CHHATHU RAM AND ORS. ETC. ETC. A

v.

COMMISSIONER OF INCOME TAX, BIHAR, PATNA AND ORS.

MARCH 3, 1993

[B.P. JEEVAN REDDY AND N. VENKATACHALA, JJ.] B

Indian Income Tax Act, 1922:

Sections 34(1A), (1B), (1D), 35(6)—Settlement—Assessment years 1940-41 to 1947-48—Offer of settlement of escaped income—Order accepting settlement passed—Subsequent appellate order from excess profits tax assessment passed holding no excess profit-tax was leviable in respect of assessment year 1942- 43—Rectification withdrawing deduction of excess profits tax allowed earlier—Whether barred by settlement. C

The appellants-assessees were assessed as individuals under Section 23(3) of the Indian Income Tax Act, 1922, for the assessment year 1942-43. The incomes assessed included the cash credits in their personal accounts in the books of a company. On the basis of the said incomes, an assessment order was made under the provisions of the Excess Profits Tax Act, and the tax so determined was deducted in computing the total income assessable under the Income Tax Act. D E

While the assessees' appeals against the inclusion of the cash credits were pending before the Appellate Assistant Commissioner, notices were served on the assessees under Section 34(1A) of the Act for the assessment years 1940-41 to 1947-48. The assessees applied to the Central Board of Revenue for settlement under sub-section (1B) and this was accepted. Subsequently the appeals were dismissed by the Appellate Assistant Commissioner. F

Thereafter, consequent on the dismissal of the Revenue's appeals against the Appellate Assistant Commissioner's order allowing the assessees' appeals under the E.P.T. Act and the Tribunal's order becoming final, the Income Tax Officer, passed order under Section 35(6) rectifying the assessment order under the Income Tax Act, relating to assessment year 1942-43, and withdrew the deduction allowed earlier by him on account of the Excess Profit Tax. G H

A On appeal by the assessees, the Appellate Assistant Commissioner held that in view of the settlement, it was not open either to the Revenue or to the assessee to disturb the finality of the tax liability. However, the Tribunal held that the orders of rectification purported to have been passed under Section 155(3) of the Income Tax Act, 1961 were really orders passed under Section 35(6) of the 1922 Act and hence no appeal could lay against such order and that the Appellate Assistant Commissioner's orders were without jurisdiction.

The assessees' applications under Section 256(1) of the Income Tax Act, 1961, were treated by the Tribunal as applications under Section 66(1) of the 1922 Act, and dismissed as barred by limitation.

The assessees' writ petitions for quashing not only the orders of the Tribunal but also the rectification made by the Income Tax Officer were dismissed by the High Court.

D Dismissing the appeals, preferred by the assessees, this Court,

HELD : 1.1. The High Court was right in holding that the settlement order did not preclude the Income Tax Officer from passing the order of rectification. [184D]

E 1.2. The deduction allowed in the original assessment proceedings on account of the Excess Profits Tax was not the subject matter of either the notice issued under sub-section (1A) of Section 34 or of the order of settlement made under sub-section (1B) of the Indian Income Tax Act, 1922. The appeals under the E.P.T. Act were allowed by the A.A.C. subF sequent to the acceptance of settlement under Section 34(1B). The question of withdrawing the deduction granted earlier on account of the Excess Profits Tax arose only after the Appellate Assistant Commissioner allowed the appeals preferred by the assessee under the E.P.T. Act, by virtue of which no Excess Profits Tax was payable by the assessees. In these circumstances, the bar contained in sub-section (1D) of Section 34 does not G come into play. Once the liability of the assessees under Excess Profits Tax Act was held to be nil, the deduction given earlier had to be withdrawn and it was accordingly withdrawn under Section 35(6) of the Act. [186B-C]

1.3. In these circumstances, it is not necessary to decide whether no H appeal could lie from the order of rectification under Section 35(6) and

whether the Appellate Tribunal had no power to condone the delay in a reference application under Section 66(1). [186D] A

Sankappa & Ors. v. *Income-tax Officer, Central Circle II, Bangalore,* **68 I.T.R. 760, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1453-1454 of 1980. B

From the Judgment and Order dated 8.12.1978 of the Patna High Court in C.W.J.C. Nos. 174 & 179 of 1975.

WITH C

Civil Appeal Nos. 3928-3929 of 1991.

S.N. Misra, Manish Misra, D.P. Mukherjee and B.S. Gupta for the Appellant.

D

G.C. Sharma and B.S. Ahuja for the Respondents.

The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J.

E

IN CIVIL APPEAL NOS. 1453 AND 1454 OF 1980

These appeals are preferred against the judgment of the Patna High Court dismissing the writ petitions filed by the two assessees herein, Chhathu Ram and Darshan Ram. The assessment year concerned is 1942-43. Both of them were assessed in the status of individuals under Section F 23(3) of the Income Tax Act, 1922 by an order dated March 14, 1945. Chhathu Ram was assessed on a total income of Rs. 4,54,431 which included a sum of Rs. 1,92,000 being the cash credit in her personal account in the Books of M/s. Chhathu Ram Horilram Ltd. Darshan Ram was assessed on a total income of Rs. 4,12,576 which included a sum of Rs.1,52,000 being the cash credit in his personal account in the Books of G the aforesaid company. On the basis of the said income, an assessment was made on them under the provisions of the Excess Profits Tax Act. The Excess Profits Tax payable was determined at Rs. 97,000 and Rs. 53,620 respectively. As provided by Section 12(1) of the Excess Profits Tax Act, the tax payable thereunder was deducted in computing the total income H

A assessable under the Income-tax Act. Both the assessees filed appeals. The Appellate Assistant Commissioner confirmed the assessments except with respect to the aforesaid additions on account of cash credits. He remanded the matter to the Income-tax officer for further consideration. After the remand the Income-tax Officer passed fresh orders, again including the said amounts in the income of the respective assessees. Appeals were again preferred to the A.A.C.

B

While the appeals aforesaid were pending before the A.A.C., notices were served upon the assessees under Section 34(1A) of the 1922 Act for the assessment years 1940-41 to 1947-48. (Sub- sections (1A) to (1D) were C introduced in the year 1954). After receiving the said notices, both the assessees applied to the Central Board of Revenue for settlement under sub-section (1B) of Section 34. On the basis of said applications, orders were passed on August 20, 1960 accepting the settlement offered.

The appeals filed by the assessees (against the orders of the Income D Tax Officer adding the aforementioned cash credits in their income) were dismissed by the Appellate Assistant Commissioner. (It is not necessary to notice the reasons for his orders for the purpose of these appeals).

The assessees had also filed appeals under the E.P.T. Act. They were E allowed by the A.A.C. on October 20, 1967. The Revenue filed appeals before the Tribunal against the orders of the A.A.C. under E.P.T. Act. They were dismissed on November 30, 1970. The Tribunal's orders became final. In the light of these orders and purporting to give effect to them, the Income-tax Officer passed orders rectifying the assessment orders, made under the Income-tax Act, relating to the assessment year 1942-43. By these F rectification orders, the Income-tax Officer withdrew the deduction allowed earlier by him on account of the Excess Profits Tax. Against this order the assessee filed appeals which were allowed by the A.A.C. holding that in view of the settlement aforesaid, it is not open either to the Revenue or to the assessee to disturb the finality of the tax liability. The Revenue G went up in appeal to the Tribunal which set aside the orders of the A.A.C. The Tribunal held that the orders of rectification purporting to have been passed under Section 155(3) of the Income-tax Act were really orders passed under Section 35(6) of the 1922 Act and if so, no appeal la· against such order. Sub-section (6) of Section 35 read as follows :

H "(6) where the excess profits tax or the business profits tax

payable by an assessee has been modified in appeal, revision or any other proceeding, or where any excess profits tax or business profits tax has been assessed after the completion of the corresponding assessment for income-tax (whether before or after the commencement of the Indian Income-tax (Amendment) Act, 1953), and in consequence thereof it is necessary to re-compute the total income of the assessee chargeable to income-tax, such recomputation shall be deemed to be a rectification of a mistake apparent from the record within the meaning of this section, and the provisions of sub-section (1) shall apply accordingly, the period of four years referred to in that sub-section being computed from the date of the order making or modifying the assessment of such excess profits tax or business profits tax.

Explanation :- For the purposes of sub-section (6), where the assessee is a firm, the provisions of sub-section (5) shall also apply as they apply to the rectification of the assessment of the partners of the firm."

It was accordingly held that the orders of the A.A.C. were without jurisdiction. The assessees filed writ petitions in the Patna High Court against the orders of the Tribunal but they withdrew them with a view to move the Tribunal under Section 256(1) of the Income-tax Act, 1961. They filed their applications accordingly which were treated by the Tribunal as applications made under Section 66(1) of the 1922 Act. The Tribunal found that the said applications were barred by limitation and accordingly dismissed the same. It is then that the assessees filed the writ petitions in Patna High Court from which these appeals arise. In these writ petitions the assessees not only prayed for quashing the orders of the Tribunal but also asked for quashing the orders of rectification made by the Income-tax Officer.

The High Court dismissed the writ petitions on the following reasoning: by virtue of Section 297 of the 1961 Act, all the proceedings including the proceedings for rectification relating to the assessment year 1942-43 must be deemed to have been taken under the 1922 Act. Under the said Act the Tribunal had no power to condone the delay in filing an application

A under Section 66(1) as held in *Sankappa & Ors.* v. *Income-tax Officer, Central Circle II, Bangalore,* (68 I.T.R. 760). The Tribunal is not a court and, therefore, the provisions of the Limitation Act, 1963 do not apply to the proceedings before the Tribunal. The dismissal of the applications under Section 66(1) was, therefore, proper. The provision contained in
B sub-section (3) of Section 66 does not also empower the High Court to condone the delay in filing the application under sub-section (1). So far as merits are concerned, the orders of settlement did not, in the facts and circumstances of this case, preclude the Income-tax Officer from passing the impugned order of rectification. The bar contained in Section 34(1D) of the 1922 Act was conclusive only in respect of the matters to which the
C settlement extended. The amount, or the issue which is the subject matter of the rectification proceedings, was never the subject matter of settlement.

We are of the opinion that the High Court was right in holding that the settlement order did not preclude the Income-tax Officer from passing the
D aforesaid order of rectification. Sub-section (1D) of Section 34 declares that any settlement arrived under the said Section "shall be conclusive as to the matters stated therein." It further declares that "no person, whose assessments have been so settled, shall be entitled to reopen in any proceeding for the recovery of any sum under this Act or in any subsequent assessment or reassessment proceeding relating to any tax chargeable under this Act or in
E any other proceeding whatsoever before any court or other authority any matter which forms part of such settlement." It may be remembered that the assessees had applied to the Central Board of Revenue for settlement under sub-section (1B) after receiving the notices under sub-section (1A) of section 34. And it was on the basis of such application that the Central Board had
F made an order of settlement. Sub-sections (1A) and (1B) of Section 34 constitute parts of one scheme which would be evident from a reading of the two sub-sections. They read as follows:

> (1A) If, in the case of any assessee, the Income-tax officer has reason to believe--
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> G
>
> (i) that income, profits or gains chargeable to income-tax have escaped assessment for any year in respect of which the relevant previous year falls wholly or partly within the period beginning on the 1st day of September 1939, and
>
> H ending on the 31st day of March, 1946; and

(ii) that the income, profits and gains which have so escaped assessment for any such year or years amount, or are likely to amount, to one lakh of rupees or more; he may, notwithstanding that the period of eight years or, as the case may be, four years specified in sub-section (i) has expired in respect thereof, serve on the assessee, or, if the assessee is 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 22, and may proceed to assess or reassess the income, profits or gains of the assessee for all or any of the years referred to in clause (i), and thereupon the provisions of this Act excepting those contained in clauses (i) and (iii) of the proviso to sub-section (i) and in sub-sections (2) and (3) of this section shall, so far as may be, apply accordingly :

Provided that the Income-tax Officer shall not issue a notice under this sub-section unless he has recorded his reasons for doing so, and the Central Board of Revenue is satisfied on such reasons recorded that it is a fit case for the issue of such notice :

Provided further that no such notice shall be issued after the 31st day of March, 1956.

(1B) Where any assessee to whom a notice has been issued under clause (a) of sub-section (1) or under sub-section (1A) for any of the years ending on the 31st day of March of the years 1941 to 1948, inclusive applies to the Central Board of Revenue at any time within six months from the receipt of such notice or before the assessment or reassessment is made, whichever is earlier, to have the matters relating to his assessment settled, the Central Board of Revenue may, after considering the terms of settlement proposed and subject to the previous approval of the Central Government, accept the terms of such settlement, and, if it does so, shall make an order in accordance with the terms of such settlement specifying among other things

A the sum of money payable by the assessee."

The deduction allowed in the original assessment proceedings on account of the Excess Profits Tax was not the subject matter of either the notice issued under sub-section (1A) of Section 34 or of the order of settlement made under sub-section (1B). The appeals under the E.P.T. Act
B were allowed by the A.A.C. subsequent to the acceptance of settlement under Section 34(1B). The question of withdrawing the deduction granted earlier on account of the Excess Profits Tax arose only after the Appellate Assistant Commissioner allowed the appeals preferred by the assessee under the E.P.T. Act, by virtue of which no Excess Profits Tax was payable
C by the assessees. We are unable to see how does the bar contained in sub-section (1D) of Section 34 come into play in the above circumstances. Once the liability of the assessees under Excess Profits Tax Act was held to be nil, the deduction given earlier had to be withdrawn and it was accordingly withdrawn under Section 35(6) of the Act.

D In this view of the matter, it is not necessary to consider any other question in these appeals. The appeals accordingly fail and are dismissed. No costs.

IN CIVIL APPEAL NOS. 3928 AND 3929 OF 1991.

E The facts in these appeals are identical to those in the above appeals. Only the assessee and the assessment years are different. Both the counsel for the assessee and the Revenue stated that these appeals will be governed by the judgment in the aforesaid two appeals. Following the judgment therein, these appeals are also dismissed. No costs.

N.P.V. Appeals dismissed.