

CIVIL WRIT.

Before Mehar Singh, J.

ESCORTS (AGENTS) PRIVATE, LTD,—*Petitioner.*

versus

THE COMMISSIONER OF INCOME-TAX AND ANOTHER,—

Respondents.

Civil Writ No. 96-D of 1958.

1958

April, 22nd

Income-tax Act (XI of 1922)—Sections 18A and 23B—Demand for advance payment of tax—Basis of—Provisional assessment made under Section 23B(1)—Whether can be such basis—Interpretation of a fiscal statute—Rule as to, where two equally forceful interpretations possible, stated.

Held, that the reasonable interpretation of section 18A(1)(a) is that it refers to the assessed income of the assessee and not to the computed tax payable by the assessee. In the case of the application of section 23B(1) of the Act no income is assessed but the income is taken as the basis as given in the return of the assessee and supplemented by his accounts and documents. This is the provisional figure taken for the levy of tax and, therefore, this section 23B(1) refers to "provisional assessment of tax payable by the assessee." Both the income of the assessee as also the tax payable by him are provisional. There is, therefore, no assessed income of the assessee under section 23B(1) of the Act. That being so, the provisional assessment cannot be the basis of a demand for advance payment of tax under section 18A(1)(a) of the Act, because there is no assessed income of the assessee upon which tax has been charged in the latest previous year with reference to which a demand can be made for the next year.

Held further, that where there is a possibility of two equally forceful interpretations being put on a provision in a fiscal Act then the interpretation must proceed in a fashion that is favourable to the subject rather than against him.

Petition under Articles 226 and 227 of the Constitution of India praying that:—

1. *This Hon'ble Court may be pleased to issue such suitable writ order or direction as may do complete justice to the petitioner company and in particular—*

(a) *a writ in the nature of mandamus directing the respondents not to enforce and/or realise their demand for Rs. 4,18,023.65 np or any other demand under section 18A for the assessment year 1958-59.*

(b) *a writ order or direction in the nature of certiorari and/or any other writ order or direction quashing the demand of the respondents on the Petitioner company under section 18A of the said Act for the Assessment year 1958-59.*

(c) *a writ order or direction in the nature of certiorari or any other order or direction quashing the order of respondent No. 2 creating a demand on the Petitioner company for the assessment year 1958-59 under section 18A of the said Act.*

(d) *a writ order or direction directing the respondents not to demand or realise any income-tax or super tax from the petitioner company for the assessment year 1958-59 under section 18A of the said Act, be issued.*

(e) *cost of the petition be also awarded to the petitioner company.*

2. *It is further prayed that pending the disposal of this petition interim order in terms of prayer*

(a) to (d), be passed.

S. K. KAPUR and P. C. KHANNA, for Petitioner.

K. N. RAJGOPAL SASTRI, for Respondent.

ORDER

Mehar Singh, J.

In this petition by Escorts (Agents) Private Limited, under Articles 226 and 227 of the Constitution, there is only one question for consideration and that is whether the demand for advance payment of tax from the petitioner by respondent No. 2, the Income Tax Officer, Companies Circle III and Central Circle 1(1), New Delhi, by his order, dated November, 1, 1957, under section 18A(a) (1) of the Indian Income Tax Act No. (XI), 1922, based on a provisional assessment, of the latest previous year, under section 23 B of the Act, is a valid and legal demand?

Respondent No. 1 to the petition is the Commissioner of Income-Tax, New Delhi. This petition was filed on March 12, 1958. At that time a revision petition against the order of respondent No. 2 was pending before respondent No. 1. Now that revision petition has been decided against the petitioner. A preliminary objection has been taken by the learned counsel for the respondents that the petition is incompetent because the order of respondent No. 2 has in the mean-time been superseded by the revisional order of respondent No. 1 and in the petition there is no prayer with regard to that order of respondent No. 1. An application for amendment of the petition challenging the legality and validity of the order of respondent No. 1 has been made. In the circumstances of the case that application is allowed and the petition stands amended as prayed for in that application in regard to the revisional order of respondent No. 1 as well.

It is not necessary to go into the minor details of what is stated in the petition by the petitioner. For the purposes of the decision of the question under consideration only few facts are necessary.

The last two regular assessments have been made for the assessment year 1952-53 and 1953-54. The last was made on January 11, 1958, But at the time the order under question was made only the first regular assessment with regard to the years 1952-53 had been made and that was on March 22, 1957. Then there have been four provisional assessments under section 23B of the Act relating to the assessment years 1954-55 to 1957-58. It will be seen that the latest previous regular assessment at the time of the impugned order was that of 1952-53 and at the time of the date of the petition that of 1953-54, but the latest previous years' provisional assessment was of the assessment year 1957-58.

Escorts (Agents),
Private, Ltd.
v.
The Commis-
sioner of Income-
tax and another
Mehar Singh, J.

The part of section 18A(1) (a) of the Act that is material for the consideration of the question in this case reads thus—

“Section 18A(1) (a) In the case of income in respect of which provision is not made under section 18 for deduction of income-tax at the time of payment, the Income-tax Officer may, on or after the 1st day of April, in any financial year, by order in writing, require an assessee to pay quarterly to the credit of the Central Government on the 15th day of June, 15th day of September, 15th day of December and 15th day of March in that year, respectively, an amount equal to one-quarter of the income-tax and super-tax payable on so much of such income as is included in his total income of th latest previous year in respect of which he has been assessed.....”

The words that need interpretation in this clause are “the income tax and super tax payable

Escorts (Agents),
Private, Ltd.
v.
The Commis-
sioner of Income-
tax and another

Mehar Singh, J.

on so much of such income as is included in his total income of the latest previous year in respect of which he has been assessed." The learned counsel for the petitioner contends that this refers to the assessed income of an assessee with regard to the complete and final assessment of the latest previous year, whereas the position taken by the learned counsel for the respondents is that this applies also to a provisional assessment under section 23 B of the Act when that is the assessment of the latest previous year and further that these words concern not the assessed income of the assessee but the tax as assessed and payable by him.

The learned counsel for the petitioner, in the first place, lays emphasis on the expression 'total income' as used in section 18 A(1)(a) of the Act and contends that that expression as defined in section 2(15) means total amount of income, profits and gains referred to in subsection (1) of section 4 computed in the manner laid down in the Act, and that in the case of a provisional assessment under section 23 B of the Act there is no case of computation of the total income by the taxation authorities, with the result that no provisional assessment under that section can be the basis of demand for advance tax under section 18 A(1)(a) of the Act. The definition of the expression 'total income' as given above shows that that income is to be computed in the manner laid down in the Act, but the learned counsel for the respondents very rightly points out that there is no justification for the suggestion of the learned counsel for the petitioner that that computation must be done by the taxation authorities before income can be described as 'total income'. He refers to section 22 of the Act and says that under that section an assessee has to submit a return of his total income during

the previous year, which obviously means that, when he states his total income in the return, he states so by computing the same in the manner laid down in the Act. If what the learned counsel for the petitioner contends was true reading of the meaning of the expression 'total income', then it would be impossible for an assessee to fill his return saying what his total income is when putting in return according to section 22 of the Act. Obviously by the time he puts in his return no taxation authority has computed in the manner laid down in the Act his income and it would not be possible for him to state his total income in his return. So that this argument advanced on behalf of the petitioner is without substance.

Escorts (Agents),
Private, Ltd.
v.
The Commis-
sioner of Income-
tax and another
—
Mehar Singh, J.

The learned counsel for the petitioner, secondly, makes reference to section 56 of the Act and his contention is that as in a provisional assessment under section 23 B of the Act there is no total income assessed for the purposes of income-tax, so no super-tax can be chargeable as advance super-tax as required by section 18A(1)(a) of the Act because super-tax only becomes chargeable on the total income assessed for the purposes of income-tax. Section 56 of the Act reads:—

“Section 56 except in cases to which section 15A applies or to which by clause (a) of the proviso to subsections (3) and (4) of section 25 those subsections do not apply and subject to the provisions of this Chapter, the total income of any individual, Hindu undivided family, company, local authority, unregistered firm or other association of persons shall, for the purposes of super-tax, be the total income as assessed for the purposes of income-tax and where an assessment of

Escorts (Agents),
Private, Ltd.

v.

The Commis-
sioner of Income-
tax and another

Mehar Singh, J.

total income has become final and conclusive for the purposes of income-tax for any year, the assessment shall also be final and conclusive for the purposes of super-tax for the same year."

This section refers (a) to charge of super-tax in a case where total income has been assessed for the purposes of income-tax, and (b) to a case where an assessment of total income has become final and conclusive for the purposes of income-tax for any year. It means that it treats the case under (a) above as distinct and different from the case under (b) above. A case under (b) is a case of final and conclusive assessment, it follows that the case under (a) must cover also a case other than that of final and conclusive assessment, which means that it covers the case of a provisional assessment under section 23B of the Act. Apart from this section 23B, subsection (1), refers to tax payable by the assessee, which means obviously any tax payable by the assessee. Therefore apart from reference to section 56 of the Act super-tax payable by the assessee is within the expression 'tax payable' by the assessee as used in section 23B of the Act. This aspect of the case as put forward on behalf of the petitioner by the learned counsel does not in the least help it in the interpretation of section 18A (1)(a) of the Act.

The third contention of the learned counsel for the petitioner has reference to third proviso to section 18A (1) (a) of the Act. Under that proviso, if after the making of an order by the Income-tax Officer and before the 15th day of February, of the financial year, an assessment of the assessee is completed in respect of a previous year, later than that referred to in order of the Income-tax Officer that officer may make an amended order requiring the assessee to make payments of advance tax

as provided in that proviso. The learned counsel for the petitioner says that it would be practically impossible for an Income-tax Officer to amend his order as required by this proviso if completed assessment as referred to therein refers to a provisional assessment for such an assessment takes place long before the 15th day of February of a financial year, but the learned counsel for the respondents has again very rightly pointed out that returns are delayed by companies like the petitioner for months and it is conceivable that a return may be so delayed that the Income-tax Officer may be obliged to make a provisional assessment under section 23 B of the Act shortly before the 15th day of February of the financial year. This is a possible situation that may well arise in a given case. This means that the basis of this part of the argument of the learned counsel for the petitioner really does not exist. This proviso is not helpful in the interpretation of section 18A(1)(a) of the Act.

Escorts (Agents),
Private, Ltd.

v.

The Commis-
sioner of Income-
tax and another

Mehar Singh, J.

Lastly, the learned counsel for the petitioner relies upon section 23B(1) of the Act and says that that subsection does not refer to assessment of income at all but that it refers to assessment of the tax payable by the assessee, which is true, and the learned counsel further says that since no total income is assessed under section 23B(1), so in the case of provisional assessment it cannot be made basis for demand for an advance payment of tax under section 18A(1)(a) of the Act. But this argument proceeds on the assumption that in section 18A(1)(a) of the Act the words "the income-tax and super-tax payable on so much of such income as is included in this total income of the latest previous year in respect of which he has been assessed, "refer to assessed income of the assessee and not to assessed tax payable by the assessee as contended by the learned counsel for the respondents. This

27

Escorts (Agents) Private, Ltd. v. The Commissioner of Income-tax and another, however, is the very matter that is under consideration in regard to the interpretation of section 18A(1)(a) of the Act. So reference to section 23B(1) of the Act in this respect is not helpful in any way.

y Mehra Singh, J.

It is accepted by the learned counsel on both sides that the word 'assess' has been used in different context in the Act carrying different meanings. So the effort of the learned counsel for the petitioner to obtain assistance from the words of section 23 of the Act in finding the meanings of the words "in respect of which he has been assessed" cannot be helpful either. Thus section 18A(1)(a) has to be read as such and its meaning found from itself. The important words in the section which requires interpretation have been referred to already twice and may be referred to here again, they are "the income-tax and super-tax payable on so much of such income as is included in his total income of the latest previous year in respect of which he has been assessed", and as these words are read in the context of this clause the emphasis is on the word 'income'. If what the learned counsel for the respondents contends is a true interpretation, then some more words have to be read with the words as reproduced above. The reading of those words will then be—"the income-tax and super-tax payable on so much of such income as is included in his total income of the latest previous year in respect of which he has been assessed to the amount of tax". There is no justification in adding in the words 'to the amount of tax'. Since the emphasis is on the word 'income' in this place, the meaning of the words 'in respect of which he has been assessed,' is income in respect of which he has been assessed', which may be read as his 'assessed income'. If it is read in this manner that the words cited above have reference to his

assessed income, then the quantum of income-tax and super-tax that he is to pay as advance is as was levied in the latest previous year on the assessed income of the assessee in that year. It appears to me that if those words are read as 'assessed tax payable', then a good part of the section need not have been stated as it has in fact been. Now, there is another aspect of the case and that is that where there is a possibility of two equally forced interpretations being put on a provision in a fiscal Act then the interpretation must proceed in a fashion that is favourable to the subject rather than against him. Upon this consideration also the reasonable interpretation of section 18A(1)(a) is that it refers to the assessed income of the assessee and not to the computed tax payable by the assess~~ee~~ - ee.

In the case of the application of section 23B(1) of the Act no income is assessed but the income is taken as the basis as given in the return of the assessee and supplemented by his accounts and documents. This is the provisional figure taken for the levy of tax and therefore this section 23B(1) refers to "provisional assessment of tax payable by the assessee." Both the income of the assessee as also the tax payable by him are provisional. There is, therefore, no assessed income of the assessee under section 23B(1) of the Act. That being so, the provisional assessment cannot be the basis of a demand for advance payment of tax under section 18A(1)(a) of the Act because there is no assessed income of the assessee upon which tax has been charged in the latest previous year with reference to which a demand can be made for the next year. Upon this consideration the order of the Income-tax Officer cannot be sustained with reference to the provisions of section 18A(1)(a) of the Act nor that of the Commissioner of Income-tax exercising powers of revision and affirming the order of the Income-tax Officer.

Escorts (Agents),
Private, Ltd.
v.
The Commis-
sioner of Income-
tax and another

Mehar Singh, J.

Escorts (Agents),
Private, Ltd.
v.
The Commis-
sioner of Income-
tax and another

In consequence this petition succeeds and the impugned orders both of the Income-tax Officer and the Commissioner of Income-tax are quashed. In the circumstances of the case there is no order as to costs in this petition.

Mehar Singh, J.