
(1963) 11 AHC CK 0002

In the Allahabad High Court

Case No : Miscellaneous Case No. 41 of 1956

STATE OF UTTAR PRADESH

APPELLANT

Vs

YASHPAL SINGH.

RESPONDENT

Date of Decision : 01-11-1963

Acts Referred:

Uttar Pradesh Agricultural Income Tax Act, 1948 — Section 24(1)

Citation : (1965) 56 ITR 332

Hon'ble Judges : M. C. Desai, C.J

Bench : Division Bench

Judgement

M. C. DESAI C.J. - This is a statement of a case referred by the Revision Board u/s 24(1) of the U. P. Agricultural Income Tax Act inviting this courts answer to the following question :

"An assessee files a return showing his income from and the expenses of cultivation u/s 6(2)(b) of the Agricultural Income Tax Act. His returns are rejected and the income is determined to be much higher than what has been shown in the returns. Is it open to the assessing authority in view of the increase in the income to allow a larger amount by way of expenses than what was shown in the returns or is the statement made in the returns binding on the assessee ?"

The assessee, who has elected in favour of the mode mentioned in section 6(2)(b) for computing his total agricultural income, submitted a return in the prescribed form showing his income and expenses. According to the return his gross income was Rs. 10,000 and odd and his expenses of cultivation were Rs. 5,000 and odd. The assessing authority did not accept the figures of income given by the assessee in his return and estimated his income from cultivation at Rs. 16,000 and odd and his expenses at Rs. 8,000 and odd, taking them to be about half of the income. Since the estimated expenses were more than the expenses mentioned by the assessee in his return, the State applied to the Revision Board in revision for reference of the above-mentioned question to this court for its answer. The Board in the statement of the case has expressed an

opinion that the admission contained in the return that the expenses of cultivation were Rs. 5,000 and odd was not conclusive, that it could be proved to be untrue or mistaken or made for a fraudulent purpose and in that event it would lose all evidentiary value, that an admission must be taken as a whole and not accepted in part and rejected in part, that if the actual income is found to be larger there is no reason for saying that the actual expenses are also not larger than what is shown in the return and that when a return is rejected, the assessing authority has to make the assessment on the basis of its best judgment, i.e., the expenses also have to be estimated according to its best judgment.

Agricultural Income Tax is to be charged "on the total agricultural income" of every person : see section 3. "Total agricultural income" means the aggregate of the amounts of agricultural income of the different classes specified in section 5 and 6 determined respectively in the manner laid down in the said sections and includes all receipts of the description specified in clauses (a), (b) and (c) of sub-section (1) of section 2 : see section 2(16). "Agricultural income" means rent or revenue derived from land and income derived from land by agriculture, sale of produce, etc. : vide section 2(1). Section 5 lays down that agricultural income from rent or revenue is the sum realized on account of rent and revenue after making certain specified deductions. Agricultural income derived by agriculture and sale of produce is to be computed in either of the two alternative methods mentioned in section 6; one method is to multiply the rent by a certain multiple and make deductions on account of agricultural calamities, and the other method is to take the gross proceeds of sale of all the produce of the land and make from them certain deductions on account of expenses, revenue paid, etc. It is the second alternative method that has been opted for by the assessee in this case. Section 6(3) lays down that "if the assessing authority is satisfied that the proceeds of sale have been correctly shown by the assessee or that any portion of the produce has not actually been sold, he may assess the value of the produce...by determining, to the best of his judgment, the amount of produce and the market value thereof." The procedure for assessment is laid down in Chapter IV of the Act. Section 15(3) requires an assessing authority to give a notice to a person liable to pay agricultural Income Tax requiring him to furnish "a return in the prescribed form...setting forth (along with such other particulars as may be provided for in the notice) his total agricultural income." Section 16 is as follows :

"16. (1) If the assessing authority is satisfied that a return made u/s 15 is correct and complete, he shall assess the total agricultural income...

(2) If the assessing authority has reason to believe that a return made u/s 15 is incorrect or incomplete, he shall serve on the person...a notice requiring him on the date to be specified therein either to attend at the office of the assessing authority or to produce...any evidence in support of the return.

(3) On the day specified in the notice...the assessing authority after seeing such

evidence as such person may produce and such other evidence as the assessing authority may require on specified points, shall...assess the total agricultural income of the assessee and determine the sum payable by him on such assessment.

(4) If the...person fails to make a return under sub-section (2) or (3) of section 15...or, having made the return, fails to comply with all the terms of the notice issued under sub-section (2) of this section or to produce any evidence required under sub-section (3), the assessing authority shall make the assessment to the best of his judgment...notwithstanding any option exercised under sub-section (1) of section 6."

The prescribed form of return contains a column for the expenses to be deducted in computing the agricultural income.

The statement does not show what happened after the assessing authority rejected the assessee's return, whether he served upon him a notice u/s 16(2), as he was bound to do, whether the notice required him only to attend his office on a certain date or to produce evidence in support of his return and whether on the day specified in the notice the assessee attended or produced any evidence or not. Sub-section (4) applies when the assessee fails to comply with all the terms of the notice, i.e., does not attend or does not produce any evidence in support of his return; in such a case, there being no evidence, the assessing authority has to estimate the total agricultural income to the best of his judgment. He has to make a guess because the return has been rejected and there is no evidence or materials from which the total agricultural income can be determined. Sub-section (3) applies when the assessee produces evidence; in such a case the assessing authority is required to determine the total agricultural income and the tax payable on it. There is no question of best judgment or guess here, because evidence or materials have been produced and the assessing authority has to determine the total agricultural income on the basis of the evidence or materials. The total agricultural income that has to be estimated or determined under sub-section (4) or (3) is the gross income less by the deductions permissible under the Act and the Rules. Therefore, estimating or determining the total agricultural income consists of estimating or determining the gross income and estimating or determining the deductions to be made from the gross income. Whatever is the method employed for arriving at the figure of gross income is also the method to be employed for arriving at the figure of deductions to be made. If the gross income is to be estimated according to the best judgment the expenses to be deducted are also to be estimated according to the best judgment. If the gross income is to be determined on the basis of evidence the expenses to be deducted are also to be determined on the basis of evidence. In other words, if the gross income is estimated by guess, it is open to the assessing authority to estimate the expenses also by guess and he cannot be said to be bound by what is stated in the return. In guessing the amount of expenses it is at his discretion whether to consider the amount of expenses

mentioned in the return or not; neither is he bound to accept the amount as correct nor can he be prevented from basing his estimate on it. He has to estimate the amount according to his best judgment and it is for him to judge what is the best way of estimating the amount. His judgment in this respect cannot be fettered by any rules. What is the gross income, what is the amount of the permissible deductions and what is the total agricultural income are all questions of fact and no question of law can be said to arise out of a finding of an assessing authority that according to his best judgment a particular amount is the amount of the gross income, another particular amount is the amount of the permissible deductions and that the former less by the latter amount is the total agricultural income.

Sri Raja Ram contended that it is not open to an assessing authority to allow greater deduction from the gross income than the deduction claimed in the return, but no provision in the Act or in the Rules can be cited in support of the contention. There is no provision laying down that in no circumstance can an assessing authority allow greater deduction than what is claimed in the return. As we said earlier, the amount of deductions to be allowed is to be determined or estimated in exactly the same way as the amount of the gross income. When the return has been rejected, there can be no question of its being binding upon the assessing authority; he cannot be bound by what he has validly rejected.

It is futile to invoke the doctrine of estoppel; an assessee is certainly not estopped by his return from claiming a greater deduction. A party is estopped by his statement only when acting on the statement the other party has altered his position to his detriment. Here, the assessing authority did not alter his position to his detriment and did not act on the statement contained in the return that a certain amount was to be deducted from the gross income.

A statement in a return that a certain amount is the amount of the deduction to be made from the gross income amounts to a statement that no more is to be deducted. Such a statement amounts to an admission on the part of the assessee. The Evidence Act is not applicable in assessment proceedings under the Agricultural Income Tax Act, but, even if it were applicable, an admission is only relevant evidence and is not conclusive evidence and can be shown to be wrong. An admission is to be considered along with other evidence and it is open to the judge to disregard it and to come to a finding contrary to the admitted fact. No illegality is committed by him if he disbelieves an admission and refuses to act on it. Therefore, even if the assessment proceedings were governed by the Evidence Act, the assessing authority did not act illegally in allowing a greater deduction contrary to the assessee's admission.

A good deal of stress was laid on the fact that rule 13 lays down that a deduction permissible u/s 6(2)(b)(iv) is in respect of "all amounts actually paid by the assessee."

"Actually paid", means "paid in fact" and not that the payment is proved by

direct or indirect evidence. The word "actually" qualifies the verb "paid" and has no relevancy to the question of proof of payment. It is an amount actually paid within the meaning of rule 13 that is determined by an assessing authority u/s 16(3) or is estimated by him u/s 16(4). It would be fallacious to say that because he estimates the amount according to the best of his judgment the amount is not actually paid. An amount actually paid can be proved by direct evidence as well as by indirect evidence and can also be estimated by the best of ones judgment.

It is not the law that no deduction can be allowed from the gross income without proof, whether direct or indirect. When there is a dispute, the onus does lie upon the assessee to prove the amount of the deductions claimed by him, but no question of onus arises when the assessing authority allows a deduction to him and he does not claim any greater deduction. As we explained earlier, determining or estimating the total agricultural income under sub-section (3) or under sub-section (4) of section 16 involves the determining or estimating the amount of the deductions; it is, therefore, permissible for an assessing authority to estimate the amount of deductions according to his best judgment, i.e., to allow a deduction without any proof having been offered by the assessee. He is not in a worse position than if he had not filed a return at all. It was not disputed before us that, if no return is filed, an assessing authority has still to estimate the amount of deductions to be allowed when proceeding under sub-section (4) of section 16. Naturally he would allow deductions according to the best of his judgment; he would allow what he considers reasonable expenses of cultivation. The filing of a return, which is rejected by him, does not deprive him of this power and does not put the assessee in a worse position.

It does not appear from the statement that the assessing authority rejected only the income part of the return and accepted the deductions part of it. He seems to have rejected the return, i.e., the whole of the return. It is, therefore, unnecessary for us to consider what would have happened if he had rejected only the income part or whether he could reject the return in part and accept in part.

It may seem ridiculous that an assessing authority deducts from the gross income a larger sum than what is claimed by the assessee on account of his expenses, but one must have regard to the fact that when an assessee grossly under-estimates his income in the return, he has to under-estimate his expenses lest the amount of the actual expenses should appear to be ridiculously high in relation to the returned income. When an assessee grossly under-estimates his income he has to reduce his expenses also; otherwise he runs a great risk of his income figure being disbelieved on the ground that it is incompatible with the expense figure. It is, therefore, not so ridiculous for an assessing authority to allow a greater deduction than what is claimed by the assessee.

The view that we take does not militate against what this court decided in *Hanuman Glass Works, Ferozabad v. Commissioner of Income Tax*. It was a case

governed by the Indian Income Tax Act, the provisions of which differ materially from those of the U. P. Agricultural Income Tax Act in regard to assessment and deductions. In that case there was no question of rejection of the return and the assessing authority acted u/s 13 because the method of accounting had not been regularly employed and the assessing authority could not properly deduce income, profits and gains from the accounts. The assessee had claimed a deduction on account of remuneration paid to two employees and that claim was rejected by the Income Tax authorities for the reason that, upon the evidence produced by the assessee, it could not be held that remuneration to the employees was to be paid not on the actual net profits as worked out by the assessee itself but on the estimate of profits made by the Income Tax authorities. This court held that the question whether the commission was to be worked out on the actual profit or on the estimated profits was a question of fact and it appeared that the assessee had produced no evidence to prove that the remuneration was to be a percentage of the estimated profits and not of the actual profits. Further, the amounts claimed as deduction were actually entered in the account books as payments which had actually been made to the employees, and there was no evidence that any greater amount than that recorded had been paid. It must be remembered that the book version of the assessee regarding its profits alone was rejected.

Our answer to the question is :

"It is open to an assessing authority acting u/s 16(4) of the Act to allow a larger deduction from the gross income than what is claimed in the return that is rejected and he is not bound by the deduction claimed in the return."

A copy of this judgment shall be sent to the Revision Board under the seal of the court and the signature of the Registrar as required by section 24(7) of the U. P. Agricultural Income Tax Act.

The opposite party shall get his costs of this reference, which we assess at Rs. 100, from the State. Counsels fee is assessed at Rs. 100.

Question answered in the affirmative.