

(1992) 10 KL CK 0027

In the High Court Of Kerala

Case No : Income-tax Reference No. 322 of 1982

Commissioner of Income Tax

APPELLANT

Vs

K. Ramakrishnan

RESPONDENT

Date of Decision : 28-10-1992

Acts Referred:

Income Tax Act, 1961 — Section 139(8), 156, 215, 217
Income Tax Rules, 1962 — Rule 117, 40

Citation : (1993) 2 ILR (Ker) 188 : (1993) 202 ITR 997

Hon'ble Judges : T.L. Viswanatha Iyer, J; L. Manoharan, J

Bench : Division Bench

Advocate : P.K.R. Menon and N.R.K. Nair, for the Appellant; G. Sivarajan and Sreedharan, for the Respondent

Judgement

T.L. Viswanatha Iyer, J.—The question referred for the opinion of this court, u/s 256(1) of the Income Tax Act, 1961 (for short, "the Act"), at the instance of the Revenue, reads as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the order of the Income Tax Officer u/s 215 of the Income Tax Act, 1961, is invalid and without competence ?" .

2. The facts leading to the reference are simple. The assessment year concerned is 1975-76. The respondent was assessed to tax under the Act for that year by order dated July. 18, 1977. The advance tax paid by him on the basis of his estimate u/s 212 fell far short of the amount of tax found due on final assessment so that he became liable to pay interest u/s 215 of the Act. But the Income Tax Officer did not advert to this aspect while completing the assessment and omitted to charge the interest. He discovered the mistake later when he purported to rectify the assessment u/s 154 by charging interest u/s 215. But the assessee successfully challenged it in appeal before the Appellate Assistant Commissioner who set aside the order as one not falling within the purview of Section 154. The Income Tax Officer thereafter passed an order on October 7,

1978, levying interest u/s 215. The amount of interest thus demanded was Rs. 3,874. A copy of this order is annexure A.

3. The assessee challenged it in appeal with the contention that the Income Tax Officer had no jurisdiction to pass a separate order charging interest. This did not find favour with the Appellate Assistant Commissioner who dismissed the appeal by his order annexure B, in the view that the Income Tax Officer was perfectly competent to pass a separate order charging interest u/s 215. He also held that an appeal was not maintainable against the order annexure A, but we need not dwell on the reasons for this view as this point is not in issue before us. The orders, annexures A and B, were set aside in appeal by the Appellate Tribunal (annexure C). The Tribunal took the view that the charging of interest should be as part of the order of assessment and could not be by a separate order. Aggrieved, the Revenue has come up with this reference on the question of law stated above.

4. The question for consideration is whether an independent order levying interest u/s 215 is competent and can be passed by the assessing authority.

5. Interest is payable by the assessee in the contingencies mentioned in Sections 139(8), 215, 216 and 217. The interest payable under Sections 215 and 217 is liable to be waived or reduced in the circumstances mentioned in Rule 40 of the Income Tax Rules, 1962, by virtue of the provisions contained in Sub-section (4) of Section 215 and Sub-section (2) of Section 217. Similarly, the interest payable u/s 139(8) may be reduced or waived in the circumstances specified in Rule 117A. So far as Section 216 is concerned, the section itself vests discretion in the Income Tax Officer to levy or not to levy the interest. It is clear from Sections 139(8), 215 and 217 that the assessee is liable for the interest chargeable thereunder if he is guilty of the defaults mentioned, but a discretion is vested in the Income Tax Officer to reduce or waive the same in the cases and circumstances prescribed.

6. The contention of the Revenue is that there is nothing in the Act or the Rules precluding the Income Tax Officer from passing a separate order levying interest under any of these provisions. According to the assessee-respondent, however, the computation of the interest and the demand thereof form part of the process of assessment and, therefore, unless the amount of interest is quantified in the order of assessment itself as part of it, and demanded, the right to levy the interest is lost to the Income Tax Officer. Levy of interest cannot be the subject of a separate order after the assessment. It is mentioned, inter alia, that if the levy of interest forms part of the order of assessment itself, it is appealable in certain circumstances, which right will be lost if a separate order is passed. It is also stated that, if the levy of interest could be made separately from the order of assessment, it will not be subject to the limitation prescribed for assessments u/s 153 of the Act. Counsel for the Revenue, however, rebuts these contentions with the statement that the levy of interest by a separate order will also be subject to the same right of appeal, as if it had formed part of the order of

assessment itself. He maintains, however, that the period prescribed by Section 153 which applies only to assessments cannot be attracted to an order levying interest.

7. Both sides placed considerable reliance on a number of decisions. Emphasis was particularly laid on certain passages and expressions in the decision of the Supreme Court in *Central Provinces Manganese Ore Co. Ltd. Vs. Commissioner of Income Tax*, . So far as the Revenue is concerned, they placed reliance on the expression "orders" in the following passage at page 966 :

"Now, the question is whether orders levying interest under subsection (8) of Section 139 and u/s 215 are appealable u/s 246 of the Income Tax Act."

8. Counsel for the Revenue stresses on the use of the plural "orders" to imply a decision therefrom by the Supreme Court that separate orders levying interest are contemplated or at least justified. When the Supreme Court spoke of orders levying interest, they postulated separate orders levying interest, so went the argument. Counsel for the respondent in his turn relied on some other observations in the same decision in the same page, to suggest that there can be only one consolidated order of assessment, with interest and all that, and not more. The passages read (at page 966):

"If that is borne in mind, it will be apparent that the levy of interest is part of the process of assessment. Although Sections 143 and 144 do not specifically provide for the levy of interest, and the levy is, in fact, attributable to Sub-section (8) of Section 139 or Section 215, it is nevertheless a part of the process of assessing the tax liability of the assessee. Where the Income Tax Officer considers that there is a case for levying interest under Sub-section (8) of Section 139 or u/s 215, what he does in practice, is to make an order levying such interest after completing the assessment of the assessee's total income and the tax payable by him." and

"Inasmuch as the levy of interest is a part of the process of assessment, it is open to an assessee to dispute the levy in appeal provided he limits himself to the ground that he is not liable to the levy at all."

9. Both the parties thus exercised themselves on the same decision attributing their own meanings and suggested intents to these words and passages.

10. Counsel for the assessee relied further on the decision of this court in *Commissioner of Income Tax Vs. Cochin-Malabar Estates Ltd.*, , as having held impliedly that a separate order charging interest could not be passed. In this case, the order of assessment was silent on the question of interest u/s 215. The Commissioner took up the order of assessment in revision u/s 263 of the Act for the purpose of levying the interest, treating the order as one prejudicial to the Revenue because of the non-levy of interest. The Commissioner's action was challenged in appeal to the Tribunal with the plea that, when the Income Tax Officer did not levy the interest in the order of assessment, he must be deemed

to have waived it in exercise of his powers under Rule 40 and, therefore, there was no order prejudicial to the Revenue liable to be revised u/s 263. The contention found favour with the Tribunal, but not with this court. It was held that, when the order of assessment was silent on the question of interest and there was nothing to indicate that the Income Tax Officer had waived it, it was open to the Commissioner to invoke his powers of revision as the Revenue stood prejudiced by the non-levy of interest. What counsel for the assessee wanted to suggest before us was that the decision would have been otherwise if the Income Tax Officer had the power to pass a separate order charging interest in which case that power could be exercised later and the mere non-levy of interest in the order of assessment itself did not prejudice the Revenue. Counsel, therefore, submitted that the decision implicit in the above case was that a separate order levying interest could not be passed.

11. It is uncontrovertible that neither of these decisions directly covers the point in question before us, nor do they touch the matter even incidentally. In making their submissions as they have done, we are afraid, counsel are attempting to do what Lord Denning L.J. of the Court of Appeal in England cautioned against in his judgment in *Paisner v. Goodrich* [1955] 2 QB 353, 358 ; [1955] 2 ER 330 :

"When the judges of this court give a decision on the interpretation of an Act of Parliament, the decision itself is binding on them and their successors (see *Cull v. Inland Revenue Commissioners* [1940] AC 51 , *Morelle Ltd. v. Wakeling* [1955] 1 All ER 708 ; 2 WLR 672 , but the words which the judges use in giving the decision are not binding. This is often a very fine distinction, because the decision can only be expressed in words.

Nevertheless, it is a real distinction which will best be appreciated by remembering that, when interpreting a statute, the sole function of the court is to apply the words of the statute to a given situation. Once a decision has been reached on that situation, the doctrine of precedent requires us to apply the statute in the same way in any similar situation ; but not in a different situation. Whenever a new situation emerges, not covered by previous decisions, the courts must be governed by the statute and not by the words of the judges. As Lord Porter has pointed out: "each case must be brought back to the test Of the statutory words" (see, his address to the Holdsworth Law Club on case-law in the *Interpretation of Statutes*, page 18). If a point should be reached where the words of the judges lead to a different result from the words of the statute, then the statute must prevail ; because the judges have no right to supplant the words of the statute and would not wish to do so."

12. The words used by judges in their judgments are not to be read as if they are words in an Act of Parliament. (See the judgment of Lord Reid in the appeal from the above decision--*Goodrich v. Paisner* [1957] AC 65 at page 88). We have to remember that the words in a judgment are not used after weighing the pros and cons of all conceivable situations that may arise. They constitute just the reasoning of the judges in the particular case, tailored to a given set of facts and

circumstances. What is made relevant and binding is only the ratio decidendi and no more. The careful drafting--perhaps with reference to analogous statutes--the multiple reading in the Legislature and the discussion which go behind the making of a statute inject a certain degree of sanctity and definiteness of meaning to the words used by the Legislature. The same cannot be said of a judgment which deals only with the particular fact situation on hand. It will be too much to ascribe and read precise meaning to words in a precedent which the judges who wrote them may not have had in mind at all. Equally, it is not possible to impute an intent to render a decision on a point which was not before them and which they never intended to deal with, even though such an inference may seem to flow logically from the ratio decidendi of the case. That was why it was stated by Lord Halsbury LC in *Quinn v. Leathern* [1901] AC 495, at page 506 :

.".... there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all."

13. A case is thus a precedent, and binding for what it explicitly decides and no more. It would be too much to imply and read into its propositions what may seem to flow even incidentally or logically from it--precisely what Sabyasachi Mukharji J., stated in *Goodyear India Ltd., Gedore (India) Pvt. Ltd., Kelvinator of India Ltd. and the Food Corporation of India and Another Vs. State of Haryana and Another*, ; *Goodyear India Ltd., Gedore (India) Pvt. Ltd., Kelvinator of India Ltd. and the Food Corporation of India and Another Vs. State of Haryana and Another*, :

".... a precedent is an authority only for what it actually decides and not for what may remotely or even logically follow from it."

14. Bes C.J., had echoed these sentiments as early as in 1826 in *Fletcher v. Lord Sondes* (3 Bing 501 at 569 ; 130 English Reports 606, at page 633) in the following words :

"Although the courts below will not impugn your Lordships" judgments in cases ad idem, yet they do not hold that they are bound by them beyond the point actually decided. The courts below truly say, we cannot know that the House of Lords would carry this determination farther than they have carried it."

15. We cannot, therefore, decide the case solely based on the general expressions used in *Central Provinces Manganese Ore Co. Ltd. Vs. Commissioner*

of Income Tax, , in which this particular question was not in issue, nor on the ratio of Commissioner of Income Tax Vs. Cochin-Malabar Estates Ltd., , as a logical inference therefrom. We have to decide it on the terms of the relevant provisions and the scheme of the Act, besides other decided cases on the point.

16. None of the sections to which we have referred expressly states as to when or how the levy of interest thereunder should be made. They do not, for instance, lay down that interest should be charged and demanded along with the computation of the income in the order of assessment itself ; nor do they bar a separate order being passed levying interest. The levy of interest is part of the process of assessment in the sense that it is part of the process of assessing the liability of the assessee. This is what the Supreme Court held while dealing with the nature of the interest, whether it is penal or compensatory, in the passages we have extracted earlier. The provisions of Sections 139(8), 215 and 217 are clear that the assessee shall pay interest at the rates specified, in the contingencies contemplated therein but the levy is not automatic since a discretion is vested in the Income Tax Officer to reduce or waive it in the cases and circumstances prescribed in Rules 117A and 40 (vide National Products Vs. Commissioner of Income Tax, Mysore,). The very vesting of a discretion postulates an application of mind and a reasoned order being passed thereon either exercising or refusing to exercise the discretion. The question that arose in Commissioner of Income Tax Vs. Cochin-Malabar Estates Ltd., , on which the assessee placed considerable reliance, was as to whether the omission to levy interest u/s 215 in the order of assessment could be presumed to be waiver of the interest by virtue of the powers vested in the Income Tax Officer under Rule 40. This court held that such an order was prejudicial to the Revenue inasmuch as there was a failure to levy interest which was chargeable under the Act. The question whether a separate order could be passed levying interest u/s 215 was neither raised nor considered in that case. This decision was not accepted by a Division Bench of the Karnataka High Court in Commissioner of Income Tax, Karnataka-I, Bangalore Vs. Executors of the Estate of Late H.H. Rajkuverba Dowager Maharani Saheb of Gondal, on the ground that an order levying interest did not form part of the order of assessment and that an order could be passed separately levying the interest even after the order of assessment was passed. Therefore, it was held that the mere omission to levy interest in the order of assessment cannot be stated to have caused any prejudice to the revenue revisable u/s 263.

17. In Commissioner of Income Tax Vs. City Palayacot Co., , the High Court of Madras was confronted with an omission on the part of the Income Tax Officer to charge interest u/s 217 for failure of the assessee to comply with the provisions of Section 212(3). The Commissioner revised the order of assessment and directed the Income Tax Officer to pass a fresh order charging interest. After affirming the Commissioner's jurisdiction to revise the order u/s 263, the learned judges observed that an order is necessary to charge, waive or reduce the interest, but this can be part of or supplemental to the order of assessment.

In Commissioner of Income Tax Vs. Narpat Singh Malkhan Singh, , the High Court of Madhya Pradesh observed that an order levying interest was different and distinct from an order of assessment u/s 143(3). Though, on the facts of the case, it was not necessary to decide this point (and they did not purport to decide it), the learned judges gave expression to their mind with the following observations (at page 82) :

"We may, however, point out that a separate provision for appeal in Section 246 against an order u/s 216 shows that an order under that section does not form part of the order of assessment u/s 143(3) which is separately appealable. Section 217 is similar to Section 216. Section 216 applies when the income has been underestimated for purposes of advance tax and Section 217 applies when no estimate has been sent at all. If an order u/s 216 is different and distinct from an order of assessment passed u/s 143(3), it would be logical to hold that an order u/s 217 is also of the same nature and different and distinct from the order of assessment u/s 143(3)."

18. Sampath Iyengar, in his Law of Income Tax (Seventh Edition) at page 4171, has commented approvingly on the view taken by the High Court of Madras that the order charging, waiving or reducing interest may be part of or supplemental to the order of assessment.

19. In Central Provinces Manganese Ore Co. Ltd. Vs. Commissioner of Income Tax, , the Supreme Court, while considering the nature of the levy of interest as to whether it is penal or compensatory, observed that the levy of interest is part of the process of assessment, i.e., part of the process of assessing the tax liability of the assessee. But does this, mean that the order charging interest should also be inscribed in the same piece of paper, namely, the order of assessment ? In the absence of anything in the Act requiring the charge of interest to be in the order of assessment itself, we are not inclined to accept the contention of the respondent that the charge of interest should be made along with the assessment and as part of it in the same order. This is a matter of procedure and no prejudice is caused to the assessee by the charge of interest being made in a separate order. The levy of interest is no doubt part of the process of assessment, but that does not mean that it should be in the same piece of paper or even simultaneous. In fact, Section 156 of the Income Tax Act, 1961, contemplates a notice of demand for the amount of the interest also, apart from tax and penalty. When the process of assessment obliges the Income Tax Officer to levy interest (subject, no doubt, to the discretion vested in him to waive or reduce it), his omission to do so in the order of assessment will not preclude him from passing a fresh order charging interest. But since the levy of interest is part of the process of assessment, the order charging interest should also be passed within the period limited for the passing of the order of assessment u/s 153. This is sufficient to allay the apprehensions of the respondent that the charge of interest will be hanging like Damocle's sword on the assessee without any limitation of time. It also follows that the order

charging interest will be appealable in the same manner and to the same extent it could have been made a contention in appeal, had it been charged in the order of assessment itself, a point on which counsel for the Revenue had no dispute, as we have already mentioned.

20. In fact, in Kalyan kumar Ray Vs. Commissioner of Income Tax, West Bengal-IV, Calcutta, , the Supreme Court upheld an order of assessment which computed merely the taxable income with all the calculations of tax, interest, etc., done separately. In upholding the assessment, the court observed that what was needed was some writing initialled or signed by the Income Tax Officer before the expiry of the period of limitation prescribed for completion of the assessment and that it was not necessary that the assessment order should itself contain all the computations of tax, etc., as well.

21. Counsel for the assessee pointed out that, if Section 153 is applicable to a separate order charging interest u/s 215, the order, annexure A, in this case is invalid as it was passed beyond the period of two years prescribed by Section 153. Counsel for the Revenue, however, demurred as, according to him, this aspect of the matter had not been raised before the Tribunal and, therefore, cannot be made the subject of decision in this court. He referred to the decision in Commissioner of Income Tax, Kerala Vs. V. Damodaran, . We do not agree. The question referred by the Tribunal is general and requires the opinion of this court as to whether the order, annexure A, is valid or without competence. If the order, annexure A, is beyond the period prescribed by Section 153, necessarily it has got to be treated as invalid. The assessment year is 1975-76. u/s 153(1)(a), the order of assessment has to be passed on or before March 31, 1978. The order, annexure A, is dated October 7, 1978, beyond the time prescribed. It is, therefore, invalid. This conclusion follows on the admitted facts and as a direct consequence of our conclusion mentioned in the preceding paragraph. This question did not arise for consideration before the Tribunal because they struck down annexure A even at the threshold itself as incompetent. The question of considering what would have been the consequence if it was a competent order did not, therefore, arise for consideration before the Tribunal. The respondent is, therefore, entitled to raise the point as it is comprehended within the question referred. Therefore, even though the Department succeeds on the question of law, it has to fail on the question of limitation.

22. We, therefore, hold that an order charging interest u/s 215 can be passed separately, apart from the assessment, but within the period prescribed for the assessment u/s 153. But the order, annexure A, in this case is invalid as one passed beyond that period. The Revenue wins on the question of law ; but the assessee wins the case.

23. We, therefore, answer the question referred in the affirmative, that is, in favour of the assessee and against the Revenue. There will be no order as to costs.

24. A copy of this judgment, under the seal of this court and the signature of the Registrar, will be sent to the Income Tax Appellate Tribunal, Cochin Bench.