
(1959) 09 AHC CK 0042

In the Allahabad High Court

Case No : Income Tax Miscellaneous Case No. 191 of 1952

Dharam Vir Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 21-09-1959

Acts Referred:

Uttar Pradesh Agricultural Income Tax Act, 1948 — Section 22, 24

Citation : (1960) 30 AWR 15

Hon'ble Judges : V. Bhargava, J;J. Sahai, J

Bench : Division Bench

Advocate : Shanti Bhushan, for the Appellant;

Final Decision : Dismissed

Judgement

V. Bhargava, J.—We have heard learned Counsel for the Applicant who has urged that two questions of law arise out of the revisional order of the Revision Board under the U.P. Agricultural. Income Tax Act, dated 18-9-1951. The first question which, according to learned Counsel, arises is whether the commissioner hearing an appeal under the U.P. Agricultural Income Tax Act was an authority subordinate to the Board so as to give the Board jurisdiction to revise the order of the Commissioner u/s 22 of the U.P. Agricultural Income Tax Act. To us it appears that the answer to this question is evident from the provisions of the Act itself. The procedure laid down in the Act is that an assessment order is first made by the assessing authority and then there is a right of appeal against that order to the Commissioner, The Board, on its own motion or on an application, is permitted u/s 22 of the Act to call for the record of any proceeding under the Act pending before or decided by any authority subordinate to it and is empowered to pass such orders as it thinks fit after such inquiry as it may deem necessary. The section thus placed clearly indicates that the Board was given a power to revise orders of assessment made by assessing authorities as well as appellate orders passed by the Commissioner. The position is, however, very much clarified by the third proviso to Section 24 of the Act. u/s 24 of the Act, power is given to

the Board to make a reference to the High Court either on its own motion or when an Assessee makes an application for that purpose. An Assessee is empowered to make an application for a reference to the High Court under this section of a question of law arising out of an order or decision of the Commissioner u/s 21 or by the Board itself u/s 22. The third proviso permits the Board itself to decide the question that may arise, in exercise of its power of revision u/s 22 instead of making a reference to the High Court. This makes it clear that whenever an application is made to the Board u/s 24 for reference of a question of law arising out of an appellate order of the Commissioner u/s 21, the Board is empowered to decide that question itself u/s 22. This power of deciding that question itself clearly makes the Commissioner subordinate to the Board and consequently, the Board can revise an order of the Commissioner u/s 22 apart from revising it in exercise of the powers conferred by the third proviso to Section 24. The Board, in the revisional order, also relied on the further circumstance that Rule 258(2) was added to the rule framed under the U.P. Agricultural Income Tax Act making this position still clearer. That rule came into force on 7-4-1951, before the Board actually exercised its revisional powers. That rule further recognises the power of the Board to revise an appellate order of the Commissioner. Learned Counsel for the Applicant urged that this rule would not be applicable in the present case because it came into force after the appellate order of the Commissioner had been made. It is not necessary to enter into the question in the present application whether the rule did or did not apply. As we have held earlier, the provisions of the Act itself show that the Board had the power to revise an order of the Commissioner and the rule can at least be referred to for the purpose of showing that subsequently this position has been put down more clearly in the rules. This is, therefore, not a question of law as requires a reference to this Court.

2. The second question of law, which, according to learned Counsel, arises, relates to the method of computing the income of the Applicant from sir and khudkasht land. The Applicant had chosen the alternative method of having the income of sir and khudkasht land computed in accordance with Section 6(2)(b) of the U.P. Agricultural Income Tax Act. The assessing authority computed the income under that provision of law. The computation could not be exact because correct information was not furnished by the Applicant and the assessing authority computed the income to the best of his judgment and had thereupon determined the tax payable by the Applicant. In appeal, the Commissioner set aside that assessment of income tax made by the assessing authority and instead adopted a different method for computing the tax. The method adopted by the Commissioner was to take the income on the basis of the principles which govern the alternative method of computation of income laid down in Section 6(2)(a) of the Act. What he did was to hold that the gross income should be deemed to be twice the amount of income determined u/s 6(2)(a) of the Act. This method adopted by the Commissioner was set aside by the Board on the view that the Commissioner had wrongly adopted this method. We do not see how it can at all

be contended that the Board had no power to make this correction. Further, it is also clear that the Commissioner had made an error when he adopted the method mentioned above. u/s 6(2)(b), computation of the income had to be made by first computing the gross proceeds of sale of all the produce and then certain deductions had to be made from the amount so determined. Even in the case of best judgment assessment, while this principle of computation laid down by Section 6(2)(b) had been chosen by the Assessee, the assessment had to be made by the assessing authority by first determining the gross proceeds of sale of all the produce to the best of his judgment, then determining the amount of deductions permissible to the best of his judgment and thereafter, taking the difference as the amount of taxable income. This was the method which was adopted by the assessing authority and has been correctly upheld by the Board. The Commissioner's order was clearly a wrong order. The decision of the Board is so clearly in accordance with law that we do not think that any question of law, fit for reference to this Court, can arise.

3. The application is dismissed with costs which we fix at Rs. 100.