

(1979) 12 RAJ CK 0004

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 1058, 1145, 1146 and 1155 of 1972

Dalchand Nemchand

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-12-1979

Acts Referred:

Constitution of India, 1950 — Article 226

Income Tax Act, 1922 — Section 23(3)

Income Tax Act, 1961 — Section 139(2), 142(1), 144

Citation : (1983) 139 ITR 454 : (1980) RLW 132 : (1979) WLN 755

Hon'ble Judges : C.M. Lodha, C.J.; M.C. Jain, J

Bench : Division Bench

Advocate : N.N. Mathur, for the Appellant; Rajendra Mehta, for the Respondent

Judgement

C.M. Lodha, C.J.—These are connected writ petitions under Article 226 of the Constitution of India by the HUF firm, M/s. Dalchand Nemchand, in respect of the best judgment assessment made by the ITO, A Ward, Udaipur, for the assessment years 1966-67, 1967-68, 1968-69 and 1969-70.

2. All the writ petitions are directed against the common order dated February 16, 1972, passed by the Additional Commissioner of Income Tax, Rajasthan, Jaipur, camp Udaipur, in respect of all the four assessment years. It appears that the ITO, A-Ward, Udaipur, who is the assessing authority served notice on the assessee, in the first instance, u/s 139(2) of the I.T. Act, 1961 (hereinafter to be referred to as "the Act"), but the assessee did not comply with the notice. Thereafter notice was issued u/s 142(1) of the Act calling upon the assessee to produce the books of account maintained by it. Thereupon the authorised representative of the assessee put in appearance on behalf of the assessee before the taxing authority and prayed for an adjournment. Adjournment was allowed but again there was default in appearance on behalf of the assessee. The ITO found that the assessee was a habitual defaulter and there was no alternative left to him but to proceed to frame the assessment on the basis of

best judgment. He went on to observe that keeping in view the past history of the case and the enquiry made by him, the assessee's income for each of these years may be assessed at Rs. 19,600, the break-up of which was as follows:

Income from property: ... Rs. 1,600 Income from business: ... Rs. 18,000

3. Aggrieved by the orders of assessment, the petitioner filed appeals before the AAC but the same were dismissed. Dissatisfied with the orders by the AAC, the assessee filed a revision petition in respect of each year before the Commissioner and the Additional Commissioner of Income Tax, Rajasthan, as already stated above, by his order dated February 16, 1972, dismissed the revision petitions. He held that the assessee was a habitual defaulter and the assessments right from the assessment year 1954-55 onwards were being made ex parte u/s 144 of the Act. He observed as follows:

"The assessments were made by the Income Tax Officer on the basis of the total income assessed in the earlier years. Although it is admitted by Shri Punjawat that the assessments on the basis of the income assessed for the earlier years are not at all unreasonable, it is contended that the Income Tax Officer does not appear to have made proper enquiry from the local market as otherwise he would have come to know that the assessee had suffered losses in business."

4. In the conclusion, the Additional Commissioner held that the earlier assessments were sufficient basis for making the best judgment assessment in the present case.

5. Learned counsel for the petitioner has urged that the assessee had suffered losses during the relevant years and, therefore, they should not have been assessed on an income of Rs. 19,600 for each year. It is submitted that the estimate of income made by the ITO is not fair and honest.

6. It may be pointed out that right from the assessment year 1954-55, down to the assessment year 1964-65, the assessee had been assessed u/s 23(3) of the 1922 Act and Section 144 of the Act. It is further clear from the grounds of revision filed by the assessee before the Addl. Commr. (Ex. 5) that for the assessment year 1964-65, the assessee had been assessed on an income of Rs. 19,600. Prior to that for the year 1963-64, the assessed income was Rs. 17,500. The assessee had never been assessed for an income less than Rs. 11,000 in any of the assessment years commencing from the assessment year 1955-56 to 1964-65. In these circumstances, it cannot be said that the estimate made by the ITO was unfair or not honest. Besides that, the observation made by the AAC in his order that the assessee had been adopting a non-co-operative attitude for years and had been guilty of contumacious conduct, cannot be said to be wrong. No material worth the name was placed before the ITO to show that the assessee had incurred losses during the assessment years under consideration. No reasons have been set out even in the writ petitions filed before us as to in what circumstances the assessee had incurred losses continuously during the assessment years under consideration as alleged by the assessee. In these

circumstances, the best judgment assessment made in the present case cannot be said to be illegal, or unjust, Of course, it has to be arbitrary by its very nature. But it is not capricious. So far as the position in law is concerned, we cannot do better than reproduce the following observations of their Lordships of the Privy Council in CIT v. Lakshminarain Badridas [1937] 5 ITR 170 which have been adopted by the Supreme Court in Brij Bhushan Lal Parduman Kumar Vs. Commissioner of Income Tax , Haryana Himachal Pradesh and New Delhi III,

"The officer is to make an assessment to the best of his judgment against a person who is in default as regards supplying information. He must not act dishonestly or vindictively or capriciously because he must exercise judgment in the matter. He must make what he honestly Relieves to be a fair estimate of the proper figure of assessment, and for this purpose he must, their Lordships think, be able to take into consideration local knowledge and repute in regard to the assessee's circumstances and his own knowledge of previous Returns by and assessments of the assessee, and all other matters which he thinks will assist him in arriving at a fair and proper estimate ; and though there must necessarily be guesswork in the matter, it must be honest guesswork. In that sense, too, the assessment must be, to some extent arbitrary."

7. The result is that we do not find any force in these writ petitions, and dismiss the same, but without any order as to costs.