

(1976) 09 AHC CK 0021

Allahabad High Court

Case No: Civil Miscellaneous Writ No. 7528 of 1973

O.C.M. Ltd. (London) (Now
named as Ralli International Ltd.
(London))

APPELLANT

Vs

Income Tax Officer, A-Ward and
Others

RESPONDENT

Date of Decision: Sept. 28, 1976**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Income Tax Act, 1961 - Section 264

Citation: (1977) 110 ITR 722**Hon'ble Judges:** R.M. Sahai, J; D.M. Chandrashekhar, J**Bench:** Division Bench**Advocate:** Shanti Bhushan and R.K. Gulati, for the Appellant; Deokinandan, for the Respondent**Final Decision:** Disposed Of

Judgement

Chandrashekhar, J.

In this petition under Article 226 of the Constitution, the petitioner has prayed for quashing the orders of the Income Tax authorities and has also prayed for issue of a direction to the Income Tax Officer to refund certain amount of tax.

2. The case of the petitioner is, briefly, as follows : The petitioner is a non-resident company which is holding shares in three companies registered in India. During the previous year relevant to the assessment year 1955-56 the petitioner received dividends from these three companies. One of these companies, namely, M/s. O.C.M. India (Private) Ltd., had declared an interim dividend of Rs. 2,30,000 and a final dividend of Rs. 1,15,000. Out of the gross interim dividend of Rs. 2,30,000 M/s. O.C.M. India (Private) Ltd. had deducted at the source Rs. 57,500 towards Income

Tax and Rs. 11,500 towards super-tax. While sending its return of income for the assessment year 1965-66 the petitioner omitted to include the interim dividend of Rs. 30,000 and according to the petitioner, this was by inadvertence. The Income Tax Officer accepted the return of the petitioner and made the assessment. Hence, neither the gross dividend of Rs. 2,30,000 nor the deductions of Rs. 57,500 towards Income Tax and Rs. 11,500 towards super-tax were taken into consideration by the Income Tax Officer. In view of the provisions of Clause 2(b)(ii) of Part II of the First Schedule to the Finance Act, 1965, the income of the petitioner was not liable to super-tax. Hence, the sum of Rs. 11,500 deducted at the source towards super-tax before payment of the interim dividend, had to be refunded to the petitioner.

3. Subsequent to the Income Tax Officer making the assessment for the year 1965-66 the petitioner made an application to him requesting him to reopen the assessment of that year as the interim dividend of Rs. 2,30,000 had escaped assessment to income, to reassess its income and to refund to it (the petitioner) the sum of Rs. 11,500 deducted at the source towards supertax. The Income Tax Officer declined to reopen the assessment.

4. The petitioner made another application to the Income Tax Officer claiming refund of the sum of Rs. 11,500 which had been deducted at the source towards super-tax before paying the interim dividend to it. But the Income Tax Officer rejected the claim for refund on the ground that the assessment had been concluded and the refund could not be granted without reopening the assessment. The petitioner's successive appeals to the Appellate Assistant Commissioner and the Income Tax Appellate Tribunal, against the aforesaid order of the Income Tax Officer, were unsuccessful.

5. The petitioner also preferred a revision petition to the Commissioner of Income Tax (hereinafter referred to as "the Commissioner") u/s 264 of the Income Tax Act, 1961, praying that the order of assessment might be revised so that the interim dividend of Rs. 2,30,000 received by it from M/s. O.C.M. India (Private) Ltd. and inadvertently not included in the original return, might be included in its income and the super-tax deducted at the source might be refunded to it (the petitioner). The Commissioner dismissed the revision petition observing as follows :

"The petitioner filed return showing income of Rs. 2,62,300 on January 18, 1966, and it was accepted by the Income Tax Officer on February 10, 1967. There is no mistake in the Income Tax Officer's order, which requires interference. The petition is misconceived and is accordingly rejected."

6. In this petition the petitioner has prayed for quashing the orders of the Income Tax Officer, the Appellate Assistant Commissioner and the Income Tax Appellate Tribunal. But it has not prayed for quashing the order of the Commissioner dismissing the revision petition, though it has contended in the body of the petition that the said order was unsustainable. Where the necessary averments of facts and

contentions are contained in a writ petition and necessary parties are also impleaded, it is open to the court to grant the appropriate relief even though the petitioner had not specifically asked for it.

7. We have heard learned counsel for the petitioner and the learned standing counsel for the Income Tax department regarding the sustainability of the order of the Commissioner dismissing the revision petition. In our opinion, the Commissioner has taken a too narrow view of the scope of the revision u/s 264. Though the Income Tax Officer accepted the income, as returned by the petitioner, and made assessment, its case is that the order of assessment has to be revised in view of the fact that a sum of Rs. 2,30,000 which ought to have been included in the return filed by it was omitted by inadvertence and consequently it was deprived of the refund of Rs. 11,500. This aspect of the case has not at all been considered by the Commissioner.

8. In [PT. SHEO NATH PRASAD SHARMA Vs. COMMISSIONER OF Income Tax, LUCKNOW, AND OTHERS.,](#) the assessee who had himself shown certain amount in his return as taxable and was assessed to tax thereon, subsequently approached the Commissioner by way of revision contending that that amount was not taxable. The Commissioner dismissed the revision petition observing as follows :

"As the assessee has himself shown the incomes on which he has been assessed, there is no force in the present petition filed by the assessee."

9. Quashing the order of the Commissioner, Pathak J. (as he then was) observed thus at page 651 of the report :

"It seems to me, however, that the order of the Commissioner rejecting the previous applications, on the mere ground that the petitioner has shown the income in his return, is erroneous. The Commissioner was bound to apply his mind to the question whether the petitioner was taxable on that income."

10. In the light of the aforesaid decision of this court, it is clear that the Commissioner should have applied his mind to the petitioner's plea that it had inadvertently omitted to include in its return the amount of interim dividend received by it from M/s. O.C.M. India (Private) Ltd. and that the assessment made by the Income Tax Officer without taking into account that amount of interim dividend, should be revised and that it (the petitioner) should be given the benefit of the refund of the super-tax which was deducted at the source before payment of the interim dividend to it. Hence, the impugned order of the Commissioner suffers from a manifest error and has to be quashed.

11. In the result, we allow this petition, quash the order of the Commissioner of Income Tax dated 28th November, 1969, in Rev. C. No. 4/Mirza-pur/1967-68 and direct him to dispose of the revision petition afresh and according to law.

12. In the circumstances of the case, we direct the parties to bear their own costs in this petition.