

PETITIONER:
COMMISSIONER OF INCOME-TAX, DELHI (CENTRAL) NEW DELHI

Vs.

RESPONDENT:
M/S. SINGH ENGINEERING WORKS (P) LTD. KANPUR

DATE OF JUDGMENT:
11/08/1970

BENCH:
GROVER, A.N.
BENCH:
GROVER, A.N.
SHAH, J.C.
HEGDE, K.S.

CITATION:
1971 AIR 95 1971 SCR (1) 769
1970 SCC (2) 428

ACT:
Income-tax Act (43 of 1961), ss. 212, 273 and 297 (2)(g)-
Proceedings under s. 18-A of the 1922-Act-Assessment,
completed after 1st April 1962-Imposition of penalty under
1961 Act-Validity.

HEADNOTE:

The assessee was required under s. 18A(1) of the Income-tax Act, 1922, to make advance payments of tax for assessment years 1960-61 and 1961-62. The assessee made his own estimates of the tax for the two years and paid the amounts. But then the assessee filed returns of income for the two years, the Income-tax Officer assessed the total income of the assessee on January 21, 1963, at much higher figures for the two years, and held that the assessee furnished inaccurate and untrue estimates of tax and imposed penalties under s. 273 of the 1961-Act. The Tribunal held that the 'Penalties could not be imposed, because, (1) the default under s. 18A of the 1922-Act could not be treated as a default under the 1961 Act; and (2) s.297(2)(g) of the 1961-Act did not save the proceedings under s.18A of the 1922-Act.

In a reference to this Court, under s.257 of the 1961 Act, HELD : Section 212 of the 1961 Act corresponds to s.18A(2) of the 1922-Act and s.273 of the 1961-Act, which empowers the levy of penalty corresponds to s. 18A(9) of the 1922-Act. According to s. 297(2) (g) of the 1961-Act, a proceeding for the imposition of a penalty in respect of an assessment for the year ending on 31st March 1962 or any earlier year, which is completed on or after 1st April 1962, may be initiated, and the penalty may be imposed under the new Act. The sub-section is applicable to the present case, since the assessment was completed after 1st April 1962. Therefore, penalty could be imposed under the 1961-Act, that is, under s. 273, which will apply mutatis mutandis to the proceedings. [770 H; 771 A-B; 722 B-C]

M/s. Jain Bros. & Ors. v. Union of India. [1970] 3 S.C.R. 253 followed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Income-tax Reference Cases Nos. 1 and 2 of 1969.

References under s. 257 of the Indian Income-tax Act, 1961 made by the Income-tax Appellate Tribunal, Allahabad Bench in R.A. Nos. 1253 and 1254 of 1967-68 (I.T.A. Nos. 13922 and 13923 of 1965-66.

R. N. Sachthey and Gobind Das, for the appellant (in both the cases).

P. N. Pachauri, J.P. Goyal and Sobhamal Jain, for the respondent (in both the cases).

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The Judgment of the Court was delivered by Grover, J. The respondent company which is an assessee was required by the Income tax Officer by notices issued under s. 18A (1) of the Indian Income tax Act 1922, hereinafter called the "Old Act" to make an advance payment of tax amounting to Rs. 3,17,077 for the assessment year 1960-61 and Rs. 3,54,911 for the assessment year 1961-62. The assessee chose to file its own estimate of tax under s. 18A(2) and in accordance therewith it paid two instalments of advance tax of Rs. 38,333/- each for the assessment year 1960-61 and three instalments of Rs. 12,875/each for the assessment year 1961-62. Thereafter the assessee filed revised estimates of tax in the month of March 1960 and March 1961 respectively estimating the tax at Rs. 1,80,000/- for each of the assessment years on a total income of Rs. 4 lakhs. The balance of advance tax as per its revised estimate was paid in time after deducting the instalments which had already been paid. The assessee subsequently filed its returns of income for the aforesaid two years declaring the total income of Rs. 4,53,942/- and Rs. 7,02,383/- respectively. The Income tax Officer completed the assessment of total income of Rs. 5,35,000/- and Rs. 8,99,029/- for the assessment years 1960-61 and 1961-62 on January 21, 1963 after the Income tax Act 1961, hereinafter called the "New Act" had come into force. The Income tax Officer took the view that the assessee had furnished inaccurate, and untrue estimates of tax and had not given any satisfactory explanation in respect of them. He imposed penalties under s. 273 of the new Act amounting to Rs. 13,700/- and Rs. 12,342/- for the assessment years 1960-61 and 1961-62 respectively. Appeals to the Appellate Assistant Commissioner in the matter of imposition of penalty were rejected. The Appellate Tribunal held that the penalties could not have been imposed under the provisions of s. 273 of the new Act in respect of the two assessment years in question. It was said inter alia, that in the absence of any deeming provision in the new Act the default under s. 18A of the old Act could not be treated as a default under s. 212 of the new Act and that s. 297(2) (g) of the new Act did not save the proceedings under s. 18A of the old Act. A question of law was referred directly to this Court under the provisions of s. 257 of the new Act owing to the conflict between the decisions of the various High Courts.

Section 18A of the old Act makes provision for advance payment of tax. Sub-section (9) provides, inter alia, for the imposition of penalty, if the Income tax Officer is satisfied that the assessee has furnished estimates of the tax payable by him which he knew or had reason to believe to be untrue. In the new Act s. 212 makes provision for the estimate by the assessee and payment

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of tax in accordance with that estimate. Section 273 of the new Act empowers the Income tax Officer to levy penalty on an assessee where he finds at the time of regular assessment that the assessee had furnished, under s. 212, an estimate of the advance tax payable by him which he knew or had reason to believe to be untrue.

As stated before the Tribunal was of the opinion that s. 297 (2) (g) of the new Act did not save proceedings under s. 18A of the old Act. According to that provision any proceeding for the imposition of a penalty in respect of any assessment for the year ending on 31st day of March 1962 or any earlier year which is completed on or after the first day of April 1962 may be initiated and any such penalty may be imposed under the new Act.

In *M/s. Jain Bros. & Others v. The Union of India*(1) this Court examined the provision of s. 271 which also appears in Chapter XXI under which s. 273 is to be found and the provision of s.297 (2) (g) of the new Act. This is what was stated in that case

"We are further unable to agree that the language of s. 271 does not warrant the taking of proceedings under that section when a default has been committed by failure to comply with a notice issued under s. 22 (2) of the Act of 1922. It is true that cl. (a) of sub-s. (1) of s. 271 mentions the corresponding provisions of the Act of 1961 but that will not make the part relating to payment of penalty inapplicable once it is held that s. 297(2)(g) governs the case. Both ss. 271(1) and 297(2)(g) have to be read together and in harmony and so read the only conclusion possible is that for the imposition of a penalty in respect of any assessment for the year ending on March 31, 1962 or any earlier year which is completed after first day of April 1962 the proceedings have to be initiated and the penalty imposed in accordance with the provisions of s. 271 of the, Act of 1961. Thus the assessee

would be

liable to a penalty as provided by s. 271(1) for the default mentioned in s. 28(1) of the Act of 1922 if his case falls within the terms of s. 297(2)(g). We may usefully refer to this Court's decision in *Third Income tax Officer, -, Mangalore v. Damodar Bhat* (71 I.T.R. 806) with reference to s. 297(2)(j) of the Act of 1961. According to it in a case falling within that section in a proceeding for recovery of tax and penalty imposed under the Act of 1922 it is not required that all the sections of the new Act relating to recovery or collection should be literally applied but only such of the sections will apply as are appropriate in the particular case

(1) (1970) 3S.C.R. 253

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and subject, if necessary, to suitable modifications. In other words, the procedure of the new Act will apply to cases contemplated by s. 297 (2) (j) of the new Act mutatis mutandis. Similarly the provision of S. 271 of the Act of 1961 will apply mutatis

mutandis to proceedings relating to penalty initiated in accordance with s. 297 (2)(g) of that Act". ,

In our judgment s. 297(2)(g) is clearly applicable to the present case inasmuch as the assessment was completed on or after the first day of April 1962. The provisions of the new Act contained in s. 273 will apply mutatis mutandis to proceedings relating to penalty initiated in accordance with s. 297(2)(g) of the new Act. The question which has been referred to us is answered in the affirmative and in favour of the Commissioner of Income tax who will be entitled to his costs in this Court.

V. P. S.

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