
(1982) 03 AHC CK 0030

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 258 of 1978, connected with
Income Tax Reference No. 580 of 1974

O.C.M. Ltd.

APPELLANT

Vs

Commissioner of Income Tax and Another

RESPONDENT

Date of Decision : 04-03-1982

Acts Referred:

Income Tax Act, 1961 — Section 237, 242, 263, 264, 264(1)

Citation : (1982) 29 CTR 295 : (1982) 138 ITR 689 : (1982) 10 TAXMAN 209

Hon'ble Judges : R.R. Rastogi, J;K.N. Seth, J

Bench : Division Bench

Advocate : R.K. Gulati, for the Appellant; M. Katju, for the Respondent

Judgement

Rastogi, J.—This writ petition and the Income Tax reference can be disposed of by a common order. By this writ petition under art. 226 of the Constitution the petitioner prays for a writ of certiorari quashing the order of the Commissioner dated 29th April, 1978, and the assessment order dated 10th February, 1967, and also prays for a writ of mandamus directing the Commissioner to rehear the revision petition and direct the ITO to include the sum of Rs. 2,30,000 in the income of the petitioner and to refund the sum of Rs. 11,500. There is a further prayer for a direction to the ITO, A-Ward, Circle I, Varanasi, to refund certain amounts.

2. The petitioners, M/s. O.C.M. Ltd. (London), is a non-resident company. It has got three subsidiary companies which are incorporated and which carry on business in India, namely, O.C.M. (India) Pvt. Ltd., Amritsar, E. Hill and Company Pvt. Ltd., Mirzapur, and the East India Carpet Company Pvt. Ltd., Amritsar. The petitioner enjoyed income in India only from one source and that was by way of dividend from these three subsidiary companies. For the assessment year 1965-66, the accounting period ended December 31, 1964, the petitioner earned the following dividend income from the aforesaid three subsidiary companies :

Name of the subsidiaries

Gross dividend

income tax deducted at source

Super-tax

Rs.

Rs.

Rs.

1.

E. Hill & Co. Pvt. Ltd.

1,20,000

30,000

2.

East India Carpet Co. Pvt. Ltd.

27,300

6,825

3.

(a) O.C.M. (India) Pvt. Ltd. (Final)

1,15,000

28,750

(b) O.C.M. (India) Pvt. Ltd. (Interim)

2,30,000

57,500

11,500

4,92,300

1,23,050

11,500

3. In its return for the assessment year 1965-66, the petitioner disclosed its dividend income from the three subsidiary companies at Rs. 2,63,300 and the

Income Tax deducted at source at Rs. 65,576. That return was accepted and an assessment order was made on February 10, 1966. By some inadvertence the petitioner omitted to include in the return the amount of Rs. 2,30,000 being interim dividend received from O.C.M. (India) Pvt. Ltd. Apart from this, in view of Clause 2(b)(ii) of Pt. II of the First Schedule to the Finance Act, 1965, the petitioner was not liable to pay any super-tax and that being so the deduction of super-tax at Rs. 11,500 from out of the interim dividend received from this subsidiary company as well, was not correct.

4. Subsequently, when the principal agents of the petitioner discovered the mistake noted above, they brought these facts to the notice of the ITO by letter dated 30th September, 1967, and filed a revised return along with a letter in which a request was made for revising the assessment. They also filed the interim dividend warrants relating to this amount. It appears that the ITO did not take any action and accordingly the petitioner filed a revision before the Commissioner. Pending that revision they also made an application u/s 237 of the I.T. Act before the ITO on the prescribed form for refund of Rs. 11,500. In reply, the ITO wrote back to the petitioner saying :

" Please refer to your claim for refund for the assessment year 1965-66. Your claim cannot be accepted in view of the fact that the company is precluded in terms of Section 242 of the Income Tax Act, 1961, from seeking a review of the computation of the total income which has become final by making an application u/s 237 of the Income Tax Act, 1961."

5. The petitioner-company filed an appeal against that order before the AAC. The AAC dismissed that appeal by his order dated March 11, 1971, for two reasons : firstly, that no appeal could be filed against the aforesaid letter and, secondly, that the revised return filed by the petitioner after the completion of the assessment was of no legal effect and the ITO was justified in ignoring the same.

6. Still aggrieved, the petitioner took up the matter in further appeal before the Appellate Tribunal. The Tribunal as well dismissed the appeal on the view that the petitioner's claim for refund after the assessment had become final was hit by Section 242 of the Act. This order was passed on 30th July, 1973. Thereafter at the instance of the assessee the Appellate Tribunal referred the following question of law for the opinion of this court :

" Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee's claim for refund was hit by Section 242 and, therefore, the same was properly rejected ? "

7. This question forms the subject-matter of consideration in Income Tax Reference No. 580 of 1974.

8. To resume the narrative of the case the Commissioner by his order dated 28th November, 1969, dismissed the petitioner's revision u/s 264 of the Act. In his opinion there was no mistake in the order of the ITO so as to justify any

interference by him and the revision was misconceived. The petitioner then came up to this court by way of a writ petition being Civil Misc. Writ Petition No. 7528 of 1973, That petition was allowed on September 28, 1976. The order of the Commissioner dated 28th November, 1967, was quashed and he was directed to dispose of the revision petition afresh and according to law.

9. The Commissioner has again by his order dated 29th April, 1978, dismissed the revision petition and it is this order which the petitioner seeks to quash in the present writ petition. It also claims a refund of the amount of Rs. 11,500 which had been deducted by way of super-tax and further of Rs. 57,500 which had been deducted at source as Income Tax.

10. A counter-affidavit has been filed in the case on behalf of the respondents. The facts which we have narrated above are not in dispute. The question which falls for consideration is as to whether the ITO was justified in not reopening the assessment when as a result of inadvertent mistake the petitioner omitted to mention in its return, the interim dividend income received by it from O.C.M. (India) Pvt. Ltd. For escaped assessment, action can be taken by the Department under Clause (a) and Clause (b) of Section 147 of the Act. If an order suffers from any mistake of fact or law apparent from the record, action can be taken for its rectification. In the present case it was only an inadvertent mistake which had occurred on the part of the assessee and when it filed the revised return with a request to reopen the assessment, we do not think that the ITO was justified in refusing to do so. In this connection we may refer to a decision of the Supreme Court in Chief Controlling Revenue Authority v. Maharashtra Sugar Mills, AIR 1950 SC 218. It has been laid down in that case thus (headnote) :

" The power to make a reference u/s 57 (of the Stamp Act) is not only for the benefit of the Chief Controlling Authority but enures also for the benefit of the party affected by the assessment and can be demanded to be used also by such a party. It is coupled with a duty cast on him, as a public officer to do the right thing and when an important and intricate question of law in respect of the construction of a document arises, as a public servant it is his duty to make the reference. If he omits to do so, it is within the power of the court to direct him to discharge that duty and make a reference to the court. "

11. In the present case there was no material or intricate question of law involved. The fact was not disputed that the petitioner had earned an interim dividend income of Rs. 2,30,000 from O.C.M. (India) Pvt. Ltd. and a sum of Rs. 11,500 had been deducted there from as super-tax. There was also no dispute that under Clause 2(b)(ii) of Part II of the First Schedule of the Finance Act, 1965, which was relevant for the year under consideration, super-tax was not chargeable. Therefore, deduction of super-tax from this interim dividend had been wrongly made. Simply because the Revenue was required to refund to the assessee a sum of Rs. 11,500, it could not have chosen to refrain from taking action on the petitioner's application. The ITO, as a public officer, was under a duty to do the right thing and not deny the subject what was legally due to him.

12. This is one aspect of the matter. The other aspect concerns the scope of Section 264 of the Act. When the petitioner approached this court on the previous occasion, this court had occasion to observe that the Commissioner took a too narrow view of the scope of the revision u/s 264 of the Act. It was observed that though the ITO accepted the income as returned by the petitioner and made the assessment, the case of the petitioner was that the order of assessment had to be revised in view of the fact that a sum of Rs. 2,30,000 which ought to have been included in the return filed by it was omitted by inadvertence and consequently it was deprived of the refund of Rs. 11,500. This aspect of the case had not at all been considered by the Commissioner. A direction was given by this court that the Commissioner should apply his mind to the petitioner's plea that it had inadvertently omitted to include in its return the amount of interim dividend received by it from M/s. O.C.M. (India) Pvt. Ltd. and that the assessment made by the ITO without taking into account that amount of interim dividend should be revised and that the petitioner be given the benefit of the refund of the super-tax, which was deducted at source before the payment of the interim dividend to it. A clear verdict was given by this court that the order of the Commissioner suffered from a manifest mistake of law. Despite these observations and directions the Commissioner has persisted in taking the same view.

13. Section 263 of the Act empowers the Commissioner to exercise his revisional power in favour of the Revenue if on an examination of the record of any proceedings under this Act he considers that any order passed therein by the ITO is erroneous in so far as it is prejudicial to the interest of the Revenue. Section 264 empowers him to exercise such power in favour of the assessee. Sub-section (1) authorises the Commissioner to call for the record of any proceeding under this Act either of his own motion or on the application by the assessee, for the revision of an order. He may make such enquiry or cause such enquiry to be made and, subject to the provisions of the Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit. It would be seen that under Sub-section (1) the revisional jurisdiction conferred on the Commissioner is subject to the provisions of the Act. He has a discretion to grant or refuse a relief. He has got the power to pass such order in revision as he may deem fit. The power is not an arbitrary one to be exercised according to his fancy. It must be exercised on an objective consideration of the facts and circumstances of the case, that is, according to law and not according to humour. We may emphasise that it is a power coupled with a duty to be exercised in the interest of justice to the assessee. It is his duty to revise an assessment which is found to be erroneous on the admitted facts of the case.

14. Thus, we find that again the Commissioner has taken a too narrow and technical view of his powers of revision. Admittedly, the assessee had received an interim dividend from O.C.M. (India) Pvt. Ltd. By inadvertence it had omitted to mention this amount in its return. The ITO erred in not revising the assessment when he revised the assessment (sic). However, when the matter

came in revision before the Commissioner he should have set right the mistake and directed the refund of Rs. 11,500 to the petitioner because this amount could not have been deducted, as the petitioner was not liable to pay any super-tax under the provision of law as applicable at that time.

15. So far as the assessee's claim for a direction to refund the sum of Rs. 57,500 is concerned, we are not inclined to give any such direction. The assessee never made a claim for the refund of this amount. In the revised return there was no claim made for it. In the revision before the Commissioner there was no claim for it. In the appellate proceedings also this claim does not figure, and now, at the stage of Article 226 proceedings, we do not think that the assessee can be allowed to take up this plea.

16. In view of what has been stated above, the petition succeeds and is allowed in part and the order of the Commissioner dated 29th April, 1978, is quashed and the petitioner's claim for a refund of Rs. 11,500 is allowed. For the rest of the claim, the petition is dismissed.

17. In so far as the reference is concerned, it has become infructuous and the question referred is returned unanswered.

18. In the circumstances, both in the writ petition and in the Income Tax reference, parties are directed to bear their own costs.