
(1970) 11 KAR CK 0007
In the Karnataka High Court
Case No : Writ Petition No. 1528 of 1970

Salar Jung Sugar Mills Ltd.

APPELLANT

Vs

State of Mysore and Others

RESPONDENT

Date of Decision : 26-11-1970

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 141
Mysore Agricultural Income Tax Act, 1957 — Section 20 (1)

Citation : (1971) 81 ITR 509 : (1971) 1 MysLJ 36

Hon'ble Judges : Mohammad Sharif, J;G.K. Govind Bhat, J

Bench : Division Bench

Advocate : D. Venugopalachari, for the Appellant; S.R. Rajasekhara Murthy, for the Respondent

Judgement

Govinda Bhat, J.—The petitioner, who is an assessee under the Mysore Agricultural Income Tax Act, 1957 (hereinafter called "the Act"), has challenged the provisional assessment made for the assessment year 1969-70 and the proceedings taken for recovery of the tax so assessed. For the assessment year 1969-70, the petitioner filed a return on 30th May, 1969, showing a net profit of Rs. 2,61,585. In arriving at the net profits, the petitioner had claimed certain deductions. The Agricultural Income Tax Officer, Bellary (respondent No. 4), issued a notice on November 22, 1969, stating that he proposed to disallow a sum of Rs. 1,99,017 claimed as deduction by the petitioner and to make a provisional assessment on the income of Rs. 4,60,602. Overruling the objections raised by the petitioner to the said proposal, the 4th respondent made a provisional assessment order on February 21, 1970, assessing a tax of Rs. 1,25,606. The notice of demand which ought to have followed the provisional assessment was, in fact, issued on February 11, 1970, in advance of the provisional assessment order. Since the petitioner did not pay the tax so demanded, a penalty of Rs. 15, 700.75 was levied and proceedings were initiated by the 5th respondent for the recovery of the provisional tax and penalty.

Thereupon, the petitioner approached this court for relief under article 226 of the Constitution of India.

2. The contention of Sri Venugopalachari, the learned counsel for the petitioner, is that the provisional assessment order made by the 4th respondent under sub-section (1) of section 20 of the Act is illegal as the assessing authority has to jurisdiction to make a provisional assessment order on an income not admitted by the assessee. The contention of the learned counsel, in our opinion, is well-founded. Sub-section (1) of section 20, which empowers the assessing authority to make a provisional assessment order, reads thus :

"20. (1) The Agricultural Income Tax Officer may, at any time after the receipt of a return made u/s 18, proceed to make in a summary manner, a provisional assessment of the tax payable by the assessee, on the basis of his return and the accounts and documents, if any, accompanying it, after giving due effect to, (i) the allowance referred to in paragraph (2) of the proviso to clause (c) of section 5 and, (ii) any loss carried forward u/s 15."

3. The above provision is in pari materia with section 141 of the Income Tax Act, 1961 (Central Act 43 of 1961). In Jaipur Udyog Ltd. v. Commissioner of Income Tax, the Supreme Court had occasion to pronounce on the ambit of the power of the Income Tax Officer u/s 141 of the Central Income Tax Act. It has been laid down in the said decision that the scheme of section 141 is to call upon the assessee to pay tax provisionally at the appropriate rate on what he admits as his taxable income, subject to the benefit of the allowances under sub-section (2) and that the returned by the section does not permit an enquiry to be made whether the total income returned by the assessee exceeds the amount admitted by him, nor whether the allowances or deductions claimed are admissible. The scheme of section 20(1) of the Act being similar to section 141 of the Income Tax Act, 1961, the assessing authority has power only to call upon an assessee to pay tax provisionally on what he admits as his taxable income. The 4th respondent in making the provisional assessment order has exceeded his jurisdiction in calling upon the petitioner to pay tax on income not admitted. Therefore, the impugned provisional assessment order, the demand based thereon and the recovery proceedings are liable to be set aside and accordingly they are quashed.

4. The petitioner is entitled to the costs of this writ petition. Advocate's fee Rs. 100.