

THE INCOME-TAX OFFICER CIRCLE II
MADURA, AND ANOTHER

1962
January 17.

v.

M. R. VIDYASAGAR

(B. P. SINHA, C. J., J. L. KAPUR, M. HIDAYATULLAH,
J. C. SHAH and J. R. MUDHOLKAR, JJ.)

Income Tax—Payment of advance tax—Assessed income exceeded the estimate—Levy of interest—Power to reduce or waive—When could be exercised—Indian Income-tax Act, 1922 (11 of 1922), s. 18A (6) fifth proviso—Indian Income-tax (Amendment) Act, 1953 (225 of 1953), s. 13—Income-tax Rules r.48.

The Income-tax Officer, Madura, issued notice under s. 18A (1) of the Indian Income-Tax Act, 1922, for payment of advance tax. R, the then manager of the Hindu Undivided family availed of the option to submit a revised estimate for the years 1946-47 and 1948-49. The assessment of these two years were completed respectively in November, 1950 and February, 1951, as the total income assessed far exceeded the estimate submitted by R, the Income-tax Officer ordered the respondent, the legal representative of R, to pay the interest under s. 18A (6) of the Act. On appeal, the Income-tax Appellate Tribunal reduced the income and, the Income-tax Officer in giving effect to the said order reduced the interest and called upon the respondent to make payment. The respondent asked the Income-tax Officer not to levy interest under s. 18A (6), submitting that the levy was illegal and unjustified, alternatively he requested that the interest be waived by virtue of the powers vested on the Income-tax Officer under proviso 5 to s. 18A (6) which was added by s. 13 of Act 25 of 1953, with retrospective effect from April 1952. The Income-tax Officer and the Inspection Assistant Commissioner declined to accede to the request. The respondent then moved the High Court at Madras for a writ under Art. 226 cancelling the levy of interest on the ground among others that refusal by the Revenue authorities to cancel the levy was arbitrary and not based on any judicial exercise of the discretion vested by the Act. The High Court upheld the plea, ordered the Income tax Officer to decide whether the respondent had made out a case for the exercise of the discretion. The only question in the appeal before the Supreme Court was whether benefit of the said 5th proviso to s. 18A (6) may be granted in respect of assessments of income which were completed by the Income-tax Officer before April 1952.

1962

*The Income-tax
Officer Circle II
Madura
v.
M. R. Vidyasagar*

Held, that the jurisdiction under 5th proviso of s. 18A (6) of the Income-tax Act may be exercised by the income-tax Officer in all cases which were pending on April 1, 1952 before him or any superior authority having under the Act power to modify the assessment of income.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 545 and 546 of 1960.

Appeals from the judgment and order dated August 13, 1954, of the Madras High Court in Writ Petitions Nos. 743 and 748 of 1954.

K. N. Rajagopal Sastri and *P. D. Menon*, for the appellants.

The respondent did not appear.

1962. January 17.—The Judgment of the court was delivered by

Shah J.

SHAH, J.—These are two appeals with certificates of fitness granted by the High Court of Judicature at Madras against certain orders passed in Writ Petitions under Art. 226 of the Constitution.

One Ramaswami Iyer—father of the respondent—was assessed to income-tax in the status of a Hindu Undivided Family. Ramaswami Iyer died in 1949 and the respondent M.R. Vidyasagar became the manager of the family. The family was a partner through its manager in a firm styled "The Madura Knitting Company", and the share in the profits of the partnership which was registered under the Indian Income-tax Act was the principal source of its assessable income. Under s. 18A of the Indian Income-tax Act, the Hindu undivided family was liable to pay advance tax for each of the assessment years 1946-47, 1947-48 and 1948-49. The Income-tax Officer, Madura, issued notices under s. 18A (1) of the Indian Income-tax Act for payment of advance tax on the basis of the preceding year's income. It was open to the assessee to submit a revised estimate of his income under s. 18A (2) in respect of the year in question and Ramaswami Iyer—who was at the material time the

manager—availed himself of the option to submit a revised estimate and estimated the income for each of the assessment years 1946-47 and 1948-49 at Rs. 45,000/-. The assessments of these two years were completed respectively on November 28, 1950 and February 23, 1951, and the income received from the Madura Knitting Company was included in the assessments under s. 23 (5). The Income Tax Officer assessed the total income of the Hindu undivided family for the year 1946-47 at Rs. 1,01,335/- and for the year 1948-49 at Rs. 3,10,697/-. As the total income assessed far exceeded the estimate of Rs. 45,000/-, submitted by the manager of the assessee family, the Income Tax Officer in making the assessment ordered the respondent to pay Rs. 6,999/12/- and Rs. 36,687/- respectively for the assessment years 1946-47 and 1948-49 as interest. In appeals against the orders of assessment by the Madura Knitting Company, by order dated March 12, 1954 the Income-tax Appellate Tribunal reduced the income of the firm, and on that basis reduced the share of the family in the income of the firm for the year 1946-47 to Rs. 83,335/- and for the year 1948-49 to Rs. 2,83,868/-. The Income-tax Officer, Madura, in giving effect to the orders passed by the Appellate Tribunal under the 3rd proviso to s. 18A (6) reduced the interest to Rs. 4,358/- for the year 1946-47 and to Rs. 32,714/10/- for the year 1948-49, and called upon the respondent to pay the arrears of tax inclusive of interest so adjusted. The respondent then called upon the Income Tax Officer not to levy interest under s. 18A (6) submitting that the levy was illegal and unjustified, and in the alternative requested that the interest be waived under the powers vested under the 5th proviso to s. 18A (6) which was added by s. 13 of the Indian Income-tax (Amendment) Act (25 of 1953). The Income-tax Officer declined to accede to the request and the respondent's application to the

1962

*The Income-tax
Officer Circle II
Madura*

*v.
M. R. Vidyasagar*

Shah J.

1952

The Income-tax
Officer Circle-II
Madurai
v.

M. R. Vidyasagar

Shah J.

Inspecting Assistant Commissioner for cancelling the levy of interest was also rejected. The respondent then moved two petitions (Nos. 743 and 748) under Art. 226 of the Constitution in the High Court of Judicature at Madras for writs cancelling the orders imposing liability for payment of interest, contending that the levy of penal interest was opposed to law and was *prima facie*, unjustified on the facts and circumstances of the case. The respondent submitted that the levy of interest under s. 18A(6) was penal in character and could not be imposed upon the legal representative of the deceased manager who was not in any manner responsible for the original return filed by the firm of which the manager was a partner. He also contended that the levy was not warranted by the provisions of the Indian Income-tax Act inasmuch as in respect of the assessment years in question the respondent was not the assessee, that the delay in completing the assessment was not attributable either to the then manager of the family, Ramaswami Iyer or to himself and therefore, no liability for payment of interest could be imposed, and that in any event refusal to cancel the levy of interest was arbitrary and not based on any judicial exercise of discretion vested in the Income-tax Officer.

A Division Bench of the Madras High Court held that the provision imposing liability to pay interest under sub.s. (6) of s. 18A was not opposed to law and could be enforced against the legal representative of the deceased manager, who was a partner of the assessee firm. The High Court, however, was of the view that as the Income-tax Officer and the Inspecting Assistant Commissioner had failed to consider whether in the circumstances of the case, the reduction or waiver of the interest was justified, it be ordered that the Income-tax Officer to decide whether the petitioner had made out a case for the exercise of the discretion vested in the

Income-tax Officer to waive or reduce the interest under the powers conferred on him by the 5th proviso of cl. (6) of s. 18A. Against that order with certificates of fitness these appeals are preferred by the Commissioner of Income Tax.

Section 18A which imposes liability upon the tax payer to make advance payment of tax was incorporated into the Indian Income-tax Act by Act 11 of 1944. That section enables the Income-tax Officer on or after the 1st day of April in any financial year, by order in writing, to require an assessee to pay to the Central Government in specified instalments income-tax and super-tax payable on so much of such income as is included in the assessee's total income of the previous year in respect of which he had been assessed. Under sub-s. (2), if the assessee who is required to pay tax by an order under sub-s. (1) estimates at any time before the last instalment is due that the part of his income to which the sub-section applies for the period which would be the previous year for an assessment for the year next following is less than the income on which he is required to pay tax and accordingly wishes to pay tax which is less than amount he is required to pay, he may send to the Income Tax Officer an estimate of the tax payable by him, and pay tax as accords with his statement. It is, however, provided by sub-s. (6) *inter-alia* that where in any year the assessee had paid tax under sub-s. (2) on the basis of his own estimate and the tax paid is less than 80% of the tax determined on the basis of his regular assessment (so far as such tax relates to income to which the provisions of s. 18 do not apply) simple interest at the rate of 6% per annum from the 1st day of January in the financial year in which the tax was paid upto the date of the said regular assessment shall be payable by the assessee upon the amount by which the tax so paid falls short of the said 80%. As originally enacted the liability to pay interest upon

1962

*The Income-tax
Officer Circle II
Madura*

*v.
M. R. Vidyasagar*

Shah J.

1962

*The Income-tax
Officer Circle II
Madura*

M. R. Vidyasagar

Shah J.

the amount by which the tax paid fell short of 80% of tax was absolute. The Income-tax Officer had no discretion in the matter, and was bound to impose liability for payment of interest. But by s. 13 of the Indian Income-tax (Amendment) Act, 1953 (25 of 1953), an additional proviso was enacted in sub-s. (6) in the following form:

“Provided further that in such cases and under such circumstances as may be prescribed, the Income-tax Officer may reduce or waive the interest payable by the assessee”.

This proviso was given retrospective effect as from April 1, 1952. Thereafter in exercise of powers conferred by s. 59 the Central Board of Revenue added Rule 43 to the following effect:—

“48. The Income-tax Officer may reduce or waive the interest payable under section 18A in the cases and under the circumstances mentioned below, namely:—

(1) Where the relevant assessment is completed more than one year after the submission of the return, the delay in assessment not being attributable to the assessee.

(2) Where a person is under section 43 deemed to be an agent of another person and is assessed upon the latter's income.

(3) Where the assessee has income from an unregistered firm to which the provisions of clause (b) of sub-section (5) of section 23 are applied.

(4) Where the “previous year” is the financial year or any year ending near about the close of the financial year and large profits are made after the 15th of March in circumstances which could not be foreseen.

(5) Any case in which the Inspecting Assistant Commissioner considers that the circumstances are such that a reduction or waiver of the interest payable under section 18A (6) is justified.

The effect of the incorporation of the 5th proviso in s. 18A (6) and of Rule 48 was manifestly to authorise the Income Tax Officer in exercise of his discretion to relieve against the rigour of the inflexible rule originally enacted in cl. (6) about payment of interest by the assessee when the tax paid by him on his estimate fell below 80% of the tax payable on regular assessment.

The only question which falls to be determined in these appeals is whether the benefit of the fifth proviso to s. 18A (6) could be claimed in respect of the assessments of the income of the respondent's family which were completed by the Income-tax Officer before April 1, 1952. The High Court was of the view that even if the assessment by the Income Tax Officer was completed before April 1, 1952, if the final adjustment pursuant to the order of the Appellate Tribunal was made after that date the Income Tax Officer was competent, in exercise of the powers with which he was invested by the fifth proviso to cl. (6) of s. 18A to reduce or waive the interest payable by the assessee and the Income-tax officer having failed to exercise his discretion a case was made out for the issue of a writ under Art. 226 of the Constitution directing that officer to consider whether in the circumstances of the case relief may be granted to the respondent.

On behalf of the Commissioner of Income-tax it is urged that the power conferred by the fifth proviso may undoubtedly be exercised in those cases where assessment is completed on or after April 1, 1952, but where the assessment was completed and liability to pay interest had crystallized under

1962

*The Income-tax
Officer Circle II
Madurai*

M. R. Vidyasagar

Shah J.

1962

*The Income-tax
Officer Circle II
Madura*

*v.
M. R. Vidyasagar*

Shah J.

sub-s.(6) as it originally stood, the Income-tax Officer has no power under the amended sub-section to reduce or waive the interest ordered to be paid by the assessee even if the proceedings in assessment are pending in appeal before the Appellate Assistant Commissioner or the Appellate Tribunal. It was urged that the interest under s. 18A(6) is payable upto the date of the regular assessment and if in the contingencies prescribed by s. 18A(6), as originally enacted liability to pay interest crystallized, the Income-tax Officer could not, in exercise of the power invested by the amending Act reopen the order, because the legislature had given to the amending statute only a partial retroactive operation, and its retroactivity could not be enlarged; to do so, would be plainly to defeat the plain intentment of the Legislature. It is unnecessary for the purpose of these appeals to consider whether an assessment which has become final before the date on which the fifth proviso came into operation, and which is not subject to any pending appeal, can be reopened and the benefit of the power conferred by the fifth proviso be afforded to an assessee. The question which falls to be determined is whether in an assessment subject to an appeal which is pending, or which may be lawfully filed, the power to reduce or waive the interest can be exercised. There is, in our judgment, inherent evidence in the rule indicating that such a power can be exercised even if the regular assessment is completed by the Income-tax Officer before April 1, 1952. The power vested in the Income-tax Officer to reduce or waive interest payable by an assessee is exercisable "in such cases or such circumstances as may be prescribed" by the Rules. By Rule 48 the Income-tax Officer is given the power to reduce or waive interest payable under s. 18A(6) in the events specified therein. By the first clause of Rule 48 where the assessment is completed more than one year after the submission of the return the delay in assessment

not being attributable to the assessee—the power of the Income-tax Officer may be exercised. There is nothing in the Rule which indicates that the power to grant relief may be exercised only before the regular assessment is completed by the Income-tax Officer. The terms of clauses (1) and (5) of the Rule clearly support the view that the order reducing or waiving interest may be passed even after the order of assessment is made, and interest is included. Again, by making Act 25 of 1953 operative retrospectively from April 1, 1952, the Legislature has evinced an intention that to regular assessments made between April 1, 1952, and the date on which the Act was enacted, the fifth proviso to s. 18A(6) may apply. The argument that liability to pay interest crystallizes when the Income-tax Officer incorporates the direction for payment of interest, because the order is not made appealable has no force. The order for payment of interest was liable to be modified if the assessment of income was varied by the Appellate Assistant Commissioner, or by the Tribunal. It is true that interest could be charged upto to the date of regular assessment by the Income-tax Officer but that does not support the theory of crystallization of liability. If therefore the quantum of liability was capable of being altered even after the date of the regular assessment, the assumption that the power to give relief against a rigid statutory provision should be restricted to cases which are decided by the Income-tax Officer only after April 1, 1952, is not warranted. The power of the Income-tax Officer arose only after April 1, 1952, but there is nothing in the act to show that it was to be exercised only in respect of assessments made by the Income-tax Officer after that date. In our judgment, the jurisdiction under the fifth proviso may be exercised by the Income-tax Officer in all cases which are pending on April 1, 1952, before the Income-tax Officer or any superior authority having under the Income-tax Act power

1952

*The Income-tax
Officer, Circle II
Madura*

M. R. Vidyasagar

Shri J.

1962

*The Income-tax
Officer Circle II
Madura*

*v.
M. R. Vidyasagar*

Shah J.

to modify the assessment of income, or are commenced after that date.

In the present case, the original assessments made by the Income-tax Officer in both the years in question were modified in view of the orders passed by the Appellate Tribunal in the assessment of the Madura Knitting Co. The order of the Appellate Tribunal was passed on April 12, 1953, i.e. after the date on which Act 25 of 1953 came into operation. After that date the Income-tax Officer was bound to give effect to the orders of the Appellate Tribunal and to adjust liability in computing the assessable income and the tax payable thereon. The Income-tax Officer being bound to adjust liability to pay interest under cl. (6) of s. 18A we see no reason why in adjusting that liability he may not exercise the powers with which he has been invested since April, 1952, if the circumstances of the case warrant such exercise.

In our view the High Court was right in holding that the Income-tax Officer had the power in the case of the assessments in question to exercise the authority conferred by the fifth proviso to s. 18A(6) and he having failed to exercise the discretion, a writ requiring him to consider whether a case is made out for the exercise of his discretion was properly issued.

These appeals therefore fail and are dismissed.

Appeals dismissed.

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