1955

M. R. KIRTIKAR v. THE COMMISSIONER OF INCOME-TAX, BOMBAY

Chagla C. J.

There is another aspect of the matter which may be considered. The very basis of s. 25 (4) is that the assessee paid tax twice when the new Income Tax Act was introduced in 1919 and the exemption he gets is on the basis that he is deemed to have paid tax for this year in the past. Therefore, in the eye of the law although he gets exemption he has paid tax on the whole of his income and therefore the law does not levy double tax upon his income. But it is difficult to understand why the assessee is not entitled to the relief under the notification because his employer by reason of certain circumstances gets exemption from payment of tax which has been assessed and which has been charged to tax. The only ground that the Tribunal has in its Judgment given for accepting the contention of the department is that the assessee was not assessable to tax by reason of s. 25 (4). That, with respect, is a clearly erroneous view of the matter. The assessee was not bound to make an application under s. 25 (4). He might not have made an application in which case the position would have remained the same except that the department would have proceeded to the next stage, that of levying the tax, but because he did apply under s. 25 (4) and the application was granted the department stopped at the second stage of charging and did not proceed to levy the tax or compel the assessee to pay the tax. In our opinion the case of the asseessee falls within the ambit of the notification.

The result is that the answer to the question submitted to us must be in the affirmative. The Commissioner to pay costs.

Attorneys for Applicant: *Payne & Co.*

Attorney for Respondent: *N. K. Petigara.*

Answers accordingly.

P. M. P.

INCOME-TAX REFERENCE

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Tendolkar.

1955 *Sept. 27*

THE NORTH DECCAN TRANSPORT, LTD., NASIK, APPLICANTS *v.* THE COMMISSIONER OF INCOME-TAX, BOMBAY NORTH, KUTCH AND SAURASHTRA, AHMEDABAD, RESPONDENT.*

Indian Income-tax Act (XI of 1922), s. 18A (2), (3) & (9) (a), 28 (1) (c); 30 & 33—Assessee furnishing false estimate of income for purpose of advance payment—Order imposing penalty—Whether appeal lies from such order?

When the Income-tax Officer is satisfied that the assessee has furnished under sub-s. (2) or (3) of s. 18A of the Indian Income-Tax Act, 1922 estimates of the tax payable by him which he knew or had reason to believe to be untrue and therefore holds the assessee liable under s. 18A

*Income-tax Reference No. 25 of 1955.

(9) (a), the order imposing a penalty on the assessee is an order under s. 28 (1) (c) read with s. 18A (9) (a) of the Act and an appeal lies against such order to the Appellate Assistant Commissioner and thereafter to the Income-Tax Appellate Tribunal under ss. 30 and 33 respectively.

The North Deccan Transport, Ltd., Nasik, assessee company, carried on the business of running transport services on different routes starting from Nasik. The relevant assessment year was 1950-51, the previous year being July 1, 1948 to June 30, 1949. The computation of the liability for advance payment of tax for the relevant year according to the latest assessment completed for the assessment year 1948-49 came to Rs. 37,410-9-0 on an income of Rs. 86,246. Acting under s. 18A (1) (a) the Income-Tax Officer required the assessee company to pay quarterly to the credit of the Central Government on June 15, September 15, December 15 of 1949 and March 15, 1950 a sum of Rs. 9,350-10-0.

The assessee company as allowed by s. 18A (2) of the Act estimated its income for the relevant assessment year at Rs. 30,000 on which the Income-tax was computed at Rs. 14,000. This estimate was filed on September 14, 1949 even though the relevant accounting year had ended on June 30, 1949. The assessee company was ultimately assessed on an income of Rs. 1,13,892, the tax on which came to Rs. 45,081-1-0. On these facts the Income-Tax Officer held that the assessee company had furnished estimates which it knew or had reasons to believe to be untrue and imposed a penalty of Rs. 7,020. The assessee company went in appeal to the Appellate Assistant Commissioner but failed. The assessee company thereupon appealed to the Income Tax Appellate Tribunal against the order of the Appellate Assistant Commissioner. The preliminary objection by the Taxing Department that no appeal lay from an order imposing a penalty under s. 18A (9) (a) of the Act was upheld by the Tribunal.

As directed by the High Court of Judicature at Bombay, the Tribunal referred the following question:—

> Whether the order of the Income-tax Officer imposing the penalty of Rs. 7,020 is an order passed under s. 18 (A) (9) of the Indian Income-Tax Act or an order under s. 28 (1) (c) or otherwise and an appeal against this order lay to the Appellate Assistant Commissioner and thereafter to the Tribunal?

B. A. Palkhivala with *Miss N. Damania,* for the Applicants.

M. P. Amin, Advocate General with *G. N. Joshi,* for the Respondent.

Chagla C. J.—The short question as to the competency of an appeal arises in this reference. The Income Tax Officer came to the conclusion that the assessee had furnished an estimate of his income for the purpose of advance payment of tax which was false to his knowledge and he imposed a penalty upon him.

1955

NORTH DECCAN TRANSPORT, LTD., NASIK v. THE COMMISSIONER OF INCOME-TAX, BOMBAY NORTH, KUTCH AND SAURASHTRA, AHMEDABAD

Chagla C. J.

The assessee appealed to the Appellate Assistant Commissioner, the appeal was dismissed, and then he appealed to the Tribunal and before the Tribunal the question arose whether the appeal was maintainable. The Tribunal took the view that the appeal did not lie.

Section 30 is the relevant section which provides for appeals against various orders made under the Act, and there is no provision in s. 30 for an appeal under s. 18A (*9*). But the contention of the assessee is that the order is not made under s. 18A (*9*) but it is made under s. 28 (*1*) (*c*) and an appeal is provided under s. 30 against an order made under s. 28 (*1*) (*c*). When we turn to s. 18A (*9*), what it requires is that the Income Tax Officer must be satisfied that the assessee has furnished under sub-s. (*2*) or sub-s. (*3*) estimates of the tax payable by him which he knew or had reason to believe to be untrue. If the Income Tax Officer is satisfied, then the later part of the section introduces a legal fiction, and we will restrict ourselves to the provisions of s. 18A (*9*) (*a*) with which we are concerned, and the legal fiction introduced is that the assessee shall be deemed to have deliberately furnished inaccurate particulars of his income, and the provisions of s. 28, so far as may be, shall apply accordingly. The very significant feature of this section is that it does not itself confer any power upon the Income Tax Officer to levy a penalty. The power to levy a penalty only arises under the provisions of s. 28 and it is by a legal fiction that s. 28 is made applicable and the provisions of s. 28 apply to the facts which fall within the ambit of s. 18A (*9*). When we turn to s. 28 (*1*) (*c*), that sub-section confers upon the Income Tax Officer, if he is satisfied that any person has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income, to levy a penalty prescribed in that section. There is a proviso to s. 18A (*9*) which, having conferred the power to impose a penalty under s. 28, cuts down the quantum of the penalty by making the penalty much less in a case falling under s. 18A (*9*). It is clear, in our opinion, that the Legislature deliberately used this draftsmanship in order to avoid the necessity of amending s. 30. If the power of imposing a penalty had been conferred upon the Income Tax Officer by s. 18A (*9*) itself, then unless s. 30 had been amended and an appeal against that order had been provided, no appeal would lie. But by reason of this ingenious or skilful draftsmanship, whichever way one looks at it, by importing s. 28, the necessity of amending s. 30 has been avoided because in the eye of the law the penalty imposed is not under s. 18A (*9*) but under s. 28 (*1*) (*c*) and under s. 30 the right of appeal is provided under orders made under s. 28. On principle also there seems to be no reason why when in every case under the Income Tax

Act where a penalty is imposed, a right of appeal is conferred upon the assessee, in this particular case that important right should not be conferred upon the assessee. But in our opinion, what clinches the matter is a reference to s. 47 which provides for recovery of penalties and there is no provision for recovery of penalty imposed under s. 18A (*9*). If the contention of the Commissioner were to be accepted, then the assessee would be in the happy position of not having to pay the penalty at all because there is no provision in law for recovering the penalty. The reason why s. 18A (*9*) is not mentioned in s. 47 is because, again, the Legislature has looked upon the imposing of penalty on the grounds mentioned in s. 18A (*9*) as the exercise of power under s. 28 and not under s. 28 (*1*) (*c*), and as s. 47 provides for recovery of penalties imposed under s. 28 it was unnecessary to refer to s. 18A (*9*).

In our opinion, the Tribunal was in error in holding that the appeal was not competent. Therefore we must answer the question as fallows :

"The order of the Income Tax Officer imposing the penalty was passed under s. 28 (*1*) (*c*) read with s. 18A (*9*) and an appeal against that order lay to the Appellate Assistant Commissioner and thereafter to the Tribunal."

The Commissioner to pay the costs.

Attorneys for Applicants: *S. P. Mehta.*

Attorney for Respondent: *N. K. Petigara.*

Answer accordingly.

P. M. P.

APPELLATE CIVIL

Before Mr. Justice Dixit and Mr. Justice Vyas.

RACHGOUDA PARAGOUDA PATIL (ORIGINAL APPLICANT), PETITIONER *v.* APPASAHEB TATYASAHEB DESAI AND OTHERS (ORIGINAL OPPONENTS) OPPONENTS.*

1955 *Sept.* 27

Bombay Tenancy and Agricultural Lands Act (Bom. LXVII of 1948), ss. 14, 27, 29 (2)—Land Sub-let on October 12, 1948—Notice terminating tenancy dated Sept. 7 and 21, 1951 on the ground of sub-letting—Application for possession on November 21, 1951—Whether application within time.

Held, a landlord's application filed on Nov. 21, 1951 for possession of land on the ground that the tenant had sub-let contrary to s. 27 on Oct. 12, 1948 was beyond the time prescribed under s. 29 (2) of the Bombay Tenancy and Agricultural Lands Act 1948 inasmuch as the right to obtain possession must be deemed to have accrued on Oct. 12, 1948, the date of sub-letting and not the date of notice since no such notice was

*Special Civil Application No. 1521 of 1955.