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now in possession had knowledge that the eviction was illegal a writ of *mandamus* would lie against him. In my opinion, the fourth respondent, at whose instance the order of ejectment was sought, must be deemed to have known like the second and third respondents the illegality and impropriety of such a course and a writ of *mandamus* can be issued requiring him to restore possession of the shop to the petitioner

I would in the circumstances direct the second and third respondents to put the petitioner in possession of the shop in dispute which is now with the fourth respondent A report should be sent to this Court about the compliance of this order within one month. The petitioner would get the costs of this petition from the fourth respondent.

K.S.K.

CIVIL MISCELLANEOUS

Before Mehar Singh and P. D. Sharma, JJ.

THE COMMISSIONER OF INCOME-TAX, PUNJAB,—*Applicant.*

versus

DALMIA DADRI CEMENT, LTD.—*Respondent.*

Income-Tax Reference No. 6 of 1961,

1962

May, 21st.

Income-tax Act (XI of 1922) Sections 18A(5) and (6) and 34(1)(b)—Proceedings under section 34(1)(b)—Whether can be started for recovery of excess amount of interest allowed under setcion 18-A(5) and for recovery of interest under section 18-A(6) not charged when original demand created.

Held, that no proceedings under section 34(1)(b) of the Income-tax Act, 1922, can be initiated for recovery of excess amount of interest that was allowed to the assessee under section 18A(5) and for recovering interest under section 18A(6) which was not charged when the original

demand was created. The provisions of section 34(1)(b) can, by no stretch of imagination, include a case where assessee had been allowed interest at a rate in excess permissible under section 18A(5) or interest had not been inadvertantly charged when it should have been done under section 18A(6). The assessee definitely was not under-assessed as its entire income, profits or gains were truly before the Income-tax Officer when the original assessment was made. It is not the case that income-tax or super-tax was charged at lesser rate than required by law. Similarly the allowing and charging of interest under section 18A(5) or 18A(6) cannot be termed as relief within the meaning of this word as understood in the Act. The various kinds of reliefs permissible to the assessee are referred to in sections 15B, 15C, 49A, 49B, 49C, 49D and section 60 of the Act. The provisions regarding interest as incorporated in section 18A are a sort of incentive to the assessee for making prompt payment of income-tax due from him and no more.

Reference under section 66(1) of the Income-tax Act, 1922, made by the Income-tax Appellate Tribunal (Delhi Bench) for opinion of this Court on the following question of law arising out of his order, dated 31st October, 1960, regarding assessment year 1952-53 (R.A. No. 304 of 1960-61—I.T.R. 7360 of 1958-59).—

> *"Whether on a true interpretation of section 34(1)(b) of the Indian Income-tax Act, the initiation of the proceedings under that section for recovery of excess amount of interest that was allowed to the assessee under section 18A(5) and for recovering interest under section 18A(6) which was not charged when the original demand was created, was proper and legal ?"*

D. N. AWASTHY AND H. R. MAHAJAN, ADVOCATES, for the Applicant.

S. K. KAPUR AND N. N. GOSWAMI, ADVOCATES, for the Respondents.

ORDER

SHARMA, J.—This is a reference by the Income-tax Appellate Tribunal (Delhi Bench) under section Sharma, J.

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66(1) of the Indian Income-tax Act asking for an opinion of this Court on the following question of law:—

> "Whether on a true interpretation of section 34 (1)(b) of the Indian Income-tax Act, the initiation of the proceedings under that section for recovery of excess amount of interest that was allowed to the assessee under section 18A(5) and for recovering interest under section 18A(6) which was not charged when the original demand was created, was proper and legal?"

Facts of the case which have given rise to the reference may briefly be stated thus: Messrs Dalmia Dadri Cement, Limited, a limited company, is interested in the manufacture of cement. The Income-tax Officer for the assessment year 1952-53, issued a notice to it under section 18A to pay tax of Rs. 1,25,049-9-0. The assessee instead paid Rs. 10,548 only. The original assessment was completed in due course and a demand of Rs. 4,50,929-4-0, was created. The Income-tax Officer in spite of the fact that payment of income-tax under section 18A was less than 80 per cent of the regular demand made under section 29 wrongly allowed Rs. 248-6-0 by way of interest under the provisions contained in section 18A(5). The amount which should have been allowed came to Rs. 109-6-0 only. Further, the Income-tax Officer while completing the original assessment omitted to charge interest under section 18A (6). The mistakes were detected sometime later and as a consequence the Income-tax Officer issued notice under section 34 and completed the assessment under section 34(1) (b) bringing to tax the penal interest amounting to Rs. 20,220.94 nP. and the amount of Rs. 139 that was originally allowed in excess of the amount permissible under the law. A notice under section 29 of the Income-tax Act was issued against the assessee for recovering Rs. 20,359-15-0 (Rs. 20,220.94 nP., *plus* Rs. 139).

The assessee went in appeal against the above order. The appellate Assistant Commissioner held that the provisions of section 34 (1)(b) were not attracted because income, profits and gains had not

escaped tax and the Income-tax Officer was not justified in recovering penal interest and interest that was allowed in excess of the due amount by recourse to section 34 of the Act. His order was confirmed in appeal by the Appellate Tribunal.

The dispute between the parties rests on the interpretation of section 34 of the Indian Income-tax Act, 1922, the relevant portion of which is reproduced below:—

"(1) If—

(a) * * * * * *

* * * * * * *

(b) notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assessee, the Income-tax Officer has in consequence of information in his possession reason to believe that income, profits or gains chargeable to income-tax have escaped assessment for any year, or have been under-assessed, or assessed at too low a rate, or have been made the subject of excessive relief under this Act, or that excessive loss or depreciation allowance has been computed,

he may in cases falling under clause (a) at any time and in cases falling under clause (b) at any time within four years of the end of that year, serve on the assessee, or, if the assessee is a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22 and may proceed to assess or re-assess such income, profits or gains or recompute the loss or

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depreciation allowance; and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section."

The learned counsel for the applicant contends that the Income-tax Officer could act as he did under section 34(1)(b) of the Indian Income-tax Act as the income, profits or gains chargeable to income-tax of the assessee had been under-assessed or had been made the subject of excessive relief. We are not inclined to agree with him since by no stretch of imagination the above provision of law can include a case where assessee had been allowed interest at a rate in excess permissible under section 18A(5) or interest had not been inadvertantly charged when it should have been done under section 18A (6). The assessee definitely was not under-assessed as its entire income, profits or gains were truly before the Income-tax Officer when the original assessment was made. It is not the case that income-tax or super-tax was charged at lesser rate than required by law. Similarly the allowing and charging of interest under section 18A(5) or 18A(6) cannot be termed as relief within the meaning of this word as understood in the Act. The various kinds of reliefs permissible to the assessee are referred to in section 15B, 15C, 49A, 49B, 49C, 49D and section 60 of the Act. The provisions regarding interest as incorporated in section 18A are a sort of incentive to the assessee for making prompt payment of income-tax due from him and no more. The Supreme Court in case, *Bhor Industries, Ltd., and others* v. *Commissioner of Income-tax, Bombay City I*(1), held, "That in ascertaining the amount deemed to be distributed no deduction could be made in respect of the interest charged under section 18A. Interest chargeable under section 18A (8) was interest and not tax. Section 23A spoke of deduction only of income-tax and super-tax; no deduction could be made in respect of this interest." The ruling of the Bombay High Court in *Simplex Mills Ltd. v. P. S. Subramanyam, Income-tax Officer, and*

(1) (1961) XLII I.T.R. 57.

another (2), relied upon by the Tribunal is applicable to the facts of the present case. It lays down:

> "Payment of interest by the Central Government under section 18A (5) of the Income-tax Act on tax paid in advance was neither a relief under the Act nor attributable to income, profits or gains chargeable to income-tax, and that though any excess payment of such interest could be recovered under section 35 it could not be recovered under section 34 as the section had no application.
>
> Tax, interest and penalty are three distinct and different items dealt with under the Income-tax Act.
>
> The expression "relief under the Act" in section 34 refers to the various kinds of reliefs to the assessee in respect of his income, profits or gains, under sections 15B, 15C, 49A, 49B, 49C, 49D, and 60, and to the reliefs specified in Part II of the Form of Assessment prescribed under the Income-tax Rules.
>
> The payment of interest on tax paid in advance is not an integral part of the whole process of assessment and where any excessive amount of interest is allowed it cannot be equated with the payment of less amount by way of tax."

The same view was reiterated in case, *Commissioner of Income-tax Punjab, Jammu and Kashmir and Himachal Pradesh, Simla* v. *Saraswati Sugar Syndicate* (3), and also in case, *Commissioner of Income-tax, Coimbatore v. Nonshi Devshi Kattawala (Pte.), Ltd* (4).

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(2) (1958) XXXIV I.T.R. 711.
(3) (1961) XLII I.T.R. 311.
(4) (1962) XLV I.T.R. 47.

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In the light of what has been said above initiation of the proceedings under section 34 (1) (b) of the Income-tax Act for recovery of excess amount of interest that was allowed to the assessee under section 18A (5) and for recovering interest under section 18A (6) which was not charged when the original demand was created was not proper and legal. Consequently, the reference is answered in the negative. We assess the counsel's fee at Rs. 100 to which the assessee will be entitled as costs.

Mehar Singh, J.

MEHAR SINGH, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan, J.

INDER MOHAN,—*Petitioner.*

versus

THE EXCISE AND TAXATION COMMISSIONER, PUNJAB, AND OTHERS.—*Respondents.*

Civil Writ No. 2 of 1962.

1962

May., 2nd.

Punjab Urban Immovable Property Tax Act (XVII of 1940)—Section 3—Punjab Urban Immovable Property Tax Rules, 1941—Rule 4(e) and (f)—Annual value—Whether can be assessed at a figure higher than rental value under the East Punjab Urban Rent Restriction Act (III of 1949).

Held, that if the property is subject to the provisions of the East Punjab Urban Rent Restriction Act, 1949, it cannot earn nor can it reasonably be expected to earn more rent than what that Act permits. It is, therefore, incumbent on the assessing authority to determine the annual rental value for purposes of the assessment of the tax under the Punjab Immovable Property Tax Act, 1940, with reference to the provisions of the East Punjab Urban Rent Restriction Act, 1949.

Petition under Article 226 of the Constitution of India praying that an appropriate writ, order or direction be issued quashing the orders passed by the Respondents.