

(1971) 12 AHC CK 0015

Allahabad High Court

Case No: Special Appeal No. 304 of 1963

Rai Bahadur Seth Gujar Mal Modi
and Others

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision: Dec. 15, 1971**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Income Tax Act, 1922 - Section 34(1A), 34(1B)

Citation: (1973) 87 ITR 159**Hon'ble Judges:** R.S. Pathak, J; Hari Swarup, J**Bench:** Division Bench**Advocate:** D.S. Agarwal and Shanti Bhushan, for the Appellant; R.R. Misra, for the Respondent**Final Decision:** Dismissed

Judgement

Hari Swarup, J.

This appeal is directed against the judgment of the learned single judge, dismissing the writ petition. The petition was filed against the orders of the Income Tax Officer, requiring the petitioner to pay a sum of Rs. 2,61,378. Five notices had been issued to the petitioner u/s 34(1A) of the Income Tax Act, 1922. The petitioner on 8th September, 1955, applied to the Central Board of Revenue u/s 34(1B) for a settlement of the matter relating to the assessment for the years 1940-41 to 1946-47. The proposed settlement was accepted by the Central Board of Revenue and an order was passed u/s 34(1B) of the Act on November 19, 1955. Under the terms of the settlement, the total income of the assessee was held to be Rs. 65,05,053. In the settlement the money payable was held to be Rs. 44,06,672. Out of this amount" Rs. 16,06,672 having already been collected, a sum of Rs. 28 lacs remained to be paid. There was a clause in the settlement which required the assessee to pay a further sum. It runs as follows :

" It is further agreed that depreciation allowance of Rs. 4,45,603 having been granted in respect of the shares specified in Clause 3, supra, the assessee shall be liable to pay to the Government a further sum equal to 2/3rd of the net and overall appreciation, if any, that may take place in the market value of the shares over the value adopted for the purpose of this settlement before the entire sum of money payable under the present settlement has been paid off by the assesseees..."

2. The amount of Rs. 28 lacs was payable in seven installments the last installment being payable in 1961. The Income Tax Officer in terms of Clause 7 of the agreement held that there was an appreciation in the value of shares to the extent of Rs. 3,92,069 and 2/3rd tax thereon amounting to Rs. 2,61,378 was demanded per his order dated 12th July, 1962, and by subsequent orders. The assesseees on June 1, 1962, made a representation to the Central Board of Revenue alleging that Clause 7 having not been incorporated in terms of the order passed by the Central Board of Revenue u/s 34(1A) of the Act, the amount was not payable. The representation was sent to the Commissioner of Income Tax who finally rejected it. We are informed that the amount demanded has by now been paid up. The learned single judge dismissed the writ petition holding that under this settlement there was a liability created on the petitioners to pay the amount in accordance with Clause 7 thereof and that the petitioner had not proved that the amount demanded was in excess of the liability under that clause. The learned single judge holding that no injury was caused by the impugned order to the petitioners, refused to exercise the jurisdiction under Article 226 of the Constitution in favour of the petitioner.

3. The learned counsel for the appellant has contended before us that Section 34(1B) did not permit a second quantification and that it could not in any case be made by the Income Tax Officer and as there is no quantification made by the Central Board of Revenue and there is no order specifying the amount u/s 34(1B), the amount is not recoverable. His further contention is that the amount could be got specified by the Central Government only through the machinery of the court by filing a civil suit and not otherwise. His last contention is that the amount having been determined without affording the petitioners any opportunity of being heard cannot be considered to be properly determined as, in determining the amount, the Income Tax Officer did not follow the principles of natural justice.

4. The terms of the settlement clearly indicate that the assessee was liable to pay to the Government a further sum equal to 2/3rd of the net and overall appreciation, if any, in the market value of the , shares. Under Clause 3 of the agreement the assessee was allowed a depreciation. The value was calculated at the depreciated rate and under Clause 7 the liability was created on the appreciation which may take place during the period the sum of Rs. 28 lacs was being paid in installments. This liability was an additional liability to the liability of Rs. 44,06,672 already quantified. The order passed by the Central Board of Revenue u/s 34(1B) of the Act shows that the proposed terms of the agreement were accepted in full. This is clear from the

order which reads :

"...whereas the said terms of settlement have been considered by the Central Board of Revenue and approved by the Central Government.

And whereas the Central Board of Revenue have, after such consideration and approval, accepted the terms of settlement."

5. We have thus no doubt that the assessee was liable to pay to the Government a further sum equal to 2/3rd of the net and overall appreciation that may take place in the market value of shares in terms of Clause 7 of the settlement. The amount was of course not specified as it was on that date not practicable to quantify the amount. The amount was payable only if there was an appreciation in the value of the shares. It was impossible to know if there would be any appreciation in value and, if so, to what extent. Once the value of the shares appreciated, liability of the petitioner to pay the amount in terms of Clause 7 of the settlement arose by virtue of the settlement and pursuant to that liability the assessee paid the sum covered by it. It is now in equity not open to the assessee to claim a writ to direct a refund of an amount which the assessee was bound to pay.

6. There is no allegation in the petition to show that the amount computed by the Income Tax Officer is excessive or does not represent the correct figure. The petitioners have thus failed to show that they have suffered any injury by the order or that any legal right of the petitioners has been affected by the order of the Income Tax Officer requiring him to pay the amount which was demanded and has been paid by the petitioners. Even if technically it may have been necessary for the Central Board of Revenue to have passed another order quantifying the amount in terms of Clause 7 of the agreement when the date of such payment arrived and to give the petitioner an opportunity of hearing before such quantification was made, the petitioners having failed to prove that they suffered any injury or that any legal right of theirs has been affected by the demand made from them, they cannot invoke the extraordinary jurisdiction of this court to help them in avoiding the liability which under law they were bound to discharge. Under Clause 7 of the settlement the petitioners had accepted the liability and they cannot now go back and take the help of this court, especially when they have satisfied the liability.

7. We see no reason to disagree with the view taken by the learned single judge and dismiss the appeal with costs.