

(1975) 05 AHC CK 0016

Allahabad High Court

Case No: Income-tax Reference No. 963 of 1972

J.K. Spinning and Weaving Mills
Co.

APPELLANT

Vs

Additional Commissioner of
Income Tax

RESPONDENT

Date of Decision: May 6, 1975

Acts Referred:

- Income Tax Act, 1922 - Section 18A(5)
- Income Tax Act, 1961 - Section 147, 148

Citation: (1976) 104 ITR 695

Hon'ble Judges: R.L. Gulati, J; C.S.P. Singh, J

Bench: Division Bench

Advocate: V.P. Upadhyaya, for the Appellant; Deokinandan, for the Respondent

Final Decision: Dismissed

Judgement

Gulati, J.

This is a reference u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2. The assessee is a limited company. The assessment year involved is 1957-58 with the previous year ending on 31st December, 1956. The assessee filed the return on 31st December, 1957, and the assessment was made on 27th March, 1958. For the assessment years 1951-52 and 1952-53, the assessments were made on 20th March, 1956, and 29th March, 1956, respectively. Interest on advance tax u/s 18A(5) of the Indian Income Tax Act, 1922, amounting to Rs. 9,696 and Rs. 5,083 for the two years respectively was allowed to the assessee by adjustment against the existing demand for the assessment year 1957-58. This means that in the previous year relevant to the assessment year 1957-58, the assessee had received interest from the Income Tax department on advance tax relating to the assessment years 1951-52 and

1952-53. This interest the assessee did not show in its return for the year 1957-58. After the assessment was made the Income Tax Officer discovered this omission and he accordingly on 19th September, 1964, commenced proceedings against the assessee u/s 148 read with Section 147(a) of the Act and made a reassessment by including in its income the two amounts of interest received by the assessee on advance tax. The assessee challenged the inclusion on two grounds : (1) that the case was not covered by Section 147(a) of the Act, and (2) that the interest related to the assessment years 1951-52 and 1952-53, and the same could not be assessed in the assessment year 1957-58. Both these contentions of the assessee were negatived by the Income Tax Officer, the Appellate Assistant Commissioner of Income Tax and the Income Tax Appellate Tribunal. The assessee is aggrieved and at his instance the Tribunal has submitted the following two questions of law for the opinion of this court:

"(1) Whether, on the facts and in the circumstances of the case, the Income Tax Officer rightly assumed jurisdiction u/s 147(a) of the Income Tax Act, 1961, for the assessment year 1957-58?

(2) Whether, on the facts and in the circumstances of the case, the payments of the amount of Rs. 9,696 for 1951-52 on March 20, 1956, and of Rs. 5,083 for 1952-53 on March 29, 1956 representing interest u/s 18A(5) of the Indian Income Tax Act, 1922, could be treated as income of the assessment year 1957-58 only?"

3. Section 147 deals with income escaping assessment. Clause (a) is applicable where income escapes assessment due to the failure of the assessee to file a return u/s 139 or to disclose fully and truly all material facts and Clause (b) applies where escapement takes place notwithstanding that there has been no omission or failure on the part of the assessee as mentioned in Clause (a). Where Clause (a) is applicable proceedings for reassessment can be initiated within a period of 8 years or 16 years depending upon the amount of the escaped income and where Clause (b) applies the period of limitation is 4 years from the end of the assessment year concerned. It is not disputed by the assessee that income from interest has escaped assessment but according to it Clause (a) of Section 147 is not applicable because there has been no omission or failure on the part- of the assessee either to file the return or to disclose fully and truly all material facts.

4. No doubt, the assessee filed its return for the year 1957-58, but he did not include in its total income the interest received from the department on advance tax. A question arises whether such an omission amounts to non-disclosure of material facts within the meaning of Clause (a) of Section 147.

5. u/s 139 of the Act an assessee is required to file a return of its total income and to furnish other prescribed particulars. The return is to be verified in the prescribed manner. It is the primary duty of the assessee to disclose in the return all his income. If he omits to disclose a part of the income, he cannot be said to have

disclosed fully and truly all material facts and he is caught within the mischief of Clause (a) of Section 147, The defence of the assessee in the instant case is that even though it did not show interest income in its return, the Income Tax Officer was aware of the fact that the assessee had earned interest on advance tax because he himself had calculated the interest and adjusted the same against the demand for the assessment year 1957-58 at the time of final assessment for the year in question. In the alternative, it is pleaded that the Income Tax Officer could with due diligence have discovered this fact.

6. Now, there is no material on record to show that the Income Tax Officer was aware of the fact that the assessee had earned income from interest and he deliberately omitted to include the same in the assessment for the year 1957-58. It is possible, however, to contend that the Income Tax Officer could have discovered this fact from the assessment records of the assessee. In our opinion, this possibility does not change the legal position. The primary duty to disclose all income lies upon the assessee and the fact that the Income Tax Officer with due diligence could have discovered the assessee's true income does not absolve the assessee from discharging his primary duty. In some cases an assessee may dispute that a particular receipt is his income. Even in such a case the assessee is required to disclose all material facts to the Income Tax Officer so that he may adjudicate upon the issue, and if the Income Tax Officer omits to bring it to tax under some erroneous belief or through an inadvertent error, Clause (a) of Section 147 may not be applicable. But the instant case is not one of those cases. Here there is no dispute about the two items of interest being the assessee's income. The assessee had also not put forward a claim that interest income was not taxable. It was the assessee's duty to include this income in its total income in the return filed by it and because of his omission to do so, the income escaped assessment. The escapement, in our view, was due directly to the default on the part of the assessee. The case is thus squarely covered by Clause (a) of Section 147.

7. In [Commissioner of Income Tax, West Bengal, and Another Vs. Hemchandra Kar and Others](#), the Supreme Court was dealing with a different situation. There the assessee was a Hindu undivided family. The karta of the family and its members had encashed certain high denomination notes in January, 1946. The encashment of the notes was not disclosed to the Income Tax Officer during the assessment proceedings for the year 1946-47. On coming to know of the encashment of the notes the Income Tax Officer reopened the assessment of the family and of the members and included a sum of Rs. 19,000 in the assessment of the family and a sum of Rs. 1,10,000 in the assessment of the five members. Two days later, the Income Tax Officer issued another notice u/s 34(1)(a) of the Indian Income Tax Act, 1922, which corresponds to Section 147(a) of the Act, and included the entire sum of Rs. 1,29,000 in the income of the family. On these facts the Supreme Court held that the second assessment was not justified u/s 34(1)(a) as the escapement of proper tax upon the family had resulted not from any non-disclosure of the facts on the part of

the assessee but because of the mistake made by the Income Tax Officer. In that case obviously, the Income Tax Officer was aware of all the necessary facts, namely, that the family and its members had encashed high denomination notes and because of an error of judgment on its part he made a wrong assessment separately upon the family and its members instead of making one assessment on the family.

8. In the case of [Modi Spinning and Weaving Mills Co. Ltd. Vs. Income Tax Officer, Special Investigation Circle \(B\), Meerut](#), the assessee had not deducted the initial depreciation while calculating the written down value of some machinery for the purpose of depreciation allowance and, as such, the depreciation allowance granted to the assessee was in excess of what was actually due to him. The Income Tax Officer, on discovering this mistake more than 4 years after the expiry of the assessment year, issued notice u/s 34(1)(a) of the Indian Income Tax Act, 1922, for reassessment. The assessee filed a writ petition in the High Court contending that the income had not escaped assessment because of any omission or failure on his part. The writ petition was dismissed by a learned single judge and the assessee's Letters Patent appeal was also dismissed. On appeal the Supreme Court set aside the judgment of the High Court holding that the High Court did not consider whether income escaped assessment by reason of omission or failure on the part of the assessee to disclose fully and truly all necessary facts for assessment and remanded the case for determination of the question whether by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment of the assessee for the 3 years in question, any income, profits or gains chargeable to Income Tax had escaped assessment, or the assessee had been given excessive depreciation allowance in computing its income. This case does not help the assessee at all. It is plain that before Section 34(1)(a) of the Income Tax Act, 1922 (corresponding to Section 147(a) of the Act), can be pressed into service it must be found as a condition precedent that there has been escapement of income and the escapement has resulted from the failure of the assessee to file his return or to disclose fully and truly all material facts necessary for assessment. In the absence of such a finding, the Income Tax Officer has no jurisdiction to make a reassessment with the aid of Section 34(1)(a). In the instant case, we have found that the escapement of interest income resulted from the assessee's failure to include it in its return. The escapement was, therefore, a direct result of the assessee's failure to disclose fully and truly all material facts.

9. The case of the Calcutta High Court in [Dunlop Rubber Company Ltd. Vs. Income Tax Officer "A"-Ward and Others](#), is clearly distinguishable. There the dispute arose between the Income Tax department and the assessee with regard to the nature of certain remittances made by the assessee-company to the U.K. The assessee's contention was that such remittances did not represent income chargeable to Income Tax under the Indian Income Tax Act. It appears that the question of taxability of the amount had been gone into earlier but those proceedings were

dropped on the satisfaction of the Income Tax Officer that the amounts were not taxable. Later, on, the Income Tax Officer appears to have changed his mind and started proceedings u/s 148. On these facts the Calcutta High Court held :

"Taking into account the entire conspectus of the facts and circumstances of this case, there has been no omission or failure on the part of the petitioner-company to disclose facts so as to justify action under Sections 147 and 148 of the Act."

10. That was clearly a case of change of opinion and the escapement, if any, had not resulted from any default on the part of the assessee but because of the erroneous view taken by the Income Tax Officer earlier when such a question was gone into. Such is not the position in the case before us. Here there was no dispute about the taxability of the two amounts of interest which escaped assessment because the assessee omitted to show them in its return.

11. We may now take up the question No. 2. The argument is that as the interest related to the assessment years 1951-52 and 1952-53, it could have been included in the assessments for those years and not in the assessment year 1957-58 as the assessee followed the mercantile system of accounting. Now, even in a case where the mercantile system of accounting is followed, income may accrue when a right to receive it arises, even if it is not actually received. The question in the instant case is as to when did the interest income arise.

12. Advance tax is payable by an assessee u/s 18A of the Indian Income Tax Act, 1922. The advance tax so paid shall be adjusted against the tax determined on assessment, provisional or regular. Sub-section (5) provides :

"The Central Government shall pay simple interest-

(i) at two per cent. per annum on any amount payable in accordance with the provisions of this Section before the 1st day of April, 1955, and paid accordingly;

(ii) at four per cent. per annum on any amount payable in accordance with the provisions of this section after the 1st day of April, 1955, and paid accordingly;

from the date of payment to the date of the provisional assessment made u/s 23B, or if no such assessment has been made to the date of the assessment (hereinafter called the regular assessment) made u/s 23 of the income, profits and gains of the previous year for an assessment for the year next following the year in which the amount was payable."

13. The interest thus is payable from the date of the deposit to the date of assessment, provisional or regular. Clearly, until such assessment comes to be made, no interest is payable to the assessee. His right to receive interest arises only after the assessment has been made. In the instant case, no doubt, the advance tax must have been paid during the years 1951-52 and 1952-53, but the interest on such payment became payable to the assessee only when the assessments for those two

years were made. The assessments were made on 20th and 29th March, 1956. Both these dates fell within the previous year relevant to the assessment year 1957-58 and, as such, the interest could be assessed only in the year 1957-58.

14. In [The Commissioner of Income Tax, Madras Vs. A. Gajapathy Naidu](#), the Supreme Court has laid down the principle with regard to the accrual of income on mercantile basis for purposes of taxation. While giving the definition of the word "accrue" or "arise" this is what their Lordships observed at page 118:

"Under this definition accepted by this court, an income accrues or arises when the assessee acquires a right to receive the same. It is commonplace that there are two principal methods of accounting for the income, profits and gains of a business; one is the cash basis and the other, the mercantile basis. The latter system of accountancy "brings into credit what is due immediately it becomes legally due and before it is actually received ; and it brings into debit expenditure the amount for which a legal liability has been incurred before it is actually disbursed."

15. Further down in the same paragraph it was held at page 119:

"When an Income Tax Officer proceeds to include a particular income in the assessment, he should ask himself, inter alia, two questions, namely : (i) what is the system of accountancy adopted by the assessee ? and (2) if it is the mercantile system of accountancy, subject to the deemed provisions, when has the right to receive that amount accrued ? If he comes to the conclusion that such a right accrued or arose to the assessee in a particular accounting year, he shall include the said income in the assessment of the succeeding assessment year. No power is conferred on the income tax Officer under the Act to relate back an income that accrued or arose in a subsequent year to another earlier year on the ground that the said income arose out of an earlier transaction. Nor is the question of reopening of accounts relevant in the matter of ascertaining when a particular income accrued or arose."

16. There an assessee who supplied bread to a Government hospital under a contract during the period April 1, 1948, to March 31, 1949, made certain representations to the Government after the close of the year that he had incurred loss. The Government directed payment of the sum of Rs. 12,447 to the assessee by way of compensation for the loss sustained in respect of the supply of bread. That amount was received by the assessee in the accounting year 1950-51. It was held by the Supreme Court that the amount ought to be included in the profits of the year 1950-51 relevant to the assessment year 1951-52 and that it could not be related back to the earlier years during which the assessee actually supplied bread to the hospital. Applying this principle the interest income arose to the assessee on dates when the regular assessments were made. These dates fell within the previous year relevant to the assessment year 1957-58 and were liable to be assessed in that year. They could not be related back to the assessment years 1951-52 and 1952-53 merely

because the advance tax related to and was paid in those years.

17. In [Nonsuch Estate Ltd. Vs. The Commissioner of Income Tax, Madras](#), the Supreme Court has held that an assessee following the mercantile system of accounting is not entitled to claim a deduction until liability for the same for which deduction is claimed has accrued. In that case the payment of the managing agent's remuneration was subject to the approval of appointment or re-appointment of the managing agent u/s 326 of the Companies Act, 1956. It was held by the Supreme Court that the managing agent's commission became an accrued liability only on the day the approval was accorded by the Central Government even though the remuneration related to an earlier period.

18. In [Commissioner of Income Tax, Mysore Vs. V. Sampangiramaiah](#), the Mysore High Court has not laid down any contrary proposition. That was a case under the Land Acquisition Act. There the assessee was given compensation and interest. The department wanted to assess the entire interest in the year in which it was received. The Mysore High Court held that the interest started accruing to the assessee from the date of possession and at the end of each year he became entitled to interest and, as such, the interest for each year should have been assessed separately. It is the date of accrual and not the receipt which is material in cases where mercantile system of accounting is followed. The date of accrual in the Mysore case was the date of possession while the date of accrual in the present case is the date of assessment.

19. The case of the Orissa High Court in [Joyanarayan Panigrahi Vs. Commissioner of Income Tax](#), was also a case under the Land Acquisition Act. There the decision of the Mysore High Court in the case of Commissioner of Income Tax v. Sampangiramaiah has been followed.

20. For the reasons stated above we answer both the questions in the affirmative, in favour of the department and against the assessee. The Commissioner is entitled to costs which we assess at Rs. 200.