

commencement of the amending Act. The Legislature has given to s. 18 of the Finance Act, 1956, only a limited retrospective operation *i.e.*, upto April 1, 1956, only. That provision must be read subject to the rule that in the absence of an express provision or clear implication, the Legislature does not intend to attribute to the amending provision a greater retrospectivity than is expressly mentioned, nor to authorise the Income-tax Officer to commence proceedings which before the new Act came into force had by the expiry of the period provided, become barred.

The appeal fails and is dismissed with costs.

Appeal dismissed.

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COMMISSIONER OF INCOME-TAX, U.P., LUCKNOW

v.

KANPUR COAL SYNDICATE

(K. SUBBA RAO, J. C. SHAH AND S. M. SIKRI, JJ.)

1964
April, 30.

Income Tax—Assessment on Association of persons or on members individually—Option to appropriate authority—Right of appeal, whether such assessee has—Powers of Tribunal and Appellate Assistant Commissioner in Appeal—Income-tax Act, 1922 (11 of 1922), ss. 3, 14(2) (b) 30, 31 and 33.

Income-tax was assessed upon the total income in the hands of the respondent-assessee, an association of several persons combined together for the purpose of purchase of coal and its supply to customers for domestic purposes and other small scale industries. The assessee claimed that it should not be assessed to tax as an association of persons, but the proportion of the income in the hands of each members of the association might be assessed to tax instead. The Income-tax Officer refused this request and an appeal to the Appellate Assistant Commissioner was dismissed. The Income-tax Appellate Tribunal, on a further appeal, held that though the Income-tax Officer had power to assess income of the association of persons as such or in the alternative on the individual members thereof in respect of their proportionate share in the income, the tribunal had no power under the Act to direct the Income-tax Officer to exercise his power in one way or other. On a

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reference, the High Court held that the Appellate Tribunal had power to set aside the Income-tax Officer's assessment against the association and to give consequential and ancillary directions to the said officer to assess individuals.

HELD:—(i) Section 3 of the Income-tax Act impliedly gives an option to an appropriate authority to assess the total income of either the association of persons or the members of such association individually.

Commissioner of Income-tax v. Reddy Mallaram, (1964) 51 I.T.R. 285 (S.C.) followed.

(ii) Such an assessee has a right to appeal under s. 30 of the Act against the order of the Income-tax Officer assessing the association of persons instead of the members individually.

(iii) The Appellate Tribunal has jurisdiction to give directions to the appropriate authority to cancel the assessment made on the association of persons and to give appropriate directions to the authority concerned to make fresh assessment on the members of that associations individually. The phraseology used both in s. 31 and s. 33 does not restrict the powers of the Appellate Assistant Commissioner or the Appellate Tribunal; both have the power of such direction.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 673 of 1963.

Appeal from the judgment and decree dated September 22, 1960, of the Allahabad High Court in Income-tax Miscellaneous Case No. 188 of 1953.

S. K. Kapur and *R. N. Sachthey*, for the appellant.

Veda Vyasa and Naunit Lal, for the respondent.

April 30, 1964. The Judgment of the Court was delivered by

Subba Rao J.

SUBBA RAO, J.—The question for decision in this appeal is whether when the Income-tax Officer in his discretion assessed an association of persons to income-tax, the Appellate Assistant Commissioner in appeal or the Income-tax Appellate Tribunal in further appeal can set aside that order and direct him to assess the members of that association individually.

The facts lie in a small compass and they are as follows: The assessee consisted of several persons combined together for the purpose of purchasing coal in order to supply the

same to customers for domestic purposes and other small scale industries. For the assessment year 1948-49 the Income-tax Officer levied tax upon the total income in the hands of the said association of persons. The assessee claimed that in the circumstances of the case it should not be assessed to tax as an association of persons, but the proportion of the income in the hands of each of the members of the association might be assessed to tax instead. As the Income-tax Officer did not comply with this request, the assessee preferred an appeal to the Appellate Assistant Commissioner, but it was dismissed. On a further appeal to the Income-tax Appellate Tribunal, the Tribunal held that though the Income-tax Officer had the power to assess the income of the association of persons as such or in the alternative on the individual members thereof in respect of their proportionate share in the income, it (the Tribunal) had no power under the Act to direct the Income-tax Officer to exercise his power in one way or other. The following question was referred to the High Court of Allahabad under s. 66(2) of the Indian Income-tax Act, 1922:

“If in pursuance of s. 3 of the Indian Income-tax Act the Income-tax Officer levies the income tax in respect of the total income of the previous year of an association of persons upon the said association of persons as a collective unit, whether the Tribunal is competent to direct the Income-tax Officer to levy the income tax proportionately upon the individual members of the said association of persons in respect of the proportionate income of each of the members consisting the said association of persons.”

A Division Bench of the High Court held that the Appellate Tribunal had power to set aside the Income-tax Officer's assessment against the association and to give consequential and ancillary directions to the said Officer to assess the individuals.

Learned counsel for the Revenue contends that under the Indian Income-tax Act, 1922, he reinafter called the Act, the Income-tax Officer has no option but to assess the total

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income of the association of members, though the individual's share in the income may be added to his individual income for the purpose of ascertaining his total income. He further argues that even if the Income-tax Officer has the option to assess to income-tax the association of persons on its total income or the individual members thereof in respect of their proportionate share of the income, if he had exercised the option in one way or other neither the Appellate Assistant Commissioner in appeal nor the Income-tax Appellate Tribunal in further appeal has power to direct the Income-tax Officer to exercise his discretion in a different way; and for this conclusion he seeks to draw strength from his further submission that no appeal lies at the instance of the association of persons when they are assessed as one unit on the ground that the Officer should have assessed the individual members of the said association.

At the outset it will be convenient to read the relevant provisions of the Act.

Section 3. Charge of Income-tax:

Where any Central Act enacts that income-tax shall be charged for any year at any rate or rates, tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions, of, this Act in respect of the total income of the previous year of every individual, Hindu undivided family, company and local authority, and of every firm and other association of persons or the partners of the firm or the members of the association individually.

Section 14. (2) The tax shall not be payable by an assessee—

* * * * *

(b) if a member of an association of persons other than a Hindu undivided family, a company or a firm, in respect of any portion of the amount which he is entitled to receive from the association on which the tax has already been paid by the association.

Section 30. (1) Any assessee objecting to the amount of income assessed under section 23
or the amount of tax determined under section 23
or denying his liability to be assessed under this Act.....may appeal to the Appellate Assistant Commissioner against the assessment or against such refusal or order:

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Section 31. (3) In disposing of an appeal the Appellate Assistant Commissioner may, in the case of an order of assessment,—

- (a) confirm, reduce, enhance or annul the assessment, or
- (b) set aside the assessment and direct the Income-tax Officer to make a fresh assessment after making such further inquiry as the Income-tax Officer thinks fit or the Appellate Assistant Commissioner may direct, and the Income-tax Officer shall thereupon proceed to make such fresh assessment and determine where necessary the amount of tax payable on the basis of such fresh assessment.

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- (4) Where as the result of an appeal any change is made in the assessment of a firm or association of persons or a new assessment of a firm or associations of persons is ordered to be made, the Appellate Assistant Commissioner may authorise the Income-tax Officer to amend accordingly any assessment made on any partner of the firm or any member of the association.

Section 3 imposes a tax upon a person in respect of his total income. The persons on whom such tax can be imposed are particularized therein, namely, Hindu undivided family, company, local authority, firm, association of persons, partners of firm or members of association individually. The section, therefore, does not in terms confer any power on any particular officer to assess one of the

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persons described therein, but is only a charging section imposing the levy of tax on the total income of an assessable entity described therein. The section expressly treats an association of persons and the individual members of an association as two distinct and different assessable entities. On the terms of the section the tax can be levied on either of the said two entities according to the provisions of the Act. There is no scope for the argument that under s. 3 the assessment shall be only on the association of persons as a unit though after such assessment the share of the income of a member of that association may be added to his other income under s. 14(2) of the Act. This construction would make the last words of the section, viz., "members of the association individually" a surplusage. This argument is also contrary to the express provisions of s. 3, which mark out the members of the association individually as a separate entity from the association of persons. Income of every person whether he is a member of an association or not is liable to the charge under the head "every individual". Section 14(2)(b) only says that if such an individual happens to be a member of an association of persons which has already been assessed, the tax would not be payable in respect of the share of his income again. That under the Act an assessment can be made on an association of persons as a unit or, alternatively, on the individual members thereof in respect of their respective shares of the income was assumed by this Court in *Commissioner of Income-tax v. Raja Reddy Mallaram*⁽¹⁾. We, therefore, hold that s. 3 impliedly gives an option to an appropriate authority to assess the total income of either the association of persons or the members of such association individually.

The next question is whether the said option is given only to the Income-tax Officer and is denied to the Appellate Assistant Commissioner and the Appellate Tribunal. Under the Act the Income-tax Officer, after following the procedure prescribed, makes the assessment under s. 23 of the Act. Doubtless in making the assessment at the first instance he has to exercise the option whether he should assess the association of persons or the members thereof

(1) [1964] 51 I.T.R. 285 (S.C.)

individually. It is not because that any section of the Act confers an exclusive power on him to do so, but because it is part of the process of assessment; that is to say, he has to ascertain who is the person liable to be assessed for the tax. If he seeks to assess an association of persons as an assessable entity, the said entity can object to the assessment, *inter alia*, on the ground that in the circumstances of the case the assessment should be made on the members of the association individually. The Income-tax Officer may reject its contention and may assess the total income of the association as such and impose the tax on it. Under s. 30 an assessee objecting to the amount of income assessed under s. 23 or the amount of tax determined under the said section or denying his liability to be assessed under the Act can prefer an appeal against the order of the Income-tax Officer to the Appellate Assistant Commissioner. It is said that an order made by the Income-tax Officer rejecting the plea of an association of persons that the members thereof shall be assessed individually does not fall under one or other of the three heads mentioned above. What is the substance of the objection of the assessee? The assessee denies his liability to be assessed under the Act in the circumstances of the case and pleads that the members of the association shall be assessed only individually. The expression "denial of liability" is comprehensive enough to take in not only the total denial of liability but also the liability to tax under particular circumstances. In either case the denial is a denial of liability to be assessed under the provisions of the Act. In one case the assessee says that he is not liable to be assessed to tax under the Act, and in the other case the assessee denies his liability to tax under the provisions of the Act if the option given to the appropriate officer under the provisions of the Act is judicially exercised. We, therefore, hold that such an assessee has a right of appeal under s. 30 of the Act against the order of the Income-tax Officer assessing the association of members instead of the members thereof individually. If an appeal lies, s. 31 of the Act describes the powers of the Appellate Assistant Commissioner in such an appeal. Under s. 31 (3)(a) in disposing of such an appeal the Appellate Assistant Commissioner may, in the case of an order of assessment, confirm, reduce, enhance or

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annul the assessment; under cl. (b) thereof he may set aside the assessment and direct the Income-tax Officer to make a fresh assessment. The Appellate Assistant Commissioner has, therefore, plenary powers in disposing of an appeal. The scope of his power is coterminous with that of the Income-tax Officer. He can do what the Income-tax Officer can do and also direct him to do what he has failed to do. If the Income-tax Officer has the option to assess one or other of the entities in the alternative, the Appellate Assistant Commissioner can direct him to do what he should have done in the circumstances of a case. Under s. 33(1), an assessee objecting to an order passed by an Appellate Assistant Commissioner under s. 28 or s. 31 may appeal to the Appellate Tribunal within 60 days of the date on which such order is communicated to him. Under s. 33(4), "The Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, and shall communicate any such orders to the assessee and to the Commissioner." Under s. 33(5), "Where as the result of an appeal any change is made in the assessment of a firm or association of persons or a new assessment of a firm or association of persons is ordered to be made, the Appellate Tribunal may authorise the Income-tax Officer to amend accordingly any assessment made on any partner of the firm or any member of the association". Under this section the Appellate Tribunal has ample power to set aside the assessment made on the association of persons and direct the Income-tax Officer to assess the individuals or to direct the amendment of the assessment already made on the members. The comprehensive phraseology used both in s. 31 and s. 33 of the Act does not countenance the attempt of the Revenue to restrict the powers of the Appellate Assistant Commissioner or of the Appellate Tribunal; both of them have power to direct the appropriate authority to assess the members individually instead of the association of persons as a unit.

We, therefore, hold, agreeing with the High Court, that the Appellate Tribunal has jurisdiction to give directions to the appropriate authority to cancel the assessment made on the association of persons and to give appropriate directions

to the authority concerned to make a fresh assessment on the members of that association individually. The answer given by the High Court to the question propounded is correct.

In the result, the appeal fails and is dismissed with costs.

Appeal dismissed.

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KETTLEWELL BULLEN AND CO.

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COMMISSIONER OF INCOME-TAX, CALCUTTA

(K. SUBBA RAO, J. C. SHAH AND S. M. SIKRI, JJ.)

1964

May 1.

*Income-tax—Compensation received for surrendering managing agency—
If capital or revenue—Test—Income-tax Act, 1922 (11 of 1922),
ss. 2(6c), 10, 12.*

By an agreement with the Fort William Jute Company in 1925 the appellant company became its Managing Agent. The terms, *inter alia*, were that the appellant or its successors, unless they chose to resign, were to continue as Managing Agent until they ceased to hold certain shares in the capital of the company and were on that account removed by a resolution of the company or their tenure of office was determined by the winding up of the company. On termination of the agency, the Managing Agent was to get such reasonable compensation as was agreed upon between the Managing Agent and the company. Besides this managing agency the appellant held five other managing agencies. In 1952, the appellant by an agreement with M/s. Mugneeram Bangur & Co., agreed to relinquish the managing agency of the Fort William Jute Co., Ltd., in their favour in consideration of M/s. Mugneeram Bangur and Co. taking over the shares held by the appellant, procuring repayment of loans advanced by the appellant to the Fort William Jute Company and further procuring that the Fort William Jute Company will pay compensation to the appellant. The appellant intimated the members of the latter company that it would be in the best interest of the share-holders to terminate the appellant's agency which would otherwise continue till 1957 and that M/S. Mugneeram Bangur & Co. had agreed to reimburse the Fort William Jute Co. Ltd. for payment of Rs. 3,50,000 as compensation to the appellant. The arrangement with M/s. Mugneeram Bangur & Co. was accepted by the Fort William Jute Co. and the appellant tendered resignation. M/s. Mugneeram Bangur and Co.