WALDIES LTD. A

v.

COMMISSIONER OF INCOME TAX, WEST BENGAL

NOVEMBER 20, 1996

[B.P. JEEVAN REDDY AND SUHAS C. SEN, JJ.] B

Companies (Profits) Surtax Act: Sections 4, 13 and 14.

Mistakes—Apparent from the record—Rectification of—AY 1964-65—'Record'—Scope of—Tax liability under S.147 of Income Tax Act—Enhanced—Consequently surtex assessment rectified—On reversal of order passed under S.147 surtex assessment again rectified—Held: Income Tax assessment order part of records of surtax assessment proceedings—Hence, for second rectification there was mistake apparent from the record—Income Tax Act, 1961, S.147. C

D

Rectified Order—Rectification of—To restore original order—After expiry of time-limit prescribed under S.13(1)—Validity of—AY 1964—65—assessment orders under Income Tax and Surtax Acts passed—Subsequently income tax liability of assessee—Company enhanced in reassessment under S.147 of Income Tax Act—Consequently, within statutory time—limit assessment order under Surtax Act rectified and surtax reduced by additional amount of income tax determined under S.147—After expiry of time—Limit for rectifying assessment under Surtax Act, order under S.147 set aside in appeal—Consequently, rectified assessment order under Surtax Act again rectified to restore original order—Held: Inspite of the expiry of time—limit under S.13 (1) of Surtax Act, second rectification justified. E F

Words and Phrases :

"Record" and "mistake apparent from the record"—Meaning of—In the context of S.13 (1) of the Companies (Profits) Surtax Act. G

The assessee—company was assessed to Income Tax for the assessment year 1964-65. This was followed by an assessment under the Companies (Profits) Surtax Act. Later on, the assessment was reopened under Section 147 of the Income Tax Act, 1961 and the H

A Income Tax liability was enhanced. Consequently, the assessment order was rectified under Section 13 of the Surtax Act. The amount by which the income tax liability was enhanced under Section 147 was allowed as a deduction from the chargeable profits under the Surtax Act and consequently the surtax liability of the assessee stood reduced. Subsequently, the Income Tax Officer, after three years, again took B resort to Section 13 of the Surtax Act, rectified the surtax assessment by withdrawing the deduction of the additional amount of tax which had been held payable under the order passed under section 147 of the Income Tax Act.

The Appellante Assistant Commissioner and the Tribunal held C that the Income Tax Officer's order was logical and justified in the facts and circumstances of this case. Being aggrieved the appellant-assessee preferred the present appeal.

On behalf of the appellant-assessee it was contended that there was no mistake apparent from the record; and that a proceeding D under Section 13 of the Surtax Act could not be taken because four years had already passed from the date of the assessment order.

Dismissing the appeal, this Court.

HELD: 1. The starting point of the assessment under Section 4 E of the Companies (Profits) Surtax Act has to be the total income computed under the Income Tax Act, 1961. That being so, the Income Tax assessment order must necessarily form part of the records of the Surtax Assessment. Any change or variation of tax liability in the Income Tax assessment order will have to be given effect to in the Surtax assessment. There is no reason to hold that the Income Tax F assessment is not a part of the records of the Surtax assessment proceedings. If this contention of the assessee is to be upheld, logically it has to be held that even the first order of rectification giving relief to the assessee was invalid. Hence, it could not be said for the second rectification there was no mistake apparent from the record.

G [884 E-H]

2. The first rectification order under the Surtax Act had given relief to the assessee by deducting the additional amount of Income Tax levied by the order passed under Section 147 of the Income Tax Act. This relief had to be taken out when the order under Section 147 H was set aside by the Appellant Assistant Commissioner and the Income

Tax liability of the assessee stood reduced. What the Income Tax Officer was trying to do in effect was to nullify the order of rectification. When the order under Section 147 of the Income Tax Act was set aside in appeal the assessee's income tax liability became smaller and consequently the chargeable profits could not be treated as validly computed when deduction had been made for Income Tax which was not actually payable. Therefore, the Income Tax Officer was justified in invoking the provisions of Section 13 of the Surtax Act and correcting the error. The Income Tax Officer by the second order of rectification was not trying to rectify the original order of assessment but was seeking to restore it by rectifying the error in the amended order. [885 A-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1790 of 1979.

From the Judgment and Order dated 24.2.78 of the Calcutta High Court in I.T.R. No. 268 of 1975.

P.K. Mukherjee and S.K. Bandyopadya for the Appellant.

P.A. Chaudhary, (B.S. Ahuja), for S.N. Terdol for the Respondents.

The Judgment of the Court was delivered by

SEN, J. The Companies (Profits) Surtax Act imposes an additional tax, apart from Income Tax, on the income of a company. It is a tax on so much of the 'chargeable profits' of a company of the previous year as exceeds the statutory deduction at the rate specified in the Act. 'Chargeable profits' has been defined by sub-section (5) of Section 2 to mean the total income of an assessee computed under the Income Tax Act and adjusted in accordance with the provisions of the First Schedule. In other words, the Income Tax Act imposes a charge on the total income of an assessee. The Companies (Profits) Surtax Act provides for levy of additional tax on the total income as computed under the Income Tax Act, after certain adjustments by excluding certain types of income and some deductions from the total income as computed under the Income Tax Act. One of the deductions which had to be made for computing chargeable profits for the purpose of levy of Surtax is the amount of Income Tax, if any, payable by a company under Section 104 of the Income Tax Act.

A The assessee- company in this case was assessed to Income Tax for the assessment year 1964-65 on 29th March, 1965. The tax payable was determined to be Rs. 1,68,000,00. This was followed by an assessment under the Companies (Profits) Surtax Act on 30th March, 1965. Later on, the Income Tax Officer thought that he had wrongly held the assessee-company to be a widely held Company and reopened the Income Tax B assessment under Section 147. Sometime in September, 1968 an order was passed holding the assessee-Company to be a closely held Company as a result of which the burden of Income Tax on the company became heavier.

Consequently, the Income Tax Officer rectified the assessment order C passed under the Surtax Act on 16th September, 1968. The additional amount of Income Tax determined as payable under the order under section 147 was allowed as deduction from the chargeable profits under the Surtax Act. As a result of the order of rectification passed under Section 13, the Surtax liability of the Company stood reduced. Thereafter, the Appellate Assistant Commissioner, on appeal by the assessee, cancelled the order D under Section 147 in November, 1970. In March, 1971, the Income Tax Officer gave effect to the Appellate Assistant Commissioner's order and recomputed the tax liability under the Income Tax Act. The Income Tax Officer once again took resort to Section 13 on 1st April, 1971 and rectified the surtax assessment by withdrawing the deduction of the additional amount E of tax which had been held payable under the order passed under Section 147 of the Income Tax Act. The second order of rectification was passed on 21st April, 1971. Both the Appellate Assistant Commissioner and the Tribunal held that the Income Tax Officer's order was logical and justified in the facts and circumstances of this case.

F On the assessee's application, the Tribunal referred the following question of law to the High Court:-

> "Whether on the facts and in the circumstances of the case the Tribunal was justified in holding that the Income Tax G Officer's action in rectifying his order passed in September, 1968 under Section 13 of the Surtax Act was in order both in law and in equity?"

The assessee's contention before the High Court was two-fold. It was argued in the first place that there was no mistake apparent from the H record. Secondly, it was argued in any event a proceeding under Section

13 could not be taken because four years had already passed from the date of the assessment order. A

Sections 13 and 14 of the Companies (Profits) Surtax Act, at the material time, were as under:-

"13. Rectification of mistakes.-(1) with a view to rectifying any mistake apparent from the record, the Commissioner, the Income Tax Officer, the Commissioner (Appeals) and the Appellate Tribunal may, of his, or its own motion or on an application by the assessee in this behalf, amend any order passed by him or it in any proceeding under this Act within four years of the date on which such order was passed. B C

(2) An amendment which has the effect of enhancing the assessment or reducing a refund or otherwise increasing the liability of the assessee shall not be made under this section unless the authority concerned has given notice to the assessee of its intention so to do and has allowed the assessee a reasonable opportunity of being heard. D

(3) Where an amendment is made under this section, the order shall be passed in writing by the authority concerned. E

(4) Subject to the other provisions of this Act, where any such amendment has the effect of reducing the assessment, the Income Tax Officer shall make any refund which may be due to such assessee.

(5) Where any such amendment has the effect of enhancing the assessment or reducing the refund already made, the Income Tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable. F

14. Other amendments—Where as a result of any order made under Sections 154,155,250,254,260,262,263 or 264 of the Income Tax Act, it is necessary to recompute the chargeable profits determined in any assessment under this Act, the Income Tax Officer may proceed to recompute the chargeable profits, and determine the surtax payable or refundable on the basis of such recomputation and make the necessary G H

A amendment and the provisions of Section 13 shall, so far as may be, apply thereto, the period of four years specified in sub-section (1) of that section being recokoned from the date of the order passed under the aforesaid sections of the Income Tax Act."

B The first contention of the assessee is that there was no mistake apparent from the record. When the first order of rectification was passed under the Surtax Act giving relief to the assessee, it was done on the basis of the order passed under Section 147 of the Income Tax Act. The result of the order passed under Section 147 was enhancement of the Income Tax liability of the assessee. This liability had to be deducted in order to C arrive at chargeable profits. If the Income Tax Officer could rectify the assessment order and give relief to the assessee when the order under Section 147 was passed, we fail to see why the Income Tax Officer cannot rectify the order of assessment once again when that order under Section 147 was set aside by the Appellate Assistant Commissioner. Unless the Income Tax assessment order formed part of the records of the order of D assessment passed under the Surtax Act, the first order of rectification could not have been passed at all. In fact, no order of assessment can be passed under the Companies (Profits) Surtax Act, except on the basis of the assessment order passed under the Income Tax Act. Section 4 of the Surtax Act imposes a charge on the 'chargeable profits' of a company for every assessment year. 'Chargeable profits' has been defined to mean 'the E total income of an assessee computed under the Income Tax Act, 1961 for any previous year or years, as the case may be, and adjusted in accordance with the provisions of the First Schedule'. Therefore, the starting point of the assessment under the Surtax Act has to be the total income computed under the Income Tax Act. That being so, the Income Tax assessment order must necessarily form part of the records of the Surtax assessment. F Any change or variation of tax liability in the Income Tax assessment order will have to be given effect to in the Surtax assessment. There is no reason to hold that the Income Tax assessment order which is the very basis of the Surtax assessment is not a part of the records of the Surtax assessment proceedings. As has been stated earlier, if this contention of the G assessee is to be upheld, logically it has to be held that even the first order of rectification giving relief to the assessee was invalid. Sabyasachi Mukherji, J. (as His Lordship then was), rightly pointed out that the assessments under the Companies (Profits) Surtax Act and the Income Tax Act were closely connected and were integral parts of each other and interwoven and that the records under Section 13 of the Companies (Profits) H Surtax Act would include the record of the Income Tax assessment.

The next point relates to limitation. The jurisdiction of the Income Tax Officer to amend any order passed by him is limited to "four years from the date on which such order was passed". In the instant case, the original order of assessment was rectified on 16th September, 1968. This rectified order gave relief to the assessee by deducting the additional amount of Income Tax levied by the order passed under Section 147 of the Income Tax Act. This relief had to be taken out when the order under Section 147 was set aside by the Appellate Assistant Commissioner and the Income Tax liability of the assessee stood reduced. What the Income Tax Officer was trying to do in effect was to nullify the order of rectification which was passed on 16th September, 1968. The assessee is right in his contention that this order was a good order when it was passed. But that was the time when the order under Section 147 was subsisting and the assessee's income tax liability was larger. But that order under Section 147 was set aside on appeal. The assessee's income tax liability became smaller and consequently the chargeable profits could not be treated as validly computed when deduction had been made for Income Tax which was not actually payable. Therefore, the Income Tax Officer was justified in invoking the provisions of Section 13 and correcting the error in the order passed on 16th September, 1968. The Income Tax Officer by the second order of rectification was not trying to rectify the original order of assessment passed on 30th March, 1965. but was seeking to restore it by rectifying the error in the amended order passed on 16th September, 1968.

In that view of the matter, it is not necessary to go into the contention of the assessee that Section 14 of the Surtax Act was amended only on 1st April, 1971 and the power under the amended Section could not be utilised for passing a second rectification order on 21st April, 1971.

The appeal, therefore, is dismissed. There will be no order as to costs.

V.S.S. Appeal dismissed.