

ADDITIONAL COMMISSIONER OF INCOME TAX,
GUJARAT, I, AHMEDABAD

v.

M/S. GURJARGRAVURES PRIVATE LIMITED

November 8, 1977

[A. C. GUPTA AND P. N. SHINGHAL JJ.]

Income-tax Act, 1961, s.251(1)(a) equivalent to s.31(3) of Act of 1922—Powers of the Appellate Assistant Commissioner in disposing of an appeal—Scope of.

The respondent assessee is a Company carrying on its business of copper engraving and manufacturing labels. For the assessment year 1963-64, the assessee did not ask for any exemption in respect of a portion of its profits under section 84 of the Income-tax Act, though in the subsequent years the assessee did ask and the Income-tax Officer accepted it. Dismissing the appeal against the orders of the assessments for the year 1963-64, the Appellate Assistant Commissioner, therefore, held that the question of error on the part of the Income-tax Officer did not arise as no claim for exemption under section 84, which was made for the first time before him, had been made before the Income-tax Officer. The Tribunal, on further appeal, took a different view and held that "since the entire assessment was open before the Appellate Assistant Commissioner" there was no "reason for not entertaining the claim of the assessee." The Tribunal directed the Income-tax Officer to allow appropriate relief under section 84 of the Act. On a reference made at the instance of Commissioner of Income-tax, the Gujarat High Court answered it against the revenue and in favour of the assessee.

Allowing the appeal the Court,

HELD : (1) 'Consideration' does not mean incidental or collateral examination of any matter by the Income-tax Officer in the process of assessment. There must be something in the assessment order to show that the Income-tax Officer applied his mind to the particular subject matter or the particular source of income with a view to its taxability or its non-taxability. If an item of income noticed by the Income-tax Officer, but not examined by him from the point of view of its taxability or non-taxability cannot be said to have been considered by him, the Income-tax Officer examining a portion of the profits from the point of view of its taxability should not be deemed to have also considered the question of its non-taxability. [172 F-G]

Commissioner of Income-tax (Central), Calcutta v. Rai Bahadur Hardutroy Motilal Chamaria (1967) 66 I.T.R. 443 applied.

Commissioner of Income-tax v. Shapoorji Pullonji Mistry (1962) 44 I.T.R. 891; *Narrondas Manordass v. Commissioner of Income-tax* (1957) 31 I.T.R. 909. referred to.

(2) In the instant case; (a) on the facts of the case, the question referred to the High Court should have been answered in the negative; (b) Neither any claim was made by the assessee before the Income-tax Officer nor was there any material on record supporting such a claim; (c) in the statement of the case, drawn up by the Tribunal there is no basis for an assumption by the High Court that a portion of the profit in the relevant assessment year was exempt from tax under section 84 and that the assessee failed to claim an exemption to which he was admittedly entitled. From that admission that in the years subsequent to the assessment year in question, a relief under section 84 had been allowed to the assessee, it cannot be presumed that the prescribed conditions justifying a claim for exemption under the section were also fulfilled in an earlier year.

[172 A-C, G-H 173 A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1655 of 1972.

A From the Judgment and Order dated 13th/14th September, 1971 of the Gujarat High Court in Income Tax Reference No. 2/70.

B. B. Ahuja and R. N. Sachthey for the Appellant.

G. L. Sanghi, Ravinder Narain, D. N. Mishra, J. B. Dadachanji and O. C. Mathur for the Respondent.

B The Judgment of the Court was delivered by

GUPTA, J.—This appeal by the Additional Commissioner of Income-tax, Gujarat, I, Ahmedabad, on a certificate under section 261 of the Income-tax Act, 1961 granted by the Gujarat High Court, raises a question relating to the powers of the Appellate Assistant Commissioner in disposing of an appeal.

C The respondent, a company carrying on the business of copper engraving and manufacturing of lables, appealed to the Appellate Assistant Commissioner against an order of assessment made under section 143(3) of the Income-Tax Act, 1961, and one of the grounds of appeal was that the Income-tax officer had erred in not giving the assessee any benefit under section 84 of the Act. The assessment year was 1963-64. No claim however had been made before the D Income-tax officer when he completed the assessment that the assessee was entitled to an exemption in respect of a portion of its profits under section 84. The Appellate Assistant Commissioner dismissed the appeal on the ground that the question of error on the part of the Income-tax officer did not arise as no claim for exemption under section 84 had been made before him. The Tribunal took a different E view and held that “since the entire assessment was open before the Appellate Assistant Commissioner” there was no “reason for not entertaining the claim of the assessee”. The Tribunal accordingly directed the Income-tax officer to allow appropriate relief under section 84 of the Act. It is on record that in the subsequent years the assessee asked for exemption under section 84 and the Income-tax officer accepted the claim. On these facts the Tribunal referred the following question F to the High Court at the instance of the Commissioner of Income-tax :

“Whether on the facts and in the circumstances of the case it was competent for the Tribunal to hold that the Appellate Assistant Commissioner should have entertained the question of relief under section 84, and to direct the Income-tax officer to allow necessary relief?”

G The High Court answered the question in the affirmative. The correctness of this decision is questioned before us by the Revenue.

H Referring to a number of authorities including the decision of this Court in *Commissioner of Income-Tax v. Shapoorji Pallonji Mistry*,⁽¹⁾ and the case of *Narrondas Manordass v. Commissioner of Income-Tax*,⁽²⁾ decided by the Bombay High Court, the High Court found it well settled that the various items of income or deductions which have

(1) (1962) 44 I.T.R. 891.

(2) (1957) 31 I.T.R. 909.

been subjected to the process of assessment constitute the subject matter of assessment, and that if there is any item of income or claim for deduction which is not processed by the Income-tax officer, it would not be a part of the subject matter of assessment and the Appellate Assistant Commissioner would not have the power to consider and process it in an appeal preferred by the assessee. Both the decisions, *Commissioner of Income-Tax v. Shapoorji Pallonji Mistry* (supra) and *Narrondas Manordass v. Commissioner of Income-Tax* (supra), are based on section 31(3) of the Indian Income-Tax Act, 1922 defining the powers of the Appellate Assistant Commissioner in disposing of an appeal. Section 251(1)(a) of the Income-Tax Act, 1961 which is the provision applicable to the case before us, is, as the High Court has noticed, almost similar in terms to section 31(3) of the Act of 1922.

Having noticed the established position in law, the High Court proceeded to consider the contention of the Revenue which was that no claim for exemption having been made by the assessee before the Income-tax officer, it was not considered or processed by him and the claim could not therefore be said to be the subject matter of assessment. It appears to have been argued further that merely because a particular item of income was taxed, it did not carry with it a decision that it was not exempt from tax and the Appellate Assistant Commissioner had accordingly no power to interfere by considering and allowing such claim for exemption. The High Court rejected the contention on the following reasoning :

“Here, in the present case the Income-tax Officer subjected to tax a certain portion of the profit which was exempt from tax under section 84. It may be that he brought it to tax because no claim for exemption was made before him by the assessee, but the fact remains that it was subjected to the process of assessment and it clearly and indubitably formed the subject matter of assessment. It is true that no claim for exemption having been made by the assessee before the Income-tax Officer, there was no decision of the Income-tax Officer, express or implied, holding that a certain portion of profit of assessee was not exempt from under section 84. But in order that the Appellate Assistant Commissioner should be entitled to interfere in appeal on a particular point, it is not necessary that there should be a decision of the point given by the Income-tax Officer. It is enough if the particular item of income in relation to which the point is to be raised has come in for consideration by the Income-tax Officer and has been subjected by him to the process of assessment.”

We do not find it possible to agree with the High Court that if an item of income is taxed, the question of its non-taxability should be taken to have been considered by the Income-tax officer though no such claim was made before him by the assessee. This is directly opposed to the view taken by this Court in *Commissioner of Income-tax*

- A** (*Central*), *Calcutta v. Bahadur Hardutroy Motilal Chamaria*.⁽¹⁾ Before we refer to this case in more detail, we think it necessary to point out a mistaken assumption appearing in the judgment under appeal. The High Court assumed that a portion of the profit in the relevant assessment year was exempt from tax under section 84, only the assessee failed to claim an exemption. In narrating the facts of the case the judgment records that the assessee was "admittedly entitled to exemption".
- B** Again, in the extract quoted above, it appears to have been assumed that a certain portion of the profit was exempt from tax under section 84. We find no basis for the assumption in the statement of the case drawn up by the Tribunal. What appears to have been admitted was that in the years subsequent to the assessment year in question, relief under section 84 had been allowed to the assessee. But from this it cannot be assumed that the prescribed conditions justifying a claim for exemption under the section were also fulfilled in an earlier year.
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- Turning now to the decision in *Commissioner of Income-tax v. Rai Bahadur Hardutroy Motilal Chamaria* (supra), this was a case of enhancement of the assessment by the Appellate Assistant Commissioner under Section 31(3) of the Indian Income-Tax Act, 1922. This Court held on a consideration of the earlier authorities including *Commissioner of Income-tax v. Shapoorji Pallonji Mistry* and *Narrondas Manohardass v. Commissioner of Income-Tax* (supra), that the Appellate Assistant Commissioner had no jurisdiction under section 31(3) "to assess a source of income which has not been processed by the Income-tax Officer" and that "it is not open to the Appellate Assistant Commissioner to travel outside the record i.e. the return made by the assessee or the assessment order of the Income-tax Officer with a view to find out new sources of income and the power of enhancement under section 31(3) of the Act is restricted to the sources of income which have been the subject matter of consideration by the Income-tax Officer from the point of view of taxability". What 'consideration' by the Income-tax officer means in this context was also explained: ". . . . 'consideration' does not mean incidental or collateral examination of any matter by the Income-tax officer in the process of assessment. There must be something in the assessment order to show that the Income-tax officer applied his mind to the particular subject matter or the particular source of income with a view to its taxability or to its non-taxability and not to any incidental connection". If, as held in this case, an item of income noticed by the Income-tax officer but not examined by him from the point of view of its taxability or non-taxability cannot be said to have been considered by him, it is not possible to hold that the Income-tax officer examining a portion of the profits from the point of view of its taxability only, should be deemed to have also considered the question of its non-taxability. As we have pointed out earlier, the statement of case drawn up by the Tribunal does not mention that there was any material on record to sustain the claim for exemption which was made for the first time before the Appellate Assistant Commissioner. We are not here called
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(1) (1967) 66 I.T.R. 443.

upon to consider a case where the assessee failed to make a claim though there was evidence on record to support it, or a case where a claim was made but no evidence or insufficient evidence was adduced in support. In the present case neither any claim was made before the Income-tax officer, nor was there any material on record supporting such a claim. We therefore hold that on the facts of this case, the question referred to the High Court should have been answered in the negative.

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The appeal is allowed but in the circumstances of the case we make no order as to costs.

S.R.

Appeal allowed.