency of Special Appeal No. 95 of 1962, proceeded with the assessment of the appellant on the basis of that judgment and completed the assessment on December 19, 1962, in accordance with s. 6(2)(a) of the Act and we are informed at the Bar that the appellant has paid the tax according to that assessment order. But after the reversal of the judgment. Of the learned Single Judge by the Division Bench that assessment order became ineffective and a fresh assessment order was made on July 30, 1969 in accordance with the judgment of the Division Bench by adopting the method of computation indicated in s.6(2) (b). Against that assessment order dated July 30, 1969 the appellant preferred ar. appeal but the same was dismissed on June 23, 1970 and a revision against the dismissal of that appeal is pending before the U.P. Agricultural Income-tax Board. The position, therefore, would be that if the appellant succeeds in these appeals the assessment order made against it on July 30, 1969 and which has been confirmed in appeal on June 23, 1970 and which is the subject-matter of revision before the Board will be rendered ineffective and the assessment order made against it on December 19, 1962 will revive and hold the field and the appellant shall be taken to have complied with the demand under that order but in case the appellant fails in these appeals the Appellate order dated June 23, 1970 subject to the result of the revision will become operative.

Counsel for the appellant raised two or three contentions before us in support of the appeals. In the first place he contended that under s. 6(1) of the Act an option to choose one or the other method of computation of agricultural income has been given to the assessee so that he could choose whichever method was advantageous to him and the assessee would be entitled to exercise such option every time he files a return, be it the initial or first return or a subsequent return or a revised return, in regard to his agricultural income of any particular previous year, especially, as Rule 5 of the U.P. Agricultural Income- tax Rules. 1949 makes it incumbent upon the assessee to file a declaration in Form A.I.T.-2 indicating his option alongwith "his return of income". He urged that this position becomes all the more clear if the provisions of the present s.6 and Rule 5 are considered vis-a-vis the said provisions before they were amended. Secondly, he urged that in the instant case in spite of the appellant having filed its first return of November 27, 1954 and its revised return of April 4, 1955, the Assessing Authority had, served upon it a notice under s.15(3) alongwith a statement showing provisional estimate of the agricultural income of the appellant at Rs. 2,07,923-9 annas in accordance with s.6(2) (a) for the relevant previous year ending June 30, 1954 (1361 Fasli), pursuant to which the appellant filed a fresh return on November 8, 1958 for the said previous year indicating in the accompanying declaration in Form No. A.I.T.-2 the option for computation in accordance with s.6(2) (a) of the Act and, therefore, the Assessing Authority had to make the assessment in accordance with s.6(2)(a) of the Act. Thirdly, he contended that in any event since the Assessing Authority after the issuance of the notice under s. 16(2) had proceeded to make a best judgment assessment under s.16(4) it had no option but to make the assessment with due regard to the statement of provisional estimate served under s.15(3-B) notwithstanding any option exercised under s.6(1) of the Act.

on the other hand, counsel for the respondents supported the view taken by the Division Bench of the High Court by contending that the option conferred upon an assessee by s. 6 is to be exercised in accordance with the provisions of the Act and the Rules and the only provision is that contained in Rule 5 which speaks of a declaration indicating the option being filed alongwith 'his return of income' which could only be when the assessee filed his first or initial return and there is no provision for filing such a declaration alongwith any subsequent return or revised return. He urged that only s.15(4) speaks of filing a revised return which could be done only if the assessee discovered any wrong statement in the return previously filed by him under sub-s.1 or 2 or 3 of s. 15 but a statement made in such previously filed return does not become wrong merely because the assessee had selected the wrong option; in other words, the assessee does not get the right to file a revised return under s.15(4) merely because he wishes to change the option. He? therefore, urged that in the absence of any positive provision being contained in the Act or the Rules conferring upon the assessee the right to change the option, the right of the option once exercised must be held to have become final. He, further urged that the aspect whether an assessee will have a right to change the option by filing a fresh declaration along with a return filed in response to the notice served under s. 15(3) of the Act, notwithstanding his having filed a return under s. 15(1) or s. 15(2) and having exercised his option at that time, was not raised before the High Court by the appellant and as such the appellant should not be permitted to raise it now inasmuch as there is no material on record to show that the return filed by the appellant on November 8, 1958 was in response to that notice or was within time specified in that notice. In any event, he urged that sub-ss. (1), (2) and (3) d s. 15 are independent provisions and the notice under s. 15(3) does not give an assessee any right to change

the option. He further urged that in the instant case the assessee could be said to have acquiesced in the proceedings that were taken by the Assessing Authority on the two earlier returns which were filed by him based on s.6(2)(b) and as such the appellant could not be allowed to change the option initially exercised by it.

In order to decide the main question that has been raised in these Appeals it will be necessary to refer to the provisions of s.6 and Rules S, and 7, as they stood originally and as they stand now after the amendments. Originally s.6, which dealt with computation of agricultural income and conferred an option on the assessee to select one or the other of the two methods of computation mentioned therein ran thus:

> "6. Computation of agricultural income.-(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 m 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 71 per cent, of the rent of the land calculated at the latest sanctioned 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 and 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:
>
> (Here followed sub-clauses (i) to (xiii) specifying the (deduction) .
>
> (3) If the assessing authority is satisfied that the proceeds of sale have not been correctly shown by the assessee or that any portion of the produce has not actually been sold, he may assess the value of the produce for purposes or clause (b) of sub-section (1) of section 2 by determining, to the best of his judgment. the amount of produce and the market value thereof "

Original Rules S, 6 and 7 of the U.P. Agricultural Income Tax Rules, 1949, framed under s.44 of the Act ran thus:

"5. An assessee shall, along with his first return of in come, file a declaration in Form No.A.I.T.-2 indicating his option under sub-section (1) of section

6.

6. The declaration filed by an assessee under rule S shall be preserved by the assessing authority in a separate guard file.

7. Where an assessee desires to vary the method of computation indicated under rule 5, he shall before the first day of August of the year in respect of which assessment is to be made. present an application for permission in that behalf to the assessing authority addressed to the Board of Revenue and the former shall without unnecessary delay forward the same together with such remarks as it may consider proper of the Board of Revenue for necessary orders."

lt may be stated that the aforesaid provisions came up for consideration before Division Bench of the Allahabad High Court in Kr. Jyoti Sarup v. Board of Revenue, U.P. (Lucknow) and Anr. (1) and justice Mukherji took the view that "this proviso (meaning the proviso to sub-s (1) of s.

6) means that once and only once during the course of an assessee's "assessable life", can he, unfettered, exercise the option given to him under s.6(1) of the Act and that if once he has exercised his option, he cannot, without the permission of the Board, take the other alternative." Justice Bind Basni Prasad, the other Member of the Bench, observed that "My interpretation of s.6 (1) is that after the commencement of the U.p. Agricultural Income Tax Act, an assessee has once selected one method of computation of agricultural income he cannot vary it subsequently in any year without the permission of the Board of Revenue. The proviso is not limited in its application to variation of such method in the course of a year".

Thereafter, the Legislature thought of amending these provisions. By the Amending Act XVIII of 1954 the aforesaid proviso to s.6(1) was deleted with effect from July 1, 1954 and an altogether different proviso unconnected with the option was substituted. By a Notification No. 2590/I-C289-C- 53 dated August 29, 1953 the word "first" n occurring between the words "his" and "return" was deleted from (1) (1952) 50 Allahabad Law Journal 557.

Rule 5 with effect from the date of the Notification. Rules 6 and 7 were totally deleted. The amended s. 6 as it stands today runs thus:

"6. Computation of agricultural income.-(1) The agricultural income mentioned in sub-clause (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 the agricultural income as aforesaid for tea gardens shall be computed in accordance with clause (b) of sub-section (2).

(2) (a) Subject to such deductions in respect of agricultural calamities as may be prescribed, the income from the land shall be deemed t-o be an amount equal to its rent multi plied by such multiple not exceeding 12 1/2 as the Land Reforms Commissioner may fix, and different multiples may be fixed for different districts or portions of district and for different classes of groves and orchards:

Provided that the Land Reforms Commissioner may direct that the multiple for calculating income from land newly brought under cultivation shall for a specified number or years be such lower figure as may be prescribed.

Explanation.-In this section rent shall be deemed to be an amount calculated at the latest sanctioned rent rates applicable to hereditary tenants of the highest class of soil in the village in the case of orchards and groves and of similar class of soil in other cases.

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

(Here followed sub-clauses (i) to (XIII) specifying the deductions) .

(3) If the assessing authority is satisfied that the proceeds of sale have not been correctly shown by the assessee or that any portion of the produce has not actually been sold, he may assess the value of the produce for purposes of clause (b) of sub-section (1) of Section 2 by determining. to the best of his judgment, the amount of produce and the market value thereof."

The amended Rule S as it now stands runs thus: "5. An assessee shall, along with his return of income, file a declaration in Form A.I.T.-2 indicating" his option under sub-section (1) of Section 6."

The Form No. A.I.T.-2 of declaration of the option for computation of income under s.6 reads thus:

"In pursuance of Section 6(1), I,.. do here by declare that I have elected the method of computation of agricultural income provided by Section 6(2)(a)/6(2)(b) and Lave computed my income accordingly."

It seems to us clear that s. 6 as originally framed gave an assessee the right to exercise the option, unfettered, only once after the commencement of the Act if he once selected one method of computation of agricultural income he could not vary it subsequently in any year without the permission of the Board of Revenue which was given absolute discretion to grant or to refuse such permission. At any rate, that was how the original unamended provisions were authoritatively interpreted by the Allahabad High Court. Relying upon the deletion of the original proviso to s.6(1) of the Act by the Amending Act XVIII of 1954 and the deletion of the word "first" which occurred originally in Rule S as also the deletion of Rules 6 and 7, counsel for the appellant contended that

whatever may have been the position under the original s. 6 and original Rules 5, 6 and 7, under the amended s.6 read with the amended Rule 5 it would be clear that there is no restriction on the assessee`s right to change the option and it would be open to an assessee not merely to change his option every year but even to change his option during. the year by filing a fresh return or a revised return for the same year indicating the change in the declaration accompanying such fresh return or revised return provided, of course, it is done before the assessment is completed by the Assessing Authority. In our view, there is considerable force in this contention for the reason that whatever restrictions had been imposed on the change of option by the original proviso to s.6(1) have been removed and the concept of "first return deleted from Rule 5. That being so, the expression "his return of income" occurring in Rule 5 would apply to any of returns contemplated under s.15 of the Act, namely, (1) a return filed in pursuance of the general notice issued and published by the Collector under s.15(1): (2) a return filed by the Principal officer of a Company under section 15(2) read with s. 21; (3) a return filed in pursuance of individual notice served upon an assessee by the Assessing Authority under s.15(3) and (4) a return or a revised return filed by an assessee A under s. 15(4), provided that in the first three cases the return is filed within time specified in the notice or the rule or within the extended time granted by the Assessing Authority and in the last case the revised return is filed on account of discovery of a wrong statement in the previous return and is filed before the assessment is complete. In fact, Rule 5 is obligatory and makes it incumbent upon an assessee to file along with his return of income a declaration in Form No. A.I.T.2 indicating his option under s. 6(1) of the Act and as such the exercise of such option including a change of the option indicated in the declaration filed along with a subsequent return or a fresh return or a revised return will be valid provided the return itself is validly submitted. In this view of the matter it is not possible to accept the view of the Division Bench of the High Court that if once option is exercised by an assessee by filing the requisite declaration along with his return for a particular year he will have no right to change his option by filing a fresh return or a revised return before the assessment is made for that year.

Turning to the factual aspects in the case the main question that arises is whether the return filed by the appellant on November 8, 1958 was in pursuance of the notice served by the Assessing Authority upon the appellant under s.15(3) of the Act or whether it was a revised return filed under s.15(4) of the Act and his question assumes significance because it was along with this return that the assessee had filed a declaration in Form No.A.I.T.-2 indicating a change in the option and praying that the computation of its agricultural income should be made in accordance with s. 6(2) of the Act instead of under s.6(2)(b) as mentioned in the declarations filed alongwith two earlier returns dated November 27, 1954 and April 4. 1955. t is obvious that if the return dated November 5, 1958 was filed under s. 15(4) then in order to avail of the change of the option the appellant will have to show that it was really a revised return in the sense that the same had been filed because of a wrong statement discovered in the earlier returns filed by him. The Division Bench of the High Court G has rightly taken the view that a wrong statement in the earlier returns does not mean selection of a wrong option by the assessee; in other words, the assessee does get the right to file a revised return under s. 15(4) merely because he wishes to change the option. Counsel for the appellant, however, contended that the fresh return filed by the appellant on November 8, 1958 was not a revised return under s.15 (4) at all but was a return filed in response to the notice that was served upon it by the Assessing Authority on April 7, 1955 under 9-817SCI79 s.15(3) of the Act. In this behalf counsel for

the respondent did make a grievance before us that there was no material on record to show whether, in fact, the return filed on November 8, 1958 was in response to the notice served under s.15(3) and if so, whether the same Was filed within time or the extended time, if any, granted by the Assessing Authority. The hearing of the appeal was, therefore, adjourned to enable both the parties particularly the Revenue which will be possessing the records to produce material in that behalf and at the resumed hearing though no material by way of assessment re cords of files in the custody of the Assessing Authority was produced by the Revenue, the appellant placed on record a copy of the return dated November 7, 1958 (which was filed on November 8, 1958) together with a copy of the declaration in the Form No.A.I.T.-2 and the forwarding letter. The forwarding letter dated November 7, 1958 clearly shows that the return was filed in response to the notice dated April 7, 1955 served upon the appellant under s.15(3) of the Act. The said letter in terms referred to the notice dated April 7, 1955 under s.15(3) as also to the statement of provisional estimate of agricultural income for the relevant previous year 1953-54 (1361 Fasli) prepared under s. 6(2) (a) read with s. 15(3-B) accompanying the notice and further stated that the appellant had decided, in order to avoid further prolonged litigation, to accept the provisional estimate of agricultural income under s. 6(2) (a) (subject only to necessary corrections as regards area and classification of soil etc.) and to suffer agricultural income tax: on that basis and requested the Assessing Authority to complete the assessment in accordance with s. 6(2) (a) of the Act. It is, therefore, clear that the return filed by the appellant on November 8, 1958 was in response to the notice served upon it by the Assessing Authority under s.15(3). Moreover, the said return was rejected by the Assessing Authority not on the ground that it had been filed beyond time but on the ground that the appellant had no right to change its option which clearly suggests that the return was treated by the Assessing Authority as having been filed within time but the same was rejected on merits holding that the appellant was not entitled to change its option. It is thus clear that the return filed by the assessee on November 8, 1958 was not a revised return under s.15 (4) but a fresh return filed within time in response to notice under s.15(3) served upon it by the Assessing Authority and as such the appellant was entitled to change its option and have computation of its agricultural income made in accordance with s.6(2) (a) of the Act. The fact that the appellant had produced some evidence in pursuance of notice received under s.16(2) in relation to its earlier returns or that it took inspection of the records of the Assessing Authority can-

not and does not amount to acquiescence or waiver of its right to file a, declaration indicating its option a fresh long with the return validity filed in response to the notice served under s. 15(3) of the Act.

Apart from the aforesaid position there is yet one more aspect to which we would like to refer in relation to the question raised before us in these appeals and that arises in view of the provisions of s.16(4) of the Act under which the Assessing Authority makes its best judgment assessment. In this connection ss.15(3), 15(3-B) and 16(4) the Act will have to be considered together. Section 15(3) runs thus:

> "15(3) In the case of any person whose total agricultural income is, in the opinion of the assessing authority. such amount as to render such person liable to payment of agricultural income-tax in any year, he may serve in hat year . a notice in the

> prescribed form requiring such person to furnish within such period, not being less than thirty days as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth (alongwith such other particulars as may be provided for in the notice), his total agricultural income during the previous year:
>
> Provided that the assessing authority may in his discretion extend the date for delivery of the return."

Section 15(3-B) runs thus:

> "15(3-B) Alongwith the notice under sub-section (3) the assessing authority shall send a statement showing a pro visional estimate of the agricultural income which in his opinion accrued to the person during the previous year. The estimate shall be prepared in accordance with the provisions of clause
>
> (a) of sub-section (2) of Sec ion 6 and be in such form and contain such particulars as may be prescribed."

In the instant case, as we have said above, notice under s.15(3) was served by the Assessing Authority upon the appellant and as required by s.15(3-B), alongwith the notice the Assessing Authority had sent a statement showing the provisional estimate of the agricultural income which in its opinion accrued to the appellant during the previous year 1953-54 which estimate was prepared in accordance with the provisions of s. 6(2) (a). Admittedly, the change of opinion sought to be exercised by the appellant was denied to it by the Assessing Authority and the Assessing Authority proceeded with the assess-

ment of the agricultural income of the appellant-assessee in accordance with s.6(2)(b). Admittedly further, the Assessing Authority had issued a notice under s.16(2) requiring the appellant to produce evidence in support of its earlier returns. On September 29, 1955 the Assessing Authority served a further notice upon the appellant in forming the latter that agricultural income to the tune of Rs. 38,947/ had escaped assessment and invited objections from the appellant whereafter it seems that the Assessing Authority not being satisfied with the evidence produced by the appellant proceeded to make its best judgment assessment under s. 16(4). Section 16(4) runs thus:

> "16(4) If the principal officer of any company or other person fails to make a return under subsections (2) or (3) of Section 15, as the case may be, or, having made the return, fails to comply with all the terms of the notice issued under sub-section (2) of this section or to produce any evidence required under sub-section (3) the assessing authority shall make the assessment lo the best of his judgment with due regard to the statement, if any, sent under sub-section (3-B) of Section 15, notwithstanding any option exercised under sub-section (1) of section 6."

It will appear clear from the aforesaid provision contained in s.16(4) that whenever the Assessing Authority proceeds to make the assessment to the best of its judgment the same is required to be made "with due regard to the statement, if any, sent under sub-section (3-B) of s. 15 notwithstanding any option exercised under sub-s. (1) of s.6. lt is thus clear that irrespective of whatever option might have been exercised by the assessee the best judgment assessment has to be made by the Assessing Authority by having due regard to the statement of provisional estimate of agricultural income made in accordance with s.6(2)(a) of the Act. The non-obstante clause leaves it open tc the Assessing Authority to select whatever basis it consider appropriate for computing and determining the true agricultural income of the assessee; it may adopt any one of the bases in respect of the entire agricultural area or adopt one basis in respect of one part of agricultural area and the other basis in respect of another part, the only obligation being to have "due regard" to the statement under s.15(3-B). The scheme of s.16(4) clearly shows that in regard to the best judgment assessment there is nothing sacrosanct about the option exercised by the assessee under s. 6(1) of the Act, equally it can be said that in regard to assessments other than best judgment assessments under the scheme of s.15 there is nothing sacrosanct about the particular option previously exercised by the assessee and he need not be held bound by it provided he changes the option by filing a subsequent or a fresh or a revised return in accordance with the applicable provisions contained in s.15, the object being to determine his true agricultural income for the relevant previous year,-though so far as the Assessing Authority is concerned such option whether original or subsequent, would indisputably be binding on it.

In view of the aforesaid discussion we are clearly of the view that the learned Single Judge of the Allahabad High Court was right in his conclusion that the appellant assessee was entitled to have tho computation of its agricultural income for the previous year 1953-54 (1361 Fasli) relevant to the assessment year 1954-55 done in accordance with s. 6(2) (a) of the Act.

The appeals are, therefore, allowed, the order of the Division Bench dated September 27, 1965 in Special Appeal No. 95 of 1962 is set aside and that of the learned Single Judge dated October 13, 1961 in Civil Misc. Writ No. 1382 of 1960 is restored.

The appellant will get the costs of Civil Appeal No.1946(NT) of 1972 from the respondents while each party will bear and pay its own costs of Civil Appeal No. 1249 (NT) of 1968.

P.B.R. Appeal allowed.