

(1968) 08 SC CK 0026
In the Supreme Court Of India
Case No : ?Appeal (civil) 808 of 1967

State of Assam and Another	Vs	APPELLANT
Deva Prasad Barua & Another		RESPONDENT

Date of Decision : 14-08-1968

Acts Referred:

Assam Agricultural Income Tax Act, 1939 — Section 19(1), 19(2), 20(1), 30
Constitution of India, 1950 — Article 226
Income Tax Act, 1922 — Section 22

Citation : AIR 1969 SC 831 : (1970) 75 ITR 18 : (1969) 1 SCR 698

Hon'ble Judges : V. Ramaswami, J;A. N. Grover, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Grover, J.—These are two connected appeals by certificate from a common judgment of the High Court of Assam and Nagaland allowing two petitions under article 226 of the Constitution and setting aside the assessment made in respect of the respondents for the assessment years 1955-56 and 1957-58 under the Assam Agricultural income tax Act, 1939, hereinafter called the Act.

2. A general notice was issued u/s 19(1) of the Act for submission of the return for the purpose of agricultural income tax on April 13, 1955, for the assessment year 1955-56. According to the departmental authorities a notice was also issued u/s 19(2) on September 16, 1955, to the respondents by the Agricultural Income- tax Officer for submission of a return for the same year which was followed by reminders sent on April 30, 1956, and April 15, 1958. It is, however, not disputed that the respondents themselves filed a return on May 31, 1958, relating to agricultural income for the assessment year 1955-56. On April 17, 1959, the Agricultural Income- tax Officer made an assessment order section 20(1) of the Act and a notice of demand was issued u/s 33 on April 13, 1959. It is unnecessary to give the details about the proceedings relating to the assessment year 1957-58 in which the dates are naturally different but the

position is identically the same. On June 4, 1962, the respondents filed two petitions under articles 226 and 227 of the Constitution challenging the assessments which had been made primarily on the ground that no notice had been served u/s 19(2) and therefore there was no jurisdiction in the Agricultural income tax Officer to pass on order of assessment u/s 20(1) of the Act and further that, since no assessment order had been passed and no notice of demand had been made within the period of three years of the end of the relevant financial year the assessments were barred by time u/s 30 of the Act. In the return which was filed in the High Court to the writ petition, it was asserted by the Assistant Commissioner of Taxes that the respondents had been served with a notice u/s 16(2) and the details of the notices and the reminders which were issued together with copies thereof were filed as annexures. It was maintained that even on the assumption that no notice u/s 19(2) had been received by the respondents the submission of the return of agricultural income was in compliance with the terms of the notice issued u/s 19(1) and therefore the assessment order made u/s 20(1) was perfectly valid and no question arose of the applicability of section 30 in such circumstances.

3. The High Court decided the petition in favour of the respondents primarily on the following considerations : (1) Once agricultural income has escaped assessment in any financial year then such income could be assessed within the period prescribed or laid down in section 30, namely, a period of three years by taking the steps indicated in that section. In the present case the agricultural income was received for the first year in the year 1954-55 and had to be assessed in the financial year 1955-56. Since no assessment had been made in that financial year it had escaped assessment. Thus section 30 was directly attracted. As the assessment was made on April 7, 1959, which was beyond three years from the expiry of the last date of the financial year in which the income had been assessed the assessment was invalid. (2) As no notice either u/s 19(2) or u/s 30 had been shown to have been served the assessment should have been made before the expiry of three years from the last date of the financial year in which the income had been assessed the assessment was invalid. (2) As no notice either u/s 39(2) or u/s 30 had been shown to have been served the assessment should have been made before the expiry of three years from the last date of the financial year, namely, 1955-56, which was not done. (3) The submission of a voluntary return by the assessee did not alter the situation as there was no provision in the Act which would help the department in that behalf. It was open to the department to have assessed the assessee before the expiry of the period of three years on receipt of the return but that was not done.

4. Section 19 is almost in the same terms as section 22 of the income tax Act, 1922, hereinafter called the income tax Act. Section 19(1) reads as follows :

"The Agricultural income tax Officer shall, on or before the first day of May for the year commencing 1st April, 1939 or any later day notified by Government in

each year, give notice by publication in the press and otherwise in the manner prescribed by rules, requiring every person whose agricultural income exceeds the limit of taxable income prescribed in section 6 to furnish, within such period not being less than thirty days as may be specified in the notice, a return, in the prescribed form and verified in the prescribed manner, setting forth (along with such other particulars as may be required by the notice) his total agricultural income during the previous year."

5. Section 20 of the Act is similar to section 23 of the income tax Act. Section 30 which deals with escapement of income tax is in the following terms :

"If for any reason any agricultural income chargeable to agricultural income tax has escaped assessment for any financial year, or has been assessed at too low a rate (or has been the subject of undue relief under this Act), the Agricultural income tax Officer may, at any time within three years of the end of that financial year, serve on the person liable to pay agricultural income tax on such agricultural income or, in the case of a company on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 19, and may proceed to assess or reassess such income, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that section."

6. Counsel for the appellant has raised two principal contentions before us. The first is that a notice had been served u/s 19(2) of the Act on the respondents and therefore the reasoning of the High Court was based on an erroneous assumption that no such notice had been served. According to him the return filed in the High Court it had been clearly asserted that such notices had been issued followed by reminders. No counter affidavit, however, had been filed by the respondents in the High Court contradicting the statement in the return. Counsel further points out that the statement in the judgment of the High Court "but it is not disputed that the notices u/s 19(2) of the Act had not, in fact, been served on the petitioner", is based on some misunderstanding or misapprehension. The counsel for the appellant did not make any concession on the point before the High Court and at the earliest opportunity, in the petition which was filed for leave under article 133 of the Constitution, this matter was raised and the same assertions which were made in the return were reiterated. It seems to us that it is futile to go into this question because (a) it is substantially a question of fact and (b) the present appeal can be decided on another ground which arises out of the second contention raised before us. On the admitted fact, that a general notice u/s 19(1) was published and that a return was filed by the respondents in respect of each of the two assessment years in question it is not possible to see how section 30 would become applicable at all. Sub-section (3) of section 19 says in categorical terms that if any person has not furnished a return within the time allowed by or under sub-section (1) or sub-section (2) he may furnish a return at any time before the assessment is made and any return so made shall be deemed to be made in due time under the section. In The Commissioner of

Income Tax, Bombay Vs. Ranchhoddas Karsondas, Bombay, a public notice u/s 22(1) of the income tax Act was published on May 1, 1945. On January 5, 1950, the assessee submitted a voluntary return showing an income of Rs. 1,935 for the assessment year 1945-46 and added a footnote to his return that his wife had sold her old ornaments and deposited a sum of Rs. 59,026 with some syndicate in which he was a partner. The income tax Officer ignored the voluntary return and in February, 1950, issued a notice u/s 34(1) of that Act pursuant to which the assessee submitted a return in March, 1950. The income tax Officer made the assessment in February, 1951, including the sum of Rs. 59,026 in the total income of the assessee. The assessee contended that the assessment was invalid as it was completed more than four years after the end of the assessment year in violation of section 34(l)(b). The department contended that the voluntary return was no return as it did not disclose any taxable income and the assessment was valid under the proviso to section 34(3). It was held that the voluntary return filed by the assessee, even though it did not disclose any taxable income, was a good return. As such, no question arose u/s 34(1) of income escaping assessment and the income tax Officer was not justified in issuing a notice u/s 34(1). The assessment which was therefore made pursuant to the notice under that section was barred by time, having been made beyond the period prescribed. The principle which has been settled by this decision is that where a voluntary return has been filed pursuant to a general notice even after the expiry of the period mentioned in that notice, the income tax Officer must proceed to assess the income by taking up that return. He cannot ignore that return and serve on the assessee a notice under the provisions relating to escaped income which was section 34 in the income tax Act. This view also finds support from the decision of this court in Commissioner of Income Tax, Madras Vs. S. Raman Chettiar, in which it was laid down, inter alia, that section 22(3) of the income tax Act, 1922, permitted an assessee to furnish a return at any time before the assessment was made, namely before the time mentioned in section 34(3) of that Act. In the present case it is not disputed, and cannot indeed be disputed, that if the words "at any time" in sub-section (3) of section 19 of the Act has not to be limited to the year of assessment as has been contended by the learned counsel for the respondents, the present case would be governed by the principles laid down by this court in the above decisions. It has been urged that the words "at any time" should be given a limited meaning and should be confined to the year of assessment, namely, that the return should be made at any time within the year of assessment and not later in which case sub-section (3) would not apply and the provision of section 30 would be at once attracted. This contention has only to be stated to be rejected. In the first place, if sub-section (3) has to be read in the manner suggested, it would become ambiguous and almost unintelligible. Secondly, according to the ordinary canons of interpretation, the words employed must be given their proper and plain meaning. Moreover, section 19 is in pari materia with section 22 of the income tax Act and the law which has been laid down by this court, while interpreting the provisions of that section, must govern

the construction of provisions of section 19 as well. The High Court, in giving the reasons on which the petitions were allowed, was not alive to all these matters and the view taken by it is clearly unsustainable.

7. The appeals are consequently allowed and the writ petitions are directed to be dismissed. The appellants will be entitled to one set of costs.

8. Appeals allowed.