(1984) 10 MAD CK 0014

In the Madras High Court

Case No : Tax Case No. 1623 of 1977 (Reference No. 1155 of 1977)

Popular Lungi Co. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 12-10-1984

Acts Referred:

Income Tax Act, 1961 — Section 209, 210, 212(1) 212(3A), 273, 273(C)

Citation : (1985) 44 CTR 181 : (1986) 158 ITR 656

Hon'ble Judges : V. Ratnam, J;G. Ramanujam, J

Bench : Division Bench

Advocate : S. Swaminathan, for the Appellant; J. Jayaraman and N.V. Balasubramanian, for the Respondent

Judgement

Ramanujam, J.—The following question has been referred to this court for its opinion by the Income Tax Appellate Tribunal at the instance

of the assessee :

Whether, on the facts and in the circumstances of the case, the provisions of section 212(3A) are attracted and the levy of penalty of Rs. 8,977

u/s 273(c) is justified in law ?

2. The assessee is a registered firm and for the assessment year 1970-71, the Income Tax Officer raised an advance tax demand u/s 210 of the

Income Tax Act, 1961 (hereinafter referred to as ""the Act""), in a sum of Rs. 49,722 in August, 1969, based on the then latest completed

assessment for the year 1964-65 which showed a total income of Rs. 2,13,750. The assessee, without complying with the said demand, sent an

estimate u/s 212(1) on September 6, 1969, estimating its total income at Rs. 1,16,000 and the tax thereon at Rs. 14,916. Thereafter, the assessee

filed a return of income for the year 1970-71 showing an income of Rs. 2,67,935.

However, the assessment was completed on a total income of

Rs. 5,87,200 resulting in a tax demand of Rs. 1,39,577. The Income Tax Officer thereafter initiated penalty proceedings for the assessee''s failure

to file an estimate in accordance with section 212(3A) of the Act and ultimately levied a penalty of Rs. 8,977.

3. Against the said levy of penalty, the assessee appealed to the Appellate Assistant Commissioner contending that since the assessee has filed an

estimate of advance tax on September 6, 1969, u/s 212, there was no obligation on its part to make an estimate u/s 212(3A) and that, therefore,

the levy of penalty was not sustainable in law. The Appellate Assistant Commissioner held that the firm had filed an estimate revising the demand

made by the Income Tax Officer and that even though it happened to be an underestimate calling for action u/s 273(a), there was no failure to

comply with the terms of section 212(3A) on the part of the assessee. In that view, he cancelled the levy of penalty made by the Income Tax

Officer.

4. The Revenue took the matter in appeal contending that the interpretation placed by the Appellate Assistant Commissioner on section 212(3A) is

not correct, that wherever an assessee''s current income on which advance tax is payable exceeds by 33-1/2% of the demand raised by the

Income Tax Officer, there is an obligation to file an estimate u/s 212(3A) and that the failure to do so attracts the provisions of section 273(c). In

that view, the Tribunal held that the assessee is under an obligation to file an estimate u/s 212(3A) and since he has not done so, the penalty levied

is legally justifiable. Aggrieved by the decision of the Tribunal, the assessee has sought and obtained a reference to this court on the question

referred to above.

5. From the facts stated above, it will be clear that the only point that is to be considered by us in this case is whether, on the facts and

circumstances of this case, there is an obligation on the part of the assessee to make an estimate u/s 212(3A). The scheme of advance tax is as

follows. In the case of the assessees who are regularly assessed, the Income Tax Officer raises a demand on the basis of the latest completed

assessment u/s 210. The tax on the current income is to be collected in advance and the current income is estimated by the Income Tax Officer on the basis of the latest completed assessment. However, the assessee, who has the material to know what his current income is, is given an option

u/s 212(1) to estimate his current income and then reduce the advance tax payable by filing an estimate. He can also file a revised estimate

thereafter in accordance with section 212(3A) which was introduced by the Finance Act of 1969 with effect from April 1, 1969. Section 212(3A)

runs as follows :

In the case of any assessee who is required to pay advance tax by an order u/s 210, if, by reason of the current income being likely to be greater

than the income on which the advance tax payable by him u/s 210 has been computed or for any other reason, the amount of advance tax

computed in the manner laid down in section 209 on the current income (which shall be estimated by the assessee) exceeds the amount of advance

tax demanded from him u/s 210 by more than 33-113 per cent. of the latter amount, he shall, at any time before the date on which the last

instalment of advance tax is due from him, send to the Income Tax Officer an estimate of -

(i) the current income, and

(ii) the advance tax payable by him on the current income calculated in the manner laid down in section 209,

and shall pay such amount of advance tax as accords with his estimate on such of the dates applicable in his case u/s 211 as have not expired, by

instalments which may be revised according to sub-section (2).

6. Having regard to the language of the said section, we are not inclined to accept the contention of the assessee that once an estimate is filed u/s

212(1), there is no obligation to make any estimate u/s 212(3A). We find that section 212(3A) extracted above requires the assessee on whom a

notice has been issued u/s 210 to make an upward revision of the tax if the current income exceeds the advance tax demanded by 33 1/3 per cent.

There is nothing in section 212(3A) to indicate that this should be exercised only as soon as the receipt of a demand u/s 210 and not on any later

occasion. It is no doubt true, the assessee may, on receiving a demand for advance tax, reduce the demand by referring to his current income u/s

212(1) if the situation so warranted. But that does not absolve the assessee from his liability to estimate the same u/s 212(3A) if the current income increases after making the estimate u/s 212(1). If the current income increases after making an estimate u/s 212(1), the assessee is bound to send a

fresh estimate u/s 212(3A) or a revised estimate u/s 212(2). If we agree with the contention put forward on behalf of the assessee that once an

estimate is filed u/s 212(1), there is no obligation on the part of the assessee to submit an estimate u/s 212(3A) and if such an interpretation is

placed on section 212(3A), then that section will become otiose. The filing of a revised estimate u/s 212(2) and the filing of a fresh estimate u/s

212(3A) are separate steps which would be taken by the assessee and they operate in two different fields. Sections 212(1) and 212(2) operate

whenever the tax on the current incomes are lower than the demand u/s 210. Section 212(3A), however, comes into operation only if the tax on

the current income exceeds by the stipulated percentage over the tax demanded u/s 210. It is also possible for an assessee to revise that estimate

u/s 212(3A) by a subsequent revision as section 212(2) is also applicable to such a situation. We have to hold therefore that there is an obligation

on the part of the assessee to file an estimate u/s 212(3A) and the assessee not having filed the estimate as required by him, the penalty levied

cannot be held to be unjustified.

7. The learned counsel for the assessee, however, refers to the decision of the Bombay High Court in Hind Products Pvt. Ltd. Vs. Commissioner

of Income Tax, Bombay City-1, , in support of his plea that once having given an estimate u/s 212(1), the assessee is not under an obligation to

submit an estimate u/s 212(3A). But we do not see how that decision will apply to the facts of this case. There, the assessee filed an estimate of

losses. However, profits accrued subsequently when the Income Tax Officer held that the estimate filed by the assessee was mala fide and unreal

and, therefore, penalty was called for. When the matter reached the Bombay High Court, it was held that the estimated income may or may not be

the same as the ultimate returned income shown by the assessee, that the word ""estimate"" implies the concept of approximation and it can never be

accurate, that therefore, merely because at the end of the year, an assessee is shown to have earned an income which is more than that shown in

the estimate filed u/s 18A(2) of the 1922 Act, which fact alone will not by itself indicate that the estimate was known to be untrue or that the assessee had filed an estimate having reason to believe that it was untrue. That situation does not arise here. Here we are concerned with the

question as to whether the assessee who has filed an estimate u/s 212(1) ceases to be under an obligation to file a return u/s 212(3A). That

question did not come up for consideration in the said decision.

8. In Commissioner of Income Tax, Gujarat-II Vs. Bharat Machinery and Hardware Mart, , the Gujarat High Court, while considering the scope

of section 212(3A) proceeded to hold that the question of the assessee being required to make an estimate of current income for purposes of

advance tax u/s 212(3A) arises only when he could reasonably be attributed with the knowledge that his current income was likely to be greater

than the income on which advance tax was payable u/s 210 and that the sine qua non for complying with the provisions of section 212(3A) is that

the advance tax payable on the current income exceeded the amount of advance tax demanded from the assessee u/s 210 by more than 33 1/3%.

That condition is satisfied here and the mere fact that the assessee has earlier filed an estimate u/s 212(1) showing a lesser income than what was

estimated by the Income Tax Officer will not absolve him from filing an estimate u/s 212(3A) if his income has exceeded the estimated income by

33 1/3%.

9. The decision of the Calcutta High Court in Ramnagar Cane and Sugar Co. Ltd. Vs. Commissioner of Income Tax, may not apply to the facts of

this case for, in that case, the court found that the assessee had no idea as to his actual-profits at the time when it paid advance tax on the basis of

the profit earned in the immediately preceding year. It is for that reason that the court held that there is no failure on the part of the assessee to file

an estimate of such tax in terms of section 212(3A) and, therefore, the order of penalty levied u/s 273 was not justified.

10. In this case, after the Income Tax Officer had issued a demand based on the last completed assessment, the assessee, without accepting that

demand, submitted his own estimate. Later, the assessee himself filed a return of income showing a considerably higher income than his estimated

income. The fact that he made an estimate u/s 212 does not dispense with his obligation to make a further estimate u/s 212(3A). His failure to file

an estimate under that section clearly attracts the provisions of section 273(c).

11. In this view of the matter, the question referred to us has to be and is answered in the affirmative and against the assessee. The Revenue will

have its costs from the assessee. Counsel''s fee Rs. 500.

