
B.N.K. Press (P.) Ltd. Vs Commissioner of Income Tax

Tax Case No"s. 1515 and 1571 of 1977

Court: Madras High Court

Date of Decision: Jan. 7, 1986

Acts Referred:

Income Tax Act, 1922 " Section 34#Income Tax Act, 1961 " Section 147, 147(a), 148, 2(8), 297(2)

Citation: (1986) 26 TAXMAN 577

Hon'ble Judges: M.N. Chandurkar, C.J; Venkataswami, J

Bench: Division Bench

Advocate: Utham Reddy, for the Appellant; C.V. Rajan, for the Respondent

Judgement

M.N. Chandurkar, C.J.

These two tax cases arise out of assessment proceedings in respect of the assessee for the assessment years

1960-61 and 1961-62. The assessee was assessed to an income of Rs. 75,748 for the assessment year 1960-61 and to an income of Rs. 15,983

for the assessment year 1961-62. The assessee company is one of the assesseees in what is known as "Shri Nagi Reddy Group". As a result of

some investigations in respect of bogus loans shown by the assessee, the assessments were reopened u/s 147(a) of the income tax Act, 1961 ("the

Act"). There was a settlement in respect of the group of cases and in response to a notice u/s 148 of the Act, the company filed a revised return

showing a total income of Rs. 1,44,498 for the assessment year 1960-61 and Rs. 84,736 in respect of the assessment year 1961-62. The

company was, however, assessed to an income of Rs. 1,54,736 and Rs. 94,819, respectively, for the assessment years 1960-61 and 1961-62. In

both the years, the additional income as admitted in the returns amounted to Rs. 68,750 in each year. On the basis of the assessments, proceedings

u/s 23A of the Indian income tax Act, 1922 ("the 1922 Act") were initiated and finding that the dividend declared was less than the statutory

percentage on the footing that the distributable surplus for 1960-61 was Rs. 79,725 and there was a shortfall of Rs. 8,162 for the year 1960-61

and similarly for 1961-62 the distributable surplus amounted to Rs. 46,607 and having regard to the dividends declared the shortfall was Rs.

17,054, the ITO levied additional super tax which amounted to Rs. 17,936 for the assessment years 1960-61 and Rs. 14,932 for 1961-62.

2. These assessments were challenged in appeal before the AAC, who, however, dismissed the appeals.

3. The Tribunal also dismissed the appeal filed by the assessee and confirmed the levy of additional super tax. The Tribunal rejected the contention

that the proceedings u/s 23A were invalid and that there having been a settlement between the group of companies in question and the department,

the revised assessment could not be taken into account for the purpose of proceedings u/s 23A. The Tribunal found that there was no evidence to

show that as a matter of settlement, no action would be taken u/s 23A. The Tribunal also took the view that by virtue of section 297(2)(e) of the

1961 Act, the ITO who completed the assessment was authorised to invoke section 23A of the 1922 Act and he was entitled to look into the

reassessment made under the 1961 Act. Arising out of this order, the following two questions have been referred to this Court at the instance of

the assessee:

1. Whether, in view of the provisions of section 297(2)(e) of the income tax Act, 1961, the orders passed on 15-9-1973 u/s 23A of the Indian

income tax Act, 1922 for the assessment years 1960-61 and 1961-62 based on the incomes as assessed in the proceedings u/s 147 of the income

tax Act, 1961 for the aforesaid years are valid in law?

2. Whether, on the facts and in the circumstances of this case, the company should have declared a larger dividend than had been declared for the

assessment years 1960-61 and 1961-62?

4. Mr. Utham Reddy, appearing on behalf of the assessee, referred us to the provisions of section 297(2)(e) and particularly to the concluding

words in that section, namely, "as if this Act had not been passed". Referring to this provision, it was contended that the ITO while giving effect to

the provisions of section 23A of the 1922 Act in the instant case had to do so as if the 1961 Act had not been passed which meant that he could

not also rely on the reassessments made u/s 147. It is not possible for us to accept this contention. Section 297(2)(e) reads as follows:

(2) Notwithstanding the repeal of the Indian income tax Act, 1922 (11 of 1922) (hereinafter referred to as the repealed Act),-

(e) subject to the provisions of clause (g) and clause (j) of this subsection, section 23A of the repealed Act shall continue to have effect in relation

to the assessment of any company or its shareholders for the assessment year ending on the 31st day of March, 1962, or any earlier year, and the

provisions of the repealed Act shall apply to all matters arising out of such assessment as fully and effectually as if this Act had not been passed;

5. We are not concerned with clauses (g) and (j) of section 297(2). Clause (e) of section 297(2) of the 1961 Act expressly provides that section

23A of the 1922 Act shall continue to have effect in relation to the assessment of any company or its shareholders for the assessment year ending

on 31-3-1962, or any earlier year. It further provides that the provisions of the repealed Act shall apply to all matters arising out of such

assessment as fully and effectually as if this Act had not been passed. Clause (e), therefore, enables the ITO to give effect to the provisions of

section 23A in respect of the assessment year ending on 31-3-1962 or any earlier year.

6. Now the argument is that when section 297(2)(e) refers to "the assessment of any company or its shareholders", that assessment must be only

under the 1922 Act. The word "assessment" is defined in section 2(8) of the 1961 Act and it includes reassessment. The object of making a

provision like clause (e) in section 297(2) is obvious. Under the provisions of section 297(2)(d), even in respect of a period prior to 1-4-1962, if

proceedings for reassessment are not taken u/s 34 of the 1922 Act, proceedings for reassessment can be taken under the provisions of section

147 read with section 148 of the 1961 Act. In the case of a company, on a reassessment made u/s 297(2)(d), it is quite possible that the assessed

profits of the company are likely to be more than the profits which were assessed earlier. In such a case, commercial profits are likely to be more

than what they were at the time of original assessment when the applicability of section 23A was considered. It cannot be contemplated that while

even in the case of a company the proceedings for reassessment were permissible in respect of a period prior to 1-4-1962, the Legislature wanted

the provisions of section 23A to be expressly excluded even though the provisions u/s 23A would have been attracted if the commercial profits

which are found on reassessment would have otherwise attracted the provisions of section 23A. It appears to us, therefore, that on the basis of the

reassessed profits, the ITO was clearly entitled to exercise his powers u/s 23A.

7. The argument that the hundi loans which were shown as income in the returns submitted in pursuance of the notice u/s 148 could not be taken

into account for the purpose of determination of commercial profits must also be rejected. The Tribunal has found as a fact that there was no

agreement between the department and the assessee that in case he disclosed the correct income, proceedings u/s 23A would not be taken. The

ITO was, therefore, clearly entitled to give effect to the provisions of section 23A on finding that there was distributable surplus and that the

amount of surplus distributable dividend was less than the prescribed percentage.

8. The matter, in our view, stands really covered by the decision of the Supreme Court in Gobald Motor Service (P.) Ltd. Vs. Commissioner of

Income Tax, Madras, . In that decision, the Supreme Court has clearly held that if an item of receipt is deliberately omitted from the accounts, it

could not be said that commercial principles prevent the amount being added to the profits in order to arrive at the real commercial or accounting

profits.

9. The proceedings u/s 23A are undoubtedly in the nature of penal proceedings as held by the Supreme Court in Commissioner of Income Tax,

West Bengal Vs. Gangadhar Banerjee and Co. (Private) Ltd., on which reliance is placed on behalf of the assessee. That decision also

undoubtedly lays down that the revenue has strictly to comply with the conditions laid down u/s 23A. It has not been shown to us as to which are

the conditions which are not complied with by the ITO. The requirements of section 23A(1) have clearly been satisfied. It is not the assessee"s

case that the assessee had incurred any losses in the earlier years or that the profits were so small that commercially it would be inexpedient to

declare any higher dividend. No circumstances as contemplated by any of the clauses, namely, clauses (a) and (b) in section 23A(1) have been

shown on record. In our view, therefore, the Tribunal was clearly right in holding that the ITO was entitled to invoke the provisions of section 23A.

As already pointed out, there is no material on record to show that larger dividend could not have been declared by the assessee. Accordingly,

question No. 1 is answered in the affirmative and against the assessee. Question No. 2 is also answered in the affirmative and against the assessee.

The questions are answered accordingly. The assessee to pay the costs of this reference, Rs. 500.