

(1959) 08 AHC CK 0037
In the Allahabad High Court
Case No : Civ. Ref. No. 6 of 1957

The Lakshmi Sugar and Oil Mills Ltd.

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 28-08-1959

Acts Referred:

Uttar Pradesh Agricultural Income Tax Act, 1948 — Section 24

Citation : (1960) 30 AWR 89

Hon'ble Judges : V.D. Bhargava, J; R.A. Misra, J

Bench : Division Bench

Advocate : S.C. Das, for the Appellant; S.C. Kesri Bir Pd., for the Respondent

Final Decision : Dismissed

Judgement

V.D. Bhargava, J.—This is a reference u/s 24 of the U.P. Agricultural Income Tax Act. This Court had directed the Revision Board to state a case on the following question:

Whether the Board has any power to disallow any part of the amount shown by the Company in its return of income, in respect of salaries of its staff; if so, did the Board have any material upon which to hold that the salaries of the staff paid in the previous year amounted to Rs. 7,488/15/0?" The facts of the case appear to be that the Assessee is a joint stock company run under the name and style of "The Lakshmi Sugar and Oil Mills Ltd., Hardoi," and the dispute relates to the assessment year 1358F. The return was submitted by the company and a notice u/s 15(3) of the Act was issued and served on the manager of the company and in compliance with that notice accounts were furnished by the company on 12-9-1950. According to the return the income mentioned therein was Rs. 27,542/9/0 and the deductions claimed under different heads amounted to a sum of Rs. 29,796/12/0. So far as the income was concerned, it was not accepted by the assessing officer on the ground that according to the report of the patwari and according to Government calculations the income should have been Rs. 34,516/3/3 and since no details of the income had been supplied,

therefore, the assessing officer treated the income as Rs. 34,516/3/3.

2. As regards the deductions, the assessing officer accepted practically all the deductions except a few and allowed a total deduction of Rs. 26,630/12/ and the assessment was made on a net income of Rs. 7,885/7/3.

3. There was a revision filed by the Assessee u/s 22 of the Act and also an application in revision on behalf of the State. The application in revision of the Assessee was dismissed but the revision of the State was partly allowed. The assessing officer had allowed a deduction of a sum of Rs. 11,488/15/0 on account of the staff salary. This amount was reduced by the Board in the revision by the State to a sum of Rs. 7,48/15/0. The order by which this amount was reduced was in the following words:

We, however, find ourselves unable to uphold the deduction of Rs. 11,488/15/0 allowed on account of staff salaries. The area of the farm is not more than 1000 acres. In the return the details of the staff salaries were not given. There were no accounts in respect of income before the assessing authority and we fail to understand how he accepted the amount alleged to have been incurred on account of salaries when the income as shown in the return was Rs. 27,542/9/0 only. We reduce the amount of salaries of staff to Rs. 7,488/15/-.

4. Learned Counsel for the Applicant has argued that this cut in the deduction was not based on any evidence or material before the Board and it was not within the jurisdiction of the Board to reduce the amount in such an arbitrary manner and he placed reliance on *Dhakeswari Cotton Mills Ltd. v. Commissioner of Income Tax West Bengal* AIR 1955 (SC) 65. It was contended by learned Counsel for the Appellant in the Supreme Court that the returns had been submitted by the company of that case but the assessing officer had increased the income without any material or evidence being before him. The reasons given for the increase were in the following words:

From the point of view of profits, 1943 was a very good year, if not the best, for all cotton mills. Expenses on cotton and fuel show that production was undoubtedly higher whereas it is found that the gross profit by this company is low. I conclude that full amount of sales have not been accounted for. It is expected that actually the rate of gross profits should have been higher this year. In view of the higher costs of establishment, I take it that the rate of about 40 per cent i.e. near about the rate disclosed in 1942 account should have been maintained. I add back the Rs. 36 lakhs for unaccounted sales.

5. Against this order of the income tax Officer there was an appeal and the matter went to the appellate court. On appeal, this order was upheld by the Asstt. Commr. The appellate tribunal when the appeal was before it requested the departmental representative to produce for extra examination of the income tax Appellate Tribunal the gross profit rates shown or assessed in the cases of "other similar cotton mills". The Assessee was also similarly asked to produce within three or four days time information regarding the gross profit rates shown

or assessed by other similar cotton mills. The income tax authorities produced certain data about which no information was given to the Assessee and when the Assessee's counsel had gone to give the details, the Tribunal refused to accept them and the counsel was told that it was not fair to the other side to take notice of any additional evidence or record at that stage. Considering all the facts the Appellate Tribunal came to the following conclusions:

We have, however, considered all facts relevant to this case and are of the opinion that the addition to the sales should be reduced from Rs. 36 lakhs made by the income tax Officer to Rs. 16 lakhs which would reduce the gross profit rate to about 35 per cent.

6. The matter came up before the High Court but the High Court refused to interfere and thereafter there was a special appeal to the Supreme Court. Their Lordships of the Supreme Court referred to a Full Bench case of the Lahore High Court in AIR 1944 353 (Lahore) and while dealing with that case their Lordships observed:

...that while proceeding under Sub-section (3) of Section 23 the income tax Officer, though not bound to rely on evidence produced by the Assessee as he considers to be false, yet if he proposes to make an estimate in disregard of that evidence, he should in fairness disclose to the Assessee the material on which he is going to found that estimate; and that in that case he proposes to use against the Assessee the result of any private enquiries made by him, he must communicate to the Assessee the substance of the information so proposed to be utilised to such an extent as to put the Assessee in possession of full particulars of the case he is expected to meet and that he should further give him ample opportunity to meet it.

and ultimately they held in that case:

We are in entire agreement with the learned Solicitor-General when he says that the income tax Officer is not fettered by technical rules of evidence and pleadings and that he is entitled to act on material which may not be accepted as evidence in a court of law but there the agreements because it is equally clear in making the assessment under Sub-section (3) of Section 23 of the Act, the Income tax Officer is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. There must be something more than bare suspicion to support the assessment u/s 23(3).

7. They further held:

The rule of law on this subject has, in our opinion, been fairly and rightly stated by the Lahore High Court in the case of AIR 1944 353 (Lahore) . They further based their judgment on the principle of fundamental rules of justice. It was observed:

In this case we are of the opinion that the Tribunal violated certain fundamental rules of justice in reaching its conclusions. Firstly, it did not disclose to the

Assessee what information had been supplied to it by the departmental representative. Next, it did not give any opportunity to the company to rebut the material furnished to it by him and lastly, it declined to take all the material that the Assessee wanted to produce in support of its cases.

8. There is also a case of this Court in *Gopinath Naik v. Commissioner of income tax* ILR 58 All. 200. There also a question arose about the scope and powers of the income tax Officer u/s 23(3) and there being a difference of opinion between Hon. Niamatulla, J. and Hon. Bajpai, J., the question was referred to Hon. Sulaiman, C.J., who agreed with the view of Hon. Niamatulla, J. In that case they have pointed out the difference between Section 25(3) and Section 23(4) i.e. and assessment which is made after the return has been filed and accounts are not accepted on the one hand and on the other the assessment on the basis of the best judgment. It was held:

There is an essential difference between cases in which action is taken u/s 23(3) and those u/s 23(4). Where the income tax Officer acts u/s 23(3) the assessment must be based on "evidence". If the evidence adduced by the Assessee is not accepted, or if the Assessee does not produce any evidence the Income tax Officer must have recourse to other evidence on which to base his assessment; and for this purpose he has ample powers u/s 37 to call for evidence. The word used is "evidence" and not some other word like "information." The evidence may not be such as fulfils all the technical requirements as to admissibility, relevancy, etc., of the Evidence Act, but mere conjecture, surmise or assumption of a fact does not amount to evidence within the meaning of Section 23(3) Prima Facie the evidence should be taken in the presence of the Assessee or within his knowledge in order that he may be able to meet such evidence. The result of private inquiries made in the absence of and without notice to the Assessee is certainly not evidence within the meaning of Section 23(3).

9. Thereafter they discussed the scope of Section 23(4).

10. The present case under the Agricultural income tax Act is analogous to the powers which are to be exercised by the assessing authority or the appellate authority u/s 23(3) of the income tax Act.

11. In the case of *Dhakeshwar Cotton Mills Ltd. v. Commissioner of income tax* AIR 1955 (SC) 65 there were certain reasons given by the assessing officer for increasing the income but in the present case we find that practically no reasons at all have been given. There is no mention of any material information or evidence on the basis of which any modification was sought in the deduction. In the circumstances, it was not within the jurisdiction of the Board to arbitrarily reduce the amount from Rs. 11,438/15/ to Rs. 7488/15/- it was a pure guess or surmise that since the farm was of 1,000 acres therefore the expenses should be Rs. 7488/15/. Notice u/s 15(3) had been served on the Assessee and in pursuance thereof accounts were furnished. There is mention of the accounts

having been before the assessing officer, though not specifically whether the details of the salaries paid to the staff were before him or not, but if the accounts were before the assessing officer, the details must have been before him and if he was satisfied that the amount claimed by the Assessee was the correct amount, it was not within the jurisdiction of the Board to vary that amount without any evidence or material being before it.

12. We would therefore, answer the question as follows:

There being no material or evidence before the Board, the Board had no power or jurisdiction to disallow any part of the deductions claimed by the company.

13. The Assessee is entitled to his costs which we assess at Rs. 100/-. We also assess the costs of the State at Rs. 100/-.