

Before B. S. Dhillon and M. R. Sharma, JJ.

COMMISSIONER OF INCOME-TAX,—*Applicant.*

versus

DASHMESH TRANSPORT CO.,—*Respondent.*

Income Tax Reference No. 9 of 1976.

August 25, 1980.

Income Tax Act (XLIII of 1961)—Sections 210 and 273(a)—Assessee called upon to pay advance tax on the basis of provisional assessment for the previous assessment year—Regular assessment for such assessment year finalised subsequently—Second notice calling upon assessee to deposit advance tax in accordance with regular assessment—Such notice—Whether valid—Assessee filing estimate of income in accordance with provisional assessment—Such assessee—Whether liable to penalty under section 273(a) for submission of incorrect estimate of income.

Held, that sub-section (1) of section 210 of the Income Tax Act, 1961 merely qualifies an assessee to whom a notice under this section can be issued. This section does not lay down that the assessment must have been framed on the assessee for the last one or two or more years. It would be perfectly in order for the Income Tax Officer to issue a notice under section 210 of the Act on an assessee against whom a regular assessment had been framed at one time even though the assessments for the next years were still pending. This section of the Act lays down that an assessee who is required to pay advance tax estimates his income for the current year to be less than his income for the previous year, then he can be called upon to pay advance tax on the basis of the estimate made by him only. Even otherwise sub-section (3) of section 210 of the Act expressly provides that advance tax can be computed on the basis of total income on which tax has been paid under section 140-A of the Act on estimate basis. These two provisions give a clear indication that it is within the jurisdiction of the Income Tax Officer to rely upon the notice for estimated income for the previous year in giving a notice to the assessee for payment of advance tax under section 210 of the Act. The contingency noticed in sub-section (3) of section 210 regarding the revision of the notice comes into play only if regular assessment for any of the earlier years than the one regarding the estimated income of which a notice is issued for the current year is framed creating a higher liability of tax. The second notice based on the regular assessment is therefore bad in law.

(Para 8).

Commissioner of Income-tax v. Dashmesh Transport Co.
(M. R. Sharma, J.)

Held, that an Income Tax Officer has to justify his every action on the clear language of the statute. Sub-section (3) of section 210 of the Act does not in terms entitle an Income-tax Officer to amend the notice for advance payment of tax on the ground that the income for the year on the basis of which advance tax is being claimed has been regularly assessed. The law allows amendment of the notice if the income for the subsequent year is subjected to a regular assessment. Where the assessee has paid advance tax which was the same as demanded by the Income Tax Officer under section 210 on the basis of provisional assessment, levy of penalty under section 273 (a) is not justified. (Para 10).

Reference under section 256(1) of the Income Tax 1961 made by the Income-tax Appellate Tribunal Chandigarh Bench, Chandigarh referring the following question of law to the Hon'ble High Court for its opinion, arising out of Tribunal's order dated 20th July, 1974 in I.T.A. No. 592 of 1971-72 for the assessment year 1968-69.

- (1) *Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that after making an order under section 210 on the basis of the provisional assessment for the year 1966-67, an amended order under section 210(3) based on the regular assessment for the assessment year 1966-67 could not be made ?*
- (2) *Whether, on the facts and in the circumstances of the case, the Tribunal was right, in law, in cancelling the penalty levied under section 273 (a) ?*

D. N. Awasthy, Advocate with D. K. Jhingan, Advocate, for the Petitioner.

G. C. Sharma, Advocate, with S. S. Mahajan, Advocate, for the Respondent.

JUDGMENT

M. R. Sharma, J.

(1) The Income-tax Appellate Tribunal, Chandigarh Bench, has referred the following questions of law to us for our opinion:—

- (1) *Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that after making an order under section 210 on the basis of the provisional*

assessment for the year 1966-67, an amended order under section 210(3) based on the regular assessment for the assessment year 1966-67 could not be made ?

- (2) Whether, on the facts and in the circumstances of the case, the Tribunal was right, in law, in cancelling the penalty levied under section 273(a) ?

(2) The assessee is a private limited company engaged in the business of passenger transport. During the financial year 1967-68, relevant to the assessment year 1968-69, the assessee was called upon to pay advance tax in the sum of Rs. 14,467 by a notice, dated 30th June, 1967 issued under section 210 of the Income-tax Act (hereinafter called the Act), on the basis of the provisional assessment for the year 1966-67. Later on, the Income-tax Officer framed an assessment for the year 1966-67 at Rs. 1,77,954 and on that basis he amended notice under section 210 of the Act calling upon the assessee to pay a sum of Rs. 1,15,670, which amount after making an adjustment of the payment of Rs. 4,823 already made by the assessee, was held to be payable. In response to this notice, the assessee filed its own estimate on 24th January, 1968 and repeated therein the figure of total income of Rs. 22,256, which was the same figure as mentioned in the earlier notice under section 210 of the Act issued by the Income-tax Officer whereby he had demanded advance tax in the sum of Rs. 14,467.

(3) When the assessee filed the return for the assessment year 1968-69, it disclosed a total income of Rs. 1,41,417. The assessment in respect of this year was completed at Rs. 2,10,956 which was subsequently reduced to Rs. 1,58,863.

(4) On these facts, the Income-tax Officer came to the conclusion that the assessee furnished under section 212 of the Act an estimate of advance tax payable by it which it knew or had reason to believe to be untrue. He, therefore, initiated penalty proceedings under section 273(a) of the Act and after giving a show cause notice to the assessee, imposed a penalty of Rs. 12,575 on it.

(5) The assessee went up in appeal which was dismissed by the Appellate Assistant Commissioner. The assessee went up in second appeal which was allowed by the Income-tax Appellate Tribunal, Chandigarh Bench, with the following observations:—

“We have carefully considered the rival submissions. On a plain reading of section 210(3), it would be apparent that

Commissioner of Income-tax v. Dashmesh Transport Co.
(M. R. Sharma, J.)

if a notice under section 210 has been based on the provisional assessment for one year, the notice cannot be revised on the basis of a regular assessment for the same year. This is so because of the words "... or regular assessment are provisional assessment under section 141 of the assessee is made in respect of the previous year later than that referred to in the order of the Income-tax Officer" used in section 210(3). The second notice based on the regular assessment for the assessment year 1966-67 was, therefore, a bad notice in law and the notice on the basis of which the assessee could be legally required to pay advance tax was the original notice according to which a payment of Rs. 14,467 was due. The assessee did file an estimate on 24th January, 1968, but this estimate is meaningless because what was done in this estimate was that the same figure of Rs. 22,256 regarding total income and the same figure of tax viz., Rs. 14,467 mentioned by the Income-tax Officer in the original notice of demand were repeated in this notice. When the assessee pays tax according to the notice of the Income-tax Officer himself no penalty under section 273(a) can be levied. In this case our finding of fact is that the tax paid by assessee at Rs. 14,467 was the same which was demanded by the Income-tax Officer under section 210. The penalty levied under section 273(a) is, therefore, not justified. We, therefore, cancel the penalty levied."

(6) This reference has come to us at the instance of the Revenue, Mr. Awasthy, the learned counsel for the Revenue, has drawn our attention to section 210(1) and (3) of the Act, which read as under:—

"210(1): Where a person has been previously assessed by way of regular assessment under this Act or under the Indian Income-tax Act, 1922 (11 of 1922), the Income-tax Officer may, on or after the 1st day of April in the financial year, by order in writing, require him to pay to the credit of the Central Government advance tax determined in accordance with the provisions of sections 207, 208 and 209.

(2)

(3) If, after the making of an order by the Income-tax Officer under this section and at any time before the date which is fifteen days prior to the date on which the last instalment of advance tax is payable by the assessee under sub-section (1) of section 211, tax is paid by the assessee under section 140-A or a regular assessment of the assessee (or of the registered firm of which he is a partner) is made in respect of a previous year later than that referred to in the order of the Income-tax Officer, the Income-tax Officer may make an amended order requiring the assessee to pay in one instalment on the specified date or in equal instalments on the specified dates, if more than one, falling after the date of the amended order, the advance tax computed on the basis of the total income on which tax has been paid under section 140-A or in respect of which the regular assessment aforesaid has been made as reduced by the amount, if any, paid in accordance with the original order."

(7) He has argued that section 210(1) of the Act envisages that notice for payment of advance tax on estimate basis should correspond to the assessable income during the previous year determined in a regular assessment and that the earlier notice issued by the Income-tax Officer which was merely based on an estimate of income was no notice in the eyes of law. According to him, when the assessment for the year 1967-68 was finalised, it was open to him to amend the notice under section 210 of the Act and to demand additional advance tax on the basis of an assessment.

(8) After hearing the learned counsel for the parties, we are of the view that there is no merit in the submissions made on behalf of the Revenue. Sub-section (i) of section 210 of the Act merely qualifies an assessee to whom a notice under this section can be issued. This section does not lay down that the assessment must have been framed on the assessee for the last one or two or more years. It would be perfectly in order for the Income-tax Officer to issue a notice under section 210 of the Act on an assessee against whom a regular assessment had been framed at one time even though, the assessments for the next years were still pending. This section of the Act lays down that an assessee who is required to pay advance tax, estimates his income for the current year to be

Commissioner of Income-tax v. Dashmesh Transport Co.
(M. R. Sharma, J.)

less than his income for the previous year, then he can be called upon to pay advance tax on the basis of the estimate made by him only. Even otherwise, sub-section (3) of section 210 of the Act expressly provides that advance tax can be computed on the basis of total income on which tax has been paid under section 140-A of the Act on estimate basis. These two provisions give a clear indication that it is within the jurisdiction of the Income-tax Officer to rely upon the notice for estimated income for the previous year for giving a notice to the assessee for payment of advance tax under section 210 of the Act. The contingency noticed in sub-section (3) of section 210 regarding the revision of the notice comes into play only if regular assessment for any of the earlier years than the one regarding the estimated income of which a notice is issued for the current year, is framed creating a higher liability of tax. We are accordingly of the view that the observations made by the learned Tribunal are in accord with law.

If the contention raised by Mr. Awasthy is allowed to prevail, it would create untold complications for the assessee as well as for the Revenue. Though we cannot assume that an Income-tax Officer would act in a capricious manner, but if the view canvassed by Mr. Awasthy is allowed to prevail it would become open to an Income-tax Officer to mention a smaller figure in the notice under section 210 of the Act and then to burden the assessee with greater tax liability and penalty if the assessment for the same year is regularly made. Similarly, if the regular assessment of an assessee is pending for the last 2/3 years, the Income-tax Officer would be bound to mention the figure in the notice under section 210 of the Act payable by an assessee in a regular assessment even though it relates to a much earlier year of assessment and the assessee himself had estimated his income at a higher figure during the last assessment year.

(9) The aforementioned considerations apart, we feel that this branch of law should be administered in such a manner as to avoid creation of uncertainties for the assessee. From the point of view of a layman no trouble should accrue to an assessee if he actually pays the advance tax which is demanded of him and the correct amount when ascertained as a result of the final assessment can be paid by him later. If the Income-tax Officer himself makes a smaller estimate regarding the advance tax, it would be unfair to the assessee if in spite of payment of that amount he is involved in

further trouble. We pointedly asked Mr. Awasthy that if the first notice served by the Income-tax Officer on the assessee, which was based on estimate basis, were held to be legally valid even then the argument advanced by him would be tenable or not. The learned counsel did not give a direct reply to this question. This implies that if the first notice is valid, it is not open to the Revenue to complain that the assessee has not paid proper advance tax only on the ground that the assessment for the year relating to the notice on estimate basis itself has been modified in the same year. We are accordingly of the view that the notice, dated 30th June, 1967 issued by the Income-tax Officer to the assessee was valid and in accordance with law. There was no legal basis for the Income-tax Officer to amend this notice and since the assessee had complied with this notice, no new notice could have been sent to him.

(10) An Income-tax Officer has to justify his every action on the clear language of the statute. Sub-section (3) of section 210 of the Act does not in terms entitle an Income-tax Officer to amend the notice for advance payment of tax on the ground that the income for the year on the basis of which advance tax is being claimed has been regularly assessed. The law allows amendment of the notice if the income for any subsequent year has been subjected to a regular assessment.

(11) For reasons aforementioned, we answer the first question in the affirmative, i.e. in favour of the assessee and against the Revenue. In view of our answer to the first question, the second question is also answered in the affirmative. The reference is accordingly disposed of with no order as to costs.

Bhopinder Singh Dhillon, J.—I agree.

H. S. B.

Before J. V. Gupta, J.

SATISH BAHADUR,—*Petitioner.*

versus

HANS RAJ and others,—*Respondents.*

Civil Revision No. 309 of 1980.

August 27, 1980.

Specific Relief Act (XLVII of 1963)—Section 41(h)—Agreement to sell duly executed by the parties—Vendee filing a suit for permanent injunction restraining the vendor from selling property to others—Such suit filed before the last date of execution of sale-deed