

(1988) 10 BOM CK 0040

Bombay High Court

Case No: Income-tax Reference No. 372 of 1975

Commissioner of Income Tax

APPELLANT

Vs

Smt. A.S. Narendrakumari
Basaheba

RESPONDENT

Date of Decision: Oct. 5, 1988

Acts Referred:

- Income Tax Act, 1961 - Section 209, 256(1), 263

Citation: (1988) 74 CTR 56 : (1989) 176 ITR 515

Hon'ble Judges: V.S. Kotwal, J; S.K. Desai, J

Bench: Division Bench

Judgement

S.K. Desai, J.

The question referred to us by the Income Tax Appellate Tribunal, Bombay Bench "A", u/s 256(1) of the Income Tax Act, 1961, reads as under :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessment order of the Income Tax Officer merged with the Appellate Assistant Commissioner's order in its entirety and that the Commissioner of Income Tax had no jurisdiction to revise the assessment order u/s 263 ?"

2. The assessee is an individual. The relevant previous year was Samvat year 2025. During the financial year 1969-70, an advance tax demand of Rs. 13,950 was raised on the assessee u/s 210 of the Income Tax act. In response to the said demand, the assessee paid an amount of Rs. 12,440. The self-assessment tax on the basis of the income return furnished by the assessee came to Rs. 10,007. The assessee was, however, assessed on a total income of Rs. 64,107 and Rs. 29,968 was the tax determined on the assessee's income as per the regular assessment order dated May 22, 1971. The tax determined as aforesaid exceeded the advance tax demanded u/s 210 by more than 33 1/3%. The assessee should have, therefore, sent to the Income Tax Officer u/s 212(3A) of the Income Tax Act an estimate of the current

income and of the advance tax payable by her (on the current income), as calculated in the manner laid down in section 209 and she should also have paid by way of advance tax the difference over and above the advance tax demanded u/s 210. The assessee had failed to comply with the said requirements of the provisions of section 212(3A) of the Income Tax Act. Under these circumstances, by virtue of the provisions of section 217(1A), interest at 9% became payable by the assessee on the amount by which the advance tax paid by her fell short of the assessed tax as defined in section 215(5). In the assessment order dated May 22, 1971, the Income Tax Officer did not mention anything about the amount of interest payable by the assessee u/s 217(1A) as aforesaid. The Commissioner was of the opinion that this omission on the part of the Income Tax Officer was prejudicial to the interests of the Revenue and was, to that extent, erroneous. He, therefore, assumed jurisdiction u/s 263 of the Income Tax Act and levied on the assessee u/s 217(1A) interest amounting to Rs. 1,251. He also directed the Income Tax Officer to issue the consequential demand notice. The assessee, feeling aggrieved from the Commissioner's order, took the matter in appeal to the Tribunal. The arguments before it were two-fold. Firstly, it was contended that since there was no order before the Commissioner which could have been said to have been made by the Income Tax Officer u/s 217(1A), the Commissioner had u/s 263 of the Income Tax Act no jurisdiction to pass the impugned order levying interest u/s 217(1A). Secondly, it was urged that if the assessment order made by the Income Tax Officer was considered to have, by implication, included an order waiving the levy of interest payable u/s 217(1A), the order of the Income Tax Officer was no longer revisable by the Commissioner as in the meantime the Income Tax Officer's assessment order had been taken by the assessee in appeal to the Appellate Assistant Commissioner and as a result of the disposal of the said appeal by the Appellate Assistant Commissioner before May 16, 1973 (the date of the impugned order of the Commissioner), the Income Tax Officer's order had merged with the Appellate Assistant Commissioner's order. The Tribunal upheld the contention of the assessee and held that the Income Tax Officer's order dated May 22, 1971, stood merged in the Appellate Assistant Commissioner's order and that, therefore, it was no longer open to the Commissioner to revise the original order of the Income Tax Officer.

3. The answer to the question referred to us is directly covered by the decision of this court in [Commissioner of Income Tax Vs. P. Muncherji and Company](#). Indeed, the Tribunal, in its order, had referred to its previous order in P. Muncherji's appeal (before the Tribunal) and had followed its own view. That view was later on confirmed by the Division Bench of the High Court in P. Muncherji's case. The Division Bench of this court in [Commissioner of Income Tax Vs. P. Muncherji and Company](#), has given a very detailed judgment and held on question No. 2, which was an identical question, that the order of the Income Tax officer had merged with the order of the Appellate Assistant Commissioner on all points in respect of which an appeal could have been filed before him or in respect of which

the Appellate Assistant Commissioner could have modified the order. Before the Bench, there was an exhaustive discussion of all the Bombay High Court and the Supreme Court authorities on the point. The Bench found the matter directly covered by [Commissioner of Income Tax, Bombay North Vs. Tejaji Farasram,](#) , though a decision under the 1922 Act, laid down the principles which were applicable to the 1961 enactment. According to the Bench, in [Commissioner of Income Tax, Bombay Vs. Amritlal Bhojilal and Co.,](#) , the Supreme Court had referred to the Bombay High Court's judgment in [Commissioner of Income Tax, Bombay North Vs. Tejaji Farasram,](#) without adversely commenting upon it. Indeed, a passage from the Supreme Court's judgment has been extracted by the Bench which would approve the view taken by the High court in [Commissioner of Income Tax, Bombay North Vs. Tejaji Farasram,](#) , and subsequently confirmed in P. Muncherji's case. This extract occurs at page 677 of the report in [Commissioner of Income Tax Vs. P. Muncherji and Company,](#) . We do not find it necessary to reproduce the extract in his judgment.

4. Accordingly, the Division Bench in [Commissioner of Income Tax Vs. P. Muncherji and Company,](#) , was of the view that the Bombay High Court's decision in [Commissioner of Income Tax, Bombay North Vs. Tejaji Farasram,](#) , had been subsequently approved by the Supreme Court and was required to be followed by the Division Bench. The said Division Bench also considered the scope and the authority of the Appellate Assistant Commissioner qua assessment and extracted relevant passages from various decisions of the Bombay High Court explaining the correct position. The Division Bench noticed that there was a conflict of view amongst the High Courts on the issue (see page 680 of the report) but was of the opinion that since the question before the Bombay High Court was concluded by the earlier decision which was on all fours and not capable of being distinguished the previous decision was required to be followed.

5. Mr. Jetley with his usual industry has referred us to a Full Bench decision of the Madhya Pradesh High court in [Commissioner of Income Tax Vs. K.L. Rajput,](#) , where the opposite view has found favour. The Full Bench of the Madhya Pradesh High Court has held that the Income Tax Officer's order merges with the appellate order of the Appellate Assistant Commissioner only to the extent it was considered and decided by the Appellate Assistant Commissioner, but the matters which are not covered by the appellate order of the Appellate Assistant Commissioner are left untouched and to that extent, the Income Tax Officer's assessment order survives and would permit exercise of revisional jurisdiction by the Commissioner u/s 263 of the Income Tax Act, 1961.

6. Mr. Jetley also drew our attention to the observations made in [Additional Commissioner of Income Tax, Kanpur and Another Vs. J.K. Synthetics Ltd.,](#) , where the Supreme Court refrained from deciding the question as by the time the matter came up for hearing before the Supreme Court, the matter had become academic.

The assessee, it seems, had succeeded on merits on the revisional order of the Commissioner and, therefore, the Supreme Court felt it unnecessary to go into or decide the controversy.

7. We have been invited by Mr. Jetley to form a larger Bench but, having perused the detailed judgment of the Division Bench in [Commissioner of Income Tax Vs. P. Muncherji and Company](#), we are not inclined to accept his suggestion. It is for the Revenue, if so advised, if it wishes to keep the matter alive in the instant case, to take the matter further to the Supreme Court. We must follow the considered view of the Division Bench of our High Court.

8. In the result, the question referred to us is answered in the affirmative and against the Revenue. There will, however, be no order as to costs of the reference.