
(1967) 05 AHC CK 0039
In the Allahabad High Court
Case No : Special Appeal No. 503 of 1962

Income Tax OFFICER	Vs	APPELLANT
ADARSH CONSTRUCTION COMPANY (DISSOLVED FIRM).		RESPONDENT

Date of Decision : 18-05-1967

Acts Referred:

Income Tax Act, 1922 — Section 22(3)

Citation : (1968) 70 ITR 796

Hon'ble Judges : V. G. Oak, C.J.; V. G. Oak, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

V. G. OAK J. - This special appeal arises out of assessment process under the Income Tax Act, 1922 (hereafter referred to as the Act). Adarsh Construction Company is a firm consisting of three partners. On October 13, 1961, the firm furnished a statement under sub-section (3) of section 22 of the Act with respect to income for the assessment years 1959-60 and 1960-61. The same day the Income Tax Officer was informed that the firm not in a position to file all the documents mentioned in the notice section 22(4). The Income Tax Officer took up the position the firm had failed to comply with the notice served upon it under 22(4). On November 30, 1961, an assessment order was passed section 23 (4) of the Act on the footing that the firm had failed to comply with the notice u/s 22(4) of the Act. A notice of demand was also issued on that basis. The firm filed in this court a writ petition challenging the assessment order dated November 30, 1961, and the demand notice. The writ petition was allowed by a learned single judge of this court on May 7, 1962. He quashed the assessment order dated November 30, 1961, with respect to the assessment years 1959-60 and 1960-61 and the demand notice. This special appeal by the Income Tax Officer, Kanpur, is directed against the order dated May 7, 1962.

The questions raised in this appeal are whether the notice u/s 22(4) is valid, and whether action could be taken u/s 23(4). In order to decide these questions it is

necessary to examine the provisions of sections 22 and 23 of the Act in detail.

Section 22 consists of five sub-sections. Under sub-section (1), the Income Tax Officer issues a general notice calling upon a person with an income beyond a certain limit to furnish a return about his total income and total world income within a certain period. Sub-section (2) provides for separate notices to individual assessees. But such a notice, an individual is called upon to furnish a return about income within a certain period. Sub-section (3) states as follows :

"If any person has not furnished a return within the time allowed by or under sub-section (1) or sub-section (2), or having furnished a return under either of those sub-section, discovers any omission or wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made."

Sub-section (4) states :

"The Income Tax Officer may serve on any person who has made a return under sub-section (1) or upon whom a notice has been served under sub-section (2) a notice requiring him, on a date to be therein specified, to produce.... such accounts or documents as the Income Tax Officer may require...."

Section 23 of the act provides for assessment. Sub-section (4) of that section states :

"If any person fails to make the return required by any notice given under sub-section (2) of section 22..... or fails to comply with all the terms of a notice issued under sub-section (4) of the same section.... the Income Tax Officer shall made the assessment to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment...."

In the present case action was taken against the respondent u/s 23(4) on the footing that it failed to comply with all the terms of the notice issued u/s 22(4). The respondents stand was that notice u/s 22(4) was invalid. The main question for consideration in the appeal is whether the notice issued to the respondent u/s 22(4) was valid or not.

It is to be noted that we are dealing with the assessment years 1959-60 and 1960-61. The return was furnished by the respondent as late as October 13, 1961. It is common ground that the return was furnished under sub-section (3) of section 22. Mr. Pachauri, appearing for the respondent, points out that sub-section (3) is not mentioned in sub-section (4) of section 22. On the other hand, Mr. Gulati, appearing for the appellant, has urged that, although the return was furnished u/s 22(3), that was in substance a return under sub-section (1) of section 22. We have, therefore, to consider whether the return filed on October 13, 1961, can be treated as a return under sub-section (1) of section 22 of the Act.

In *P. S. Rama Iyer v. Commissioner of Income Tax* the assessee voluntarily

submitted a return on February 21, 1951, for the assessment year 1947-48 without any notice u/s 22(2). The Income Tax Officer rejected the return, and estimated the income at Rs. 30,000, and assessed him accordingly. It was held by the Madras High Court that the return submitted by the assessee, even though it did not disclose the receipt of taxable income, was a "return" within section 22(1) on which assessment proceedings could be validly taken and therefore the assessment was valid. The question referred to the High Court in that case was whether the assessment of Rs. 30,000 for the assessment year 1947-48 was valid. It was in that connection that the court remarked that there was a return within section 22(1) of the Act. The court was not called upon to decide whether action could be taken u/s 22(4) of the Act.

In *R. P. Kandaswami v. Commissioner of Income Tax, Madras*, it was held that, where in respect of any year an assessee has voluntarily submitted his returns, the Income Tax Officer cannot ignore the returns and initiate proceedings u/s 34.

In *Radharkrishna Rungta v. Seventh Income Tax Officer, C-II Ward, Bombay*,

it was held that a voluntary return of loss submitted by an assessee would be a good and valid return under sub-section (3) of section 22.

In *Commissioner of Income Tax v. Ranchhoddas Karsondas* it was held by the Supreme Court that a return showing income below the taxable limit submitted voluntarily in answer to the general notice u/s 22(1) of the Act is a good return.

None of these cases lays down the proposition that, if a person submits a return u/s 22(3), he can be called upon to furnish a document u/s 22(4) of the Act.

As pointed out above, the question for consideration is whether a return filed u/s 22(3) can be treated as a return u/s 22(1) for purposes of section 22(4) of the Act. We have already outline the plan of section 22. Under sub-section (1), a person has to furnish a return about income within a certain period in pursuance of the general notice. Under sub-section (2), an individual assessee has to furnish a return within the prescribed period in pursuance of a separate notice issued to him. If a person fails to take action under either of these two provisions, he may furnish a return as provided under sub-section (3). One of the situations mentioned in sub-section (3) is where a return has been filed under sub-section (1) it is found that that return is incomplete. In such a case the person may furnish a supplementary return. It is difficult to accept the contention that a supplementary return is also under sub-section (1). The supplementary return is clearly under sub-section (3) of section 22. The plan of section 12 suggests that returns may be filled under three separate provisions contained u/s 22 of the Act. There should be no difficulty in treating returns filed under sub-section (3) as a distinct class.

We notice that, although sub-section (1) and (2) are mentioned in sub-section (4) of section 22, there is no mention of sub-section (3) there. It is not clear why sub-section (3) was not expressly mentioned in sub-section (4). The learned

single judge has suggested that the legislature might have thought it fit to give encouragement to the filing of voluntary return. Be that as it may, the fact remains that sub-section (4) of section 22 makes no reference to the returns filed under sub-section (3).

Mr. Gulati invited our attention to section 28 of the Act. Section 28 provides for penalty for concealment of income. Section 28 refers to sub-sections (1) and (2) of section 22, but makes no reference to sub-section (3) of the said section. Mr. Gulati contended that the language of section 28 suggests that a return filed under sub-section (3) of section 22 is covered by section 28. We do not think so. The returns to be furnished under sub-section (1) and (2) are obligatory. On the other hand, the return furnished under sub-section (3) is voluntary. The legislature rightly decided that there should be penalty for non-compliance with the requirements of sub-section (1) and (2), but there is no need for prescribing a penalty for failure to furnish a voluntary statement under sub-section (3) of section 22.

In *Gursahai Saigal v. Commissioner of Income Tax*, their Lordships of the Supreme Court observed on page 5 :

"The provisions in a taxing statute dealing with machinery for assessment have to be construed by the ordinary rules of construction, that is to say, in accordance with the clear intention of the legislature which is to make a charge levied effective... In interpreting provisions of this kind the rule is that that construction should be preferred which makes the machinery workable..."

Mr. Gulati urged that, if the interpretation placed on section 22(4) by the learned single judge is accepted, the provisions would be unworkable. We may point out that section 22(4) is not the only provision in the Act enabling the Income Tax Officer to examine the relevant documents. Sub-section (3) of section 23 provides for an enquiry. During such an enquiry the Income Tax Officer may insist on examining such evidence as he may require on specific points. Section 37 of the Act confers wide powers upon the Income Tax authorities. u/s 37 the Income Tax Officer may compel the production of books of account and other relevant documents. It cannot, therefore, be said that, if action is not taken under the special provision of section 22(4), assessment would become impossible.

We have already pointed out that, although section 22(4) mentions sub-section (1), there is no reference to sub-section (3). In the instant case, the return was filed on October 13, 1961, u/s 22(3) of the Act. As discussed above, that return cannot be deemed to be a return furnished u/s 22(1) for purposes of action u/s 22(4) of the Act.

The learned single judge was, therefore, right that, in the circumstances of the present case, no notice could be served upon the respondent u/s 22(4) of the Act. Since the notice itself was invalid, no assessment could be done on the footing that the respondent failed to comply with the notice issued u/s 22(4).

The learned single judge was justified in quashing the assessment order dated November 30, 1961.

The appeal is dismissed with costs. We assess the respondents costs at Rs. 200.