

(1990) 11 KAR CK 0048

In the Karnataka High Court

Case No : Civil Revision Petitions No's. 579 to 582 of 1986

A.R. Mahendra

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 27-11-1990

Acts Referred:

Income Tax Act, 1961 — Section 147 (b)

Mysore Agricultural Income Tax Act, 1957 — Section 18 (2), 36, 55

Citation : (1991) 192 ITR 351

Hon'ble Judges : M.P. Chandrakantaraj Urs, J;K.B. Navadgi, J

Bench : Division Bench

Advocate : S.G. Shivaram, for the Appellant; H.L. Dattu, for the Respondent

Judgement

M.P. Chandrakantaraj Urs, J.—These revision petitions filed u/s 55 of the Karnataka Agricultural Income Tax Act, 1957 (hereinafter referred to as "the Act"), are directed against the common order passed by the Karnataka Appellate Tribunal in Agricultural Income Tax Appeals Nos. 16 of 1984, 17 of 1984, 18 of 1984 and 19 of 1984. The said common order is dated October 11, 1985.

2. The facts relating to these revision petitions may be stated briefly and they are as follows :

One A. R. Mahendra, Coffee Planter, Hosahalli Estate, the petitioner in all these petitions, filed the return of his income in Form No.3 prescribed under the Rules framed under the Act declaring a loss of Rs. 65,089 for the assessment year 1976-77 and the assessment for that year however, came to be made on August 13, 1977, by determining the net income at Rs. 19,603. Similarly, for the year 1977-78, he filed his return declaring a loss of Rs. 97,759 and the assessing authority made an assessment on September 13, 1977, by determining the net income at Rs. 18,191. For the assessment year 1978-79, the assessee returned a loss of Rs. 44,388 and the assessment was made on July 12, 1978, by determining the net income at Rs. 32,625. For the assessment year 1979-80, the assessee returned a loss of Rs. 23,010 and the assessment for that year was

made on May 17,1979, by determining the net income at Rs. 42,594.

3. From these undisputed facts, what emerges is that the returns filed were not accepted by the assessing authority and the assessing authority proceeded to assess the petitioner on best judgment basis. Appeals, it transpires, were filed against those assessment orders. Appeals were preferred against the aforementioned assessment orders in Appeals Nos. 16 of 1984 to 19 of 1984 before the Karnataka Appellate Tribunal, Bangalore. By an order, those appeals came to be dismissed on October 11,1985. The assessee-appellate there after wards does not appear to have prosecuted any remedy against those appellate orders passed. He, however, on January 1,1983, filed a revised return in Form No. 3, declaring a net loss of Rs. 61,366 for the year 1976-77, Rs. 38,078 for the year 1977-78, Rs. 13,364 for the year 1978-79 and Rs. 17,905,86 for the year 1979-80. These returns were acted upon by the assessing authority and as no books of account which were called for were produced, the assessing authority proceeded to assess the assessee in the purported exercise of his power u/s 36 of the Act. Consequently, the orders passed were appealed against by the assessee once again before the Deputy Commissioner of Commercial Taxes (Appeals), Mysore, and he dismissed the same on merits by a common order dated January 18,1984, against the said orders passed in Appeal Petitions Nos. 149, 150, 151, and 152 of 1982-83. Appeals were lodged before the Appellate Tribunal which has sustained the orders of the assessing authority and the first appellate authority. Hence, the present revision petitions, inter alia, on the two grounds (1) that the assessing authority could not have any jurisdiction u/s 36 to pass the orders and (2) even if he had jurisdiction, the same was exercised beyond the prescribed period of limitation u/s 36 as it stood in the year 1983.

4. The fact we have stated above are not in dispute. Therefore, the only questions which fall for our consideration are the two points urged by the assessee-revision-petitioner before us. Section 36 is a special jurisdiction conferred on the assessing authority to bring to tax any income which has escaped assessment to tax under the Act or if the assessee was asked to pay a lesser rate of tax than what he was liable to pay or because he was allowed allowances to which he was not entitled. Section 36 of the Act has fallen for consideration by this court in more than one case. Following the earlier Division Bench rulings of this court on October 12,1990, in Writ Petitions Nos. 10945 to 10951 of 1982 B.D. Basavaraj and another Vs. Agricultural Income Tax Officer and another, we held that unless the assessing authority, after coming to the conclusion that one or the several ingredients mentioned in section 36 of the Act has or have become operative and as such the concluded assessments are liable to be revoked, he is required to call upon the assessee whose income has been assessed to tax at a lower rate than legally permissible or has been given an allowance to which he was not entitled, by calling for a fresh return for the relevant year or years u/s 18(2) of the Act. This becomes abundantly clear if one has to refer to the language of section 36 of the Act which is as follows :

"36. Income escaping assessment. - If for any reason any agricultural income chargeable to tax under this Act has escaped assessment in any financial year or has been assessed at too low a rate, the Agricultural Income Tax Officer may, at any time within five years of the end of that year, serve on the person liable to pay the tax or in the case of a company on the principle officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 18 and may proceed to assess or reassess such income and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section :

Provided that the tax shall be charged at the rate at which it would have been charged if such income had not escaped assessment or full assessment, as the case may be :

Provided further that, in computing the period of limitation for assessment or reassessment under this section, the time during which the assessment has been deferred on account of any stay order granted by any court or other authority in any case or by reason of the fact that an appeal or other proceeding is pending before the High Court or the Supreme Court shall be excluded :

Provided also that nothing contained in this section limiting the time within which any action may be taken or any order, assessment or reassessment may be made, shall apply to an assessment or reassessment made on the assessee or any person in consequence of, or to give effect to, any finding, direction or order made under sections 32, 32A, 33, 34, 35 or 55 or any judgment or order made by the Supreme Court, the High Court or any other court."

5. In the aforementioned decision in the case of B.D. Basavaraj and another Vs. Agricultural Income Tax Officer and another, we have explained, following the decision of the Supreme Court in the case of V. Jaganmohan Rao and Others Vs. Commissioner of Income Tax and Excess Profits Tax, Andhra Pradesh, , that the effect of forming an opinion that income has escaped assessment and issuing a notice to reopen the assessment is that the earlier assessment order becomes non est and a fresh assessment has to be made in respect of each assessment year to which the provisions of section 36 are attracted and, therefore, the justification to assume jurisdiction. The assessing authority, exercising his power u/s 36 of the Act, is required to call for a fresh return in accordance with sub-section (2) of section 18 of the Act. If it is not called for, as held by this court and the Supreme Court, while interpreting sections 34 and 22 of the Indian Income Tax Act, 1922, which is in pari materia with section 36 and section 18 of the Act, the assessing authority acquires no jurisdiction.

6. In the instant case, we have seen that there was no reference to "any notice issued by the assessing authority intimating the assessee that any income had escaped assessment. Possibly, that could not have been done as what was returned for the relevant assessment years was loss, in other words, "Nil" income. But, that came to be rejected and a best judgment assessment was

made for all the four years which leaves no doubt in our mind that the assessing authority did not form an opinion that there was any escapement of assessment of the income of the assessee for the relevant assessment years. Therefore, the question or occasion to form an opinion as to whether any income had escaped assessment did not at all arise in so far as the assessing authority was concerned. It was only because, voluntarily, the assessee filed fresh returns in Form No. 3 in the year 1983 that the assessing authority proceeded to assess once again for those assessment years, though the assessments for those years had stood concluded and had become final when the first batch of appeals was dismissed for not being prosecuted and for being beyond the time prescribed.

7. We see from the records that the only notice issued by the assessing authority after the fresh returns were filed in 1983 is a notice under sub-section (4) of section 18 of the Act calling upon the petitioner to produce the books of account which he failed to produce. It was in that circumstance that fresh assessments were concluded assessing the petitioner on best judgment basis. This is something which we are unable to understand having regard to the law clearly espoused by this court in the Division Bench ruling which we relied upon, i.e., in the case of *E.M.V. Muthappan Vs. Agricultural Income Tax Officer and Another*, . Similar was the view expressed by this court as far back as June 22, 1971 in the case of *C.T. Rajagopal Vs. State of Mysore*, . In that view of the matter, we are of the view that the assessing authority did not have jurisdiction to proceed to assess the assessee once again on the fresh voluntary returns filed by the assessee in 1983.

8. However, Mr. H. L. Dattu, learned counsel for the respondent, stated placing reliance upon the judgment of the Supreme Court in the case of *NIRANJAN and CO. P. LTD. Vs. COMMISSIONER OF Income Tax, WEST BENGAL, AND OTHERS.*, that it was open to the assessing authority to take notice of a fresh return filed and proceed to assess any escaped assessment. In that case, what had happened was that the assessee had filed a return of income under the Income Tax Act showing certain income. That income came to be assessed and assessment was concluded. Without knowing that assessment orders had been passed, the assessee therein, who was the appellant before the Supreme Court, filed fresh returns showing certain modifications though in the new return filed, the excess of income was only one rupee. In that view of the matter, the Income Tax Officer issued to him a proposition notice u/s 147(b) of the Income Tax Act to bring to tax the income that had escaped assessment. The assessee challenged the same before the High Court of Mysore in the case of *Esthuri Aswathaiah Vs. Income Tax Officer, Kolar Circle*, and the High Court dismissed the writ petition. On appeal to the Supreme Court in *Esthuri Aswathiah Vs. The Income Tax Officer, Mysore State*, , the Supreme Court held that, on the facts of that case, on the filing of the fresh return, the return had becomes part of the records of the assessment and the Income Tax Officer, the assessing authority there in, had material on which he could form an opinion that there was escapement of income or underassessment of income, and, therefore, there was jurisdiction to reopen

the assessment u/s 147(b) of the Income Tax Act. We do not see how that has any relevance to the facts of the case which we have set out and whether, in the returns filed for the relevant assessment years earlier, and after conclusion of the first round of assessments, the assessee had shown loss on both occasions. The assessing authority proceeded to pass orders of assessment on best judgment basis, that means he rejected the returns filed. Therefore, it is not possible by any stretch of imagination to state that the second round of returns filed in the year 1983 disclosed any escapement which could form the basis for the assessing authority to start afresh and proceed u/s 36 even if one were to go by the decision in the case of NIRANJAN and CO. P. LTD. Vs. COMMISSIONER OF Income Tax, WEST BENGAL, AND OTHERS., 9. We, therefore, find that the Tribunal as well as the first appellate authority totally overlooked the question of jurisdiction and blindly confirmed the order without noticing the grave irregularity committed by the assessing authority, namely, the agricultural Income Tax Officer, Hassan. Therefore, we have no choice but to set aside the orders of the Tribunal as well as the other orders which merged in the Tribunal's order.

10. We may also add, having regard to the period of limitation prescribed for exercising jurisdiction u/s 36 of the Act as it stood at the relevant time, namely, three years, the assessments done in 1983 were beyond the period of three years. The last assessment was concluded in the year 1979 on the first batch of returns filed. Therefore, even if there had been jurisdiction with the Agricultural Income Tax Officer, Hassan, that was barred by time and as such he could not have initiated action even if there was material to do so.

11. We, therefore, allow these revision petitions and set aside the orders as indicated above.

12. In the circumstances of the case, there will be no order as to costs.