
(1968) 05 AHC CK 0034

In the Allahabad High Court

Case No : Special Appeal No's. 417, 418 and 419 of 1962

Devendra Prakash

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 09-05-1968

Acts Referred:

Income Tax Act, 1922 — Section 16(3), 35

Citation : (1969) 72 ITR 151

Hon'ble Judges : W. Broome, J;G. Kumar, J

Bench : Division Bench

Advocate : P.N. Pachauri, for the Appellant; Gopal Behari, for the Respondent

Final Decision : Dismissed

Judgement

Broome, J.—These three special appeals are directed against the judgment of Hon'ble Brijlal Gupta J., dated November 23, 1961, DEVENDRA PRAKASH Vs. Income Tax OFFICER, BAREILLY., , by which he partly allowed three writ petitions (Nos. 841 of 1960 and 842 and 843 of 1961), challenging notices of demand issued by the Income Tax authorities on the basis of a rectification order passed u/s 35 of the Income Tax Act, 1922.

2. The facts of the case in brief are as follows :

There was a partnership business started in the year 1949, in which the partners were Hirday Narain, his major son, Yogendra Prakash, and four minor sons, Surendra Prakash, Gajendra Prakash, Devendra Prakash and Bhupendra Prakash. This firm remained in existence up to July 11, 1952. But from July 12, 1952, it was reconstituted so as to exclude the father, Hirday Narain, and so as to introduce a later born minor son, Satendra Prakash, as a partner. Surendra Prakash had become major in the meantime, but Gajendra Prakash, Devendra Prakash and Bhupendra Prakash remained minors. An assessment order was passed against the firm on March 28, 1956, in respect of the assessment year 1953-54, apportioning the income among the partners as follows :

"Net income remains at Rs. 3,95,788. The above income is to be apportioned in the ratio of 1 : 5 which will come to Rs. 79,157 and Rs. 3,16,613.

Income up to July 11, 1952. is allocated as below:

Rs.

Hirday Narain

82,772

Yogendra Prakash

52,772

Surendra Prakash

52,772

Gajendra Prakash

52,772

Devendra Prakash

52,772

Bhupendra Prakash

52,772

Income from July 12, 1952, to September 27, 1952. is allocated as below :

Rs.

Yogendra Prakash

13,193

Surendra Prakash

13,193

Gajendra Prakash

13,193

Devendra Prakash

13,193

Bhupendra Prakash

13,193

Satendra Prakash

13,193

Out of the above income the entire profiles up to July 11, 1952, will be assessed in the hands of Hirday Narain u/s 16(3)(a)(ii) except for a sum of Rs. 52,772 falling to the lot of Yogendra Prakash and also the sum of Rs. 13,192 falling to the lot of Satendra Prakash, u/s 16(3)(a)(iv)."

3. Thus, the income received by the three petitioners, Gajendra Prakash, Devendra Prakash and Bhupendra Prakash, for the first part of the accounting period (October 10, 1951 to July 11, 1952) amounting to Rs. 52,772 for each of them, was lumped together with the income of their father, Hirday Narain, for the purpose of the assessment of tax, in accordance with the provisions of Section 16(3)(a)(ii), which provides that :

"16. (3) In computing the total income of any individual for the purpose of assessment, there shall be included-

(a) so much of the income of a wife or minor child of such individual as arises directly or indirectly--...

(ii) from the admission of the minor to the benefits of partnership in a firm of which such individual as a partner."

4. On the same day the above-quoted assessment order was passed against the firm, i.e., on March 28, 1956, individual assessment orders were passed against the separate partners and each of the three petitioners was assessed on an income of Rs. 13,193 (viz., the amount received from July 12, 1952, to September 27, 1952, only, and not the income received during the earlier period up to July 11, 1952). Subsequent modifications, which have not been challenged in these petitions, were made on November 24, 1956, and January 14, 1958, which had the effect of raising the assessed incomes of the petitioners to Rs. 13,990 each. Meanwhile, however, their father, Hirday Narain, went in appeal against the original assessment order, first to the Appellate Assistant Commissioner and then to the Appellate Tribunal; and on January 13, 1959, the Tribunal held that Hirday Narain should have been assessed in the status of a Hindu undivided family and not as an individual, with the result that Section 16(3)(a)(ii) was inapplicable to his case and the income of his minor sons, Gajendra Prakash, Devendra Prakash and Bhupendra Prakash, could not be lumped together with his income under the provisions of that section. The result was that the three sums of Rs. 52,772 earned by these three minors in the period up to July 11, 1952, remained untaxed either as their income or as part of their father's income. The Income Tax Officer sought to rectify this omission by issuing notices on August 8, 1959, u/s 35 of the Act. The petitioner filed objections, but these were overruled, and on March 3, 1960, orders of rectification were passed to include these amounts in the assessments of the three petitioners. It was these orders of March 3, 1960, together with the notices of demand issued thereon, that were challenged in the writ petitions out of which the present appeals arise, the main contention being that Section 35 could not be invoked in the circumstances of this case and, consequently, the

assessments of the petitioners could not be enhanced beyond the figure of Rs. 13,990 shown against each of them in the orders of assessment passed on January 14, 1958.

5. A subsidiary contention raised in the writ petitions was that the amount of income derived by each petitioner from another firm (Choubey Madan Gopal) had been illegally enhanced by the order of March 3, 1960, from Rs. 53 to Rs. 225 without issuing any notice in respect of this item.

6. But it appears that this matter was not pressed before the learned single judge, for it has not been dealt with by him in his judgment; and there is no specific averment about it in the grounds of appeal. We propose, therefore, to ignore this part of the case.

7. The only part of the petitioners' case that found favour with the learned single judge was the plea that they were not liable to pay interest on the amount found due on rectification, because no notice of intention to impose such interest was issued. The petitioners were, therefore, granted relief only to the extent that the demand for interest was quashed ; and, except for this slight modification the rectification orders were held to be valid and were allowed to stand.

8. The crucial point that calls for decision in these special appeals is whether rectification of the petitioners' assessments u/s 35 of the Income Tax Act, 1922, was legally possible or not. The relevant portion of this section runs as follows :

" 35. Rectification of mistake.--...the Income Tax Officer may, at any time within four years from the date of any assessment order or refund order passed by him on his own motion rectify any mistake apparent from the record of the...assessment or refund..."

9. The question is what is the precise significance of the words " mistake apparent from the record of the assessment ". From the rulings that have been cited before us, it would appear that the assessment records in which the mistake has to be detected, before the Income Tax Officer can assume jurisdiction u/s 35, must be the assessment record of the particular assessee concerned. It is not possible to rectify an assessee's income on the basis of some mistake that may be apparent on the assessment record of some other person, even though that other person may be a close relation or a business partner of the assessee in question. An exception to this rule has been introduced by Sub-section (5) of Section 35, which permits the assessment of a person who is a partner in a firm to be rectified on the basis of facts disclosed by the assessment or reassessment of the firm; but that does not mean that the assessments of other partners can be looked into for the purpose of discovering mistakes in the assessment of that person. Learned counsel for the appellants, consequently, argues that in the present case it was not open to the Income Tax Officer to exercise the power of rectifying the petitioners' assessments u/s 35 on the basis of a mistake revealed by the judgment given by the Appellate Tribunal on January 13, 1959, in the appeal filed by Hirday Narain, because that appellate

judgment did not form part of the assessment records of the petitioners but was only to be found on the record of the assessment of a separate partner (Hirday Narain).

10. Mr. Gopal Behari, who appears for the Income Tax authorities, maintains, however, that the Income Tax Officer could take note of the judicial decision given by the Appellate Tribunal, even though it did not form part of the petitioners' records ; and in this connection he has drawn our attention to the Supreme Court pronouncements in M.K. Venkatachalam, I.T.O. and Another Vs. Bombay Dyeing and Mfg. Co., Ltd., and Walchand Nagar Industries Ltd. Vs. V.S. Gaitonde, Income Tax Officer, Companies Circle 1(3), Bombay and Another, . In the first of these cases it has been laid down that, where an assessment order is " plainly and obviously inconsistent with a specific and clear provision of the statute ", it must be held that there is a " mistake apparent from the record ", within the meaning of Section 35. And in the second case an assessment order, which was on the face of it a good order at the time when it was passed, was found to embody a " mistake apparent from the record " in the light of a subsequent Supreme Court decision. It is clear, therefore, that the Income Tax Officer does not have to shut his eyes completely to all extraneous matters when judging whether a particular assessment record reveals a " mistake apparent from the record ". He can take into account statutory provisions and pronouncements of the Supreme Court. We see no reason why this principle should not also apply to a case where a High Court has given a decision that shows an existing assessment order to be erroneous; and if the argument is taken to its logical extreme, the Income Tax Officer should be able to take note of any judicial pronouncement by any court or tribunal, when considering whether there is a "mistake apparent from the record" of a prior assessment. Once the Income Tax Officer read the judgment of the Appellate Tribunal in Hirday Narain's appeal, he would immediately discover that Section 16(3)(a)(ii) had been wrongly applied to the case of the petitioners, and there would be a "mistake apparent from the record" which would entitle him to take action u/s 35.

11. It is unnecessary, however, for us to give any definite ruling on this aspect of the case; it is enough to hold that the legal position with regard to the power of the Income Tax Officer to look into the Appellate Tribunal's decision, while considering if there was any " mistake apparent from the record " of the petitioners' assessments, is doubtful. Where there is doubt as to the true legal position, the petitioners cannot demand that a writ be issued in their favour.

12. Furthermore, we find that, even if the view be taken that the Income Tax Officer had to confine himself rigorously to the individual assessment records of the petitioners-appellants, he could still claim to have detected an error therein, for there was an obvious discrepancy between the amounts disclosed by the petitioners themselves as their income and the amounts on which tax had actually been levied. This is made clear by the rectification order itself (annexure I to the writ petitions) which opens with the following words :

" One of the sources of income of the assessee in the relevant previous year was share in the registered firm, M/s. Hirday Narain Yogendra Prakash, Bareilly. The share of the assessee was disclosed in the return at book figure in the amount of Rs. 42,823. The revised and the final share in the firm comes to Rs. 63,075. The assessee was originally assessed on a share of Rs. 13,193. Thus, it is obvious that the correct share of the assessee has not been assessed to tax. This is a mistake apparent from the record and as such it was sought to be rectified u/s 35 of the Income Tax Act."

13. Learned counsel for the appellants objects that the so-called discrepancy between the declared income and the income actually assessed was no discrepancy at all, because it stood explained by the reference to Section 16(3) (a)(ii) in the assessment order of the firm dated March 28, 1956. But the appellants cannot have it both ways; if the Income Tax Officer was precluded from looking into extraneous assessment records for the purpose of detecting a " mistake apparent from the record " on the assessment records of the appellants, he was in no way required in the initial stage to look into extraneous record for explanations that might be forthcoming to account for apparent mistakes. Admittedly, there was nothing on the individual assessment records of the appellants to explain the discrepancy that has been pointed out; and, in the circumstances, we feel that the Income Tax Officer was justified in treating this discrepancy as a "mistake apparent from the record " and in taking action thereon in accordance with Section 35.

14. The result is that we find ourselves in agreement with the learned single judge in holding that the provisions of Section 35 could be legitimately invoked in the case of the three petitioners-appellants. These appeals are without force and are, accordingly, dismissed with costs.