APPELLATE CIVIL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Rangnekar.

1936
March 11

SARUPCHAND PANNALAL (ORIGINAL ASSESSEE), APPLICANT *v.* THE COMMISSIONER OF INCOME-TAX, BOMBAY PRESIDENCY AND ADEN, OPPONENT.*

Indian Income-tax Act (XI of 1922), section 13—Regular method, meaning of—Power to change regular method—Assessee cannot start a new method for casual period.

An assessee is not entitled to change his method of accounting from year to year as suits him best; the reference in section 13 of the Indian Income-tax Act, 1922, to the regular method of keeping accounts precludes any practice of that sort. At the same time it is impossible to say that an assessee is never at liberty to alter the regular method which he has once employed. What he must alter, however, is his regular method, that is to say, he must abandon what, up to that time, has been his regular method, and start a new regular method, and not merely a new method for a casual period.

APPLICATION under section 66 (*3*) of the Indian Income-tax Act, 1922.

At Kalansare in the East Khandesh District Sarupchand Pannalal (applicant) carried on money-lending business in the name of the shop of Satidas Dhanji. For the income-tax year 1933-34, he was assessed by the Assistant Income-tax Officer, East Khandesh District, to income-tax and surcharge in the amount of Rs. 5,697-4-0 on Rs. 38,048 which was the amount of accrued interest and which the assessee must be supposed to have received in his money-lending business. Actually for the income-tax year in question the assessee had received Rs. 4,622 only as interest as shown in the interest account.

Since the Samvat year 1988 the assessee had adopted a method of showing interest on the cash basis in preference to that of accrued interest, which till then was his method of keeping accounts. The assessee was obliged to alter his regular method owing to a dispute between himself and one Bhikchand which had given rise to litigation between

*Civil Application No. 1074 of 1935 (with C. A. No. 1075 of 1935).

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them relating to family property and the debtors, taking advantage of the dispute, would not pay interest due from them.

The petitioner appealed to the Assistant Commissioner of Income-tax against the order of assessment made by the Assistant Income-tax Officer and the same was confirmed in appeal.

The petitioner thereafter applied to the Commissioner of Income-tax, Bombay Presidency and Aden, requesting him to make a reference to the High Court under section 66 (*2*) of the Indian Income-tax Act, 1922, but on August 12, 1935, the Commissioner made an order declining to take action.

Feeling aggrieved by the above order the petitioner applied to the High Court and prayed that the High Court should direct the Commissioner to make a reference to that Court under section 66 (*2*) of the Act on two questions of law, viz. :

"(1) Whether on a true construction of section 13 of the Indian Income-tax Act, the Income-tax Officer was wrong in law in not accepting the method of accounting employed by the assessee since Samvat 1988 ?

(2) Is it legal to make assessment on notional income which is arrived at by taking a flat percentage on the amounts recoverable when nothing is received in cash ?"

The application was heard.

G. C. O'Gorman, with *Y. V. Dixit*, for the applicant.

K. McI. Kemp, Advocate-General, with *A. P. Lillie*, Government Solicitor, for the opponent.

BEAUMONT C. J. Application No. 1074 of 1935 is an application to the Court asking us to direct the Commissioner of Income-tax, Bombay, to state a case raising a point of law under section 66 (*3*) of the Indian Income-tax Act. The point involved is a very short one. The assessee in partnership with his cousin carries on the business of money-lending, and until the accounting period, which is

Samvat year 1988, ending in November, 1932, the assessee's firm adopted what is known as the mercantile basis of accounting, that is to say, they showed the income accruing in any year as being the income on which assessment was to be based, and not the income received during that year. Shortly before the accounting period in question the assessee and his cousin quarrelled. Litigation is going on for the partition of their estate and business, and the debtors of the firm refuse to pay interest, because they do not know which of the partners will ultimately be entitled to it. Consequently the actual amount received for interest is very much less than the amount shown in the books as accrued interest, and that being so, the assessee desires to change his method of accounting from the mercantile method to the cash method. The learned Commissioner has refused to accept that. I desire to say that I am not altogether in agreement with the reasoning on which the learned Income-tax Commissioner bases his order. Section 13 of the Act provides that income, profits and gains shall be computed in accordance with the method of accounting regularly employed by the assessee. The Commissioner says that the regular method is the mercantile method, and he must adopt that. That may be so, but, at the same time, it seems to me impossible to contend that an assessee is never at liberty to alter the regular method which he has once employed. What he must alter however is his regular method, that is to say, he must abandon what, up to that time, has been his regular method, and start a new regular method, and not merely a new method for a casual period. It seems to me plain that there must be a power to change, because supposing that an assessee were to keep his accounts on the mercantile basis down to the year 1930, and then for five years he were to keep his accounts on the cash basis, it could hardly be suggested that at the end of the five years his regular method of accounting was still the mercantile method. But if a change has been made, it must have been

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Beaumont C. J.

made at some definite moment of time. The learned Commissioner is however entitled to require proper evidence that the regular method of accounting has been changed. If the Commissioner is satisfied that at a particular moment the assessee has changed his regular method of accounting, he is not likely to be satisfied in the following year, or a few years later, that the regular method has been changed again back to the old method. The assessee is not entitled to change his method of accounting from year to year as suits him best; the reference in section 13 to the regular method of keeping accounts precludes any practice of that sort. But although I think that the reasoning of the learned Commissioner is in some respects wrong, because he certainly seems to suggest that a method once regularly adopted can never be changed, I think the question of law which the assessee desires us to direct the Commissioner to raise does not really arise. The question suggested is whether on a true construction of section 13 of the Income-tax Act, the Income-tax Officer was wrong in law in not accepting the method of accounting employed by the assessee since Samvat year 1988. Now that question really involves an actual question of fact, and a hypothetical question of law. First of all, has the regular method of accounting been changed? That is a pure question of fact, and the only point of law would be a hypothetical one, namely, if the regular method has been changed, is the Commissioner bound to adopt that change? I do not suppose the learned Commissioner would dispute that he is bound to recognise a changed method, and the only real question is whether he ought, or ought not, to have been satisfied that the method has been changed, which, as I say, is a pure question of fact on which it is not open to us to differ from the learned Commissioner. In my view, therefore, there is no point of law which arises on the assessment which we can direct the learned Commissioner to raise. The application, therefore,

must be rejected. With regard to Application No. 1075 of 1935, it is an application by the assessee in respect of the next following year. The same considerations apply, except that obviously it is rather easier to prove for the subsequent year that the regular method has been changed than it was for the earlier year, but no more law arises in the second application than in the first. Therefore both applications must be rejected with costs on the original side scale to be taxed by the Taxing Master.

RANGNEKAR J. I agree; but as the question of construction of section 13 has been raised in the course of the discussion, I should like to state shortly my view of the section. The section says that income, profits and gains shall be computed for the purposes of sections 10, 11 and 12 in accordance with the method of accounting regularly employed by the assessee. It follows from that section that when an assessee says that the method which he has followed has been regularly employed by him, the question whether that is so or not is entirely for the Income-tax authorities, and any opinion expressed by them would amount to nothing more than a finding of fact, and would not entitle the assessee to come to this Court. But I do not agree with the Commissioner that it is not open to a person to change a method which he has regularly employed for some years at any period in any particular year. There is nothing in the section or the Act to prevent an assessee from changing his method. He has of course to satisfy the Income-tax authorities that he is doing so in good faith, and if the revenue is not likely to be defrauded, I think the Income-tax Officer will accept the new method, and if he refuses, his discretion can be questioned on an appeal to the superior officers.

Applications rejected.

Y. V. D.