

(1969) 05 MAD CK 0001

In the Madras High Court

Case No : Tax Case No. 41 of 1966 (Reference No. 20 of 1966)

Commissioner of Income Tax

APPELLANT

Vs

K.L. Varadarajan

RESPONDENT

Date of Decision : 02-05-1969

Acts Referred:

Income Tax Act, 1922 — Section 17, 17(1), 34

Citation : (1970) 75 ITR 23

Hon'ble Judges : K. Veeraswami, C.J; T. Ramaprasada Rao, J

Bench : Division Bench

Advocate : V. Balasubramanyan and J. Jayaraman, for the Appellant; T.V. Ramanathan, for the Respondent

Judgement

Ramaprasada Rao, J.—The Commissioner of Income Tax required the Appellate Tribunal u/s 66(1) of the Indian Income Tax Act, 1922, to

refer the following question of law which is said to arise out of the consolidated order of the Income Tax Appellate Tribunal in I.T.A. Nos. 10928

to 10930 of 1962-63. The question referred is :

Whether the declaration filed by the assessee u/s 17(1) in respect of the assessment year 1958-59 was operative in relation to the reassessments

in respect of the previous years ending on December 31, 1954, December. 31, 1955, and December 31, 1956, corresponding to the assessment

years 1955-56, 1956-57 and 1957-58?

2. The facts are stated in a consolidated statement drawn up for the purpose and they are as follows: The original assessments of the assessee,

who derived income by way of dividends on shares and interest on deposits, were completed u/s 23(3) of the Act on January 31, 1966,

December 27, 1956 and February 28, 1958, for the years corresponding to the

assessment years 1955-56, 1956-57 and 1957-58. The residential status adopted in these years by the assessee was "resident and ordinarily resident" person. In the course of the assessment proceedings for 1958-59 (year ending December 31, 1957), the assessee filed a declaration u/s 17(1) claiming to be assessed at rates appropriate to his total world income. This assessment was completed on March 23, 1960, in the status of a "non-resident". The Income Tax Officer found that, for the previous years, the total income of the assessee was charged to Income Tax at the normal rates and as he failed to make the requisite declaration u/s 17(1) within the time, it was considered that the earlier assessments were made at too low a rate. In view of this, action u/s 34 was taken and the assessments re-opened and completed u/s 23(3) read with Section 34 of the Act. His status was treated as that of a "nonresident." The assessee's declaration u/s 17(1), which he made in the course of the assessment proceedings for the assessment year 1958-59, was rejected and ignored and his total income was brought to tax at the maximum rates. The assessee, in the course of such re-opening of the assessments, requested that the income during the three years in question should be taxed at rates appropriate to his world income and that the omission on his part to make the declaration earlier u/s 17(1) was due to inadvertence and ignorance. It was also contended that as the assessments were re-opened and are thus deemed to be pending even for the earlier years, the assessee's declaration made during the assessment proceedings for the year 1958-59 should be considered and the assessment made in accordance with law. The Income Tax Officer was of the view that as the assessee exercised his option after the prescribed date, the declaration cannot have effect on the assessments before this, even though they were taken up u/s 34(1)(b) of the Act. He was of the view that the declaration filed by him could not enure to his benefit for the earlier years and the second proviso to Section 17 cannot avail the assessee. In the end he completed the assessment and levied the tax on the total income at the maximum rates laid down u/s 17(1) of the Act.

3. On appeal the assessee contended that the revenue had no jurisdiction to reopen assessments u/s 34(1) and in particular it was argued that the Income Tax Officer was wrong in holding that the declaration filed by the

assessee u/s 17(1) in the manner stated above could not enure for the benefit of assessee for the earlier years, since a reopening of an assessment should be deemed to be a continuation of the original assessment. The Appellate Assistant Commissioner held, disagreeing with the Income Tax Officer, that the declaration made by the assessee and filed during the assessment year 1958-59 was in order and that such a declaration was operative and effective even for the prior years as the assessments were reopened u/s 34 of the Act. On appeal by the department against the order of the Appellate Assistant Commissioner, the Tribunal accepted the reasoning and conclusions of the Appellate Assistant Commissioner and dismissed the appeal. The Appellate Tribunal did not countenance the argument of the departmental representative that a declaration u/s 17(1) cannot be availed of by the assessee for the assessment years 1955-56, 1956-57 and 1957-58. The Appellate Tribunal observed that there is nothing in the language of Section 17(1) to support the revenue's stand that such declaration shall have effect only for subsequent assessment years. It interpreted the word "subsequent" as to mean subsequent assessments, whatever may be its nature. It would not agree with the revenue that the word "subsequent" is only apposite with reference to years and not to assessments as contended. As the department has chosen to reopen completed assessments, then, according to the Tribunal, those assessments once again have become pending and, therefore, it held that the declaration made before such assessments were completed can be taken advantage of by the assessee. The Appellate Assistant Commissioner having observed that the declaration has to be accepted, as the assessee, was prevented by sufficient cause from filing the same earlier, it is not open to the revenue to deny the benefit that normally flows from such a declaration and extending the same even to assessments sought to be reopened u/s 34. According to the Appellate Tribunal, the emphasis appears to be upon the completion of the assessment and not on the years. In the result, therefore, the Tribunal accepted the order of the Appellate Assistant Commissioner and dismissed the appeals. In these circumstances the above question of law has been referred to us.

4. Section 17(1) prescribes the procedure for the determination of tax payable in certain special cases. If a person is an individual and is not a

resident in the taxable territories, the tax including super-tax payable by him on his total income has to be calculated in accordance with the formula

prescribed in Section 17(1)(a) and (b). The first proviso enables such a person to obtain a relief from the maximum rate prescribed in Sub-clause

(1) of Section 17, provided the assessee by notice in writing to the Income Tax Officer declares that the including super-tax payable by him on his

total income shall be determined with reference to his total world income. On the filing of such a declaration the tax shall be determined in

accordance with the alleviating formula prescribed in the first proviso to Section 17(1). The declaration so filed by him shall be final and binding on

him and is made applicable to all assessments thereafter. The second proviso confers another privilege on an assessee who, for sufficient cause, is

prevented from making the declaration as prescribed in the first proviso. If the revenue is satisfied that the assessee was prevented by sufficient

cause from making such a declaration on the occasion prescribed in the first proviso, then such a declaration may be accepted and shall have effect

in relation to the assessment for the year in which the declaration is made (if such assessment had not been completed before such declaration),

and all assessments thereafter. In the instant case, the declaration was filed during the assessment year 1958-59. It is common ground that for the

previous three years, corresponding to the assessment years 1955-56, 1956-57 and 1957-58, the assessments were reopened u/s 34. In that

sense it is contended that the assessments for the previous years have not yet been completed and that therefore the declaration, though filed later,

and which has since been accepted by the revenue, as the assessee showed sufficient cause for not making the declaration during the assessment

year in question, should enure to the benefit of the assessee even for the years relevant under consideration. The argument proceeds that the words

applicable to all assessments thereafter"" should literally be interpreted and, as assessment proceedings have been reopened u/s 34 for the previous

years referred to, the relief available to the assessee under the provisos to Section 17 should be granted to him. "

5. It is no doubt true that, when an assessment is reopened u/s 34, technically the proposed assessment on such reopening due to escapement may

be considered to be a continuation of the earlier assessments. But a reopening of an assessment is an independent statutory procedure prescribed

under the taxing law under certain circumstances. This is distinct and separate from the earlier original assessments. It is undeniable that there are

three stages in the imposition of a tax :

There is the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable.

Next, there is the assessment. Liability does not depend on assessment. That, ex hypothesi, has already been fixed. But assessment particularises

the exact sum which a person liable has to pay.

Lastly, come the methods of recovery, if the person taxed does not voluntarily pay." (Per Lord Dunedin in *Whitney v. Inland Revenue*

Commissioners, [1925] 10 T.C.88 (H.L.)).

6. Section 17 (1) fixes the liability of a non-resident. The proviso gives him the privilege provided he acts in a particular way and in the prescribed

manner. If he fails to adopt the course which would enable him to obtain the statutory concession regarding rate, he is to be blamed and he cannot,

by circumventing the particularised procedure, evoke the sympathy of the revenue and seek for relief. In the instant case, it is admitted that before

the completion of the assessments in their original stage for the three years in question, no declaration, as prescribed under the first proviso to

Section 17 has been filed. The very foundation of the concession rests upon the filing of a declaration as contemplated by the statute. This

declaration is irretrievably connected in point of time to the assessment in question. If, therefore, during the earlier years when the assessee

returned his income he did not choose to file a declaration so as to obtain the concession, then he cannot, by a priori reasoning or by invoking the

sympathy and logic, obtain such relief by filing a declaration at a point of time later than the prescribed and appointed time and ask for the

concession on the only ground that the revenue has reopened an earlier completed assessment u/s 34 on the basis of escapement of tax. The

words "all assessments thereafter" appearing in both the provisos obviously refer to original assessments. Otherwise, it would lead to this anomaly :

A person who has not escaped assessment cannot derive an advantage by filing a declaration at a point of time posterior to the completion of

assessment; but a person who has escaped assessment can get the statutory concession by filing such a declaration before the reopened

assessment is completed. This anomalous result remains unexplained by the learned counsel for the respondent, In order, therefore, to avoid any such inconsistency in the application of the plain language of Section 17 (1) read with its provisos, we are of the view that the expression ""all assessments thereafter"" appearing in both the provisos could only apply to all "assessment years thereafter and "not to assessments made by the revenue in exercise of its powers u/s 34 of the Act.

7. The Tribunal was of the view that it- would be a straining of the language if the expression ""all assessments thereafter"" were to. be understood as assessment years thereafter. Apparently, it based its conclusion that, if the revenue chose to reopen the completed assessments, then those assessments should be deemed to be pending. It should not be forgotten that the jurisdiction u/s 34 is very limited and it is resorted to by the revenue only in exceptional circumstances and in accordance with the statutory prescription therein. It is not a general provision but an exceptional one. To interpret Section 17 in the light of such an exceptional provision in the taxing statute would be to render the text and the plain words of Section 17 ambiguous when it is not. If an assessee intends to avail himself of the advantage to be taxed at the average rate applicable to his total world income instead of the maximum rate, then it is for him to exercise that option in the manner prescribed. As already stated, the declaration should be in point of time anterior to the assessment in question of every year and once the assessment has been completed and the declaration has not been filed prior to such completion, then it cannot be said that the assessee has exercised his option as required of him in law. The accident of the reopening of the assessment by the revenue u/s 34(1) cannot revive the option which he failed to exercise at the prescribed time.

8. As the facts are not in dispute in this case, the option exercised by the assessee was long after the assessments for the years 1955-56, 1956-57 and 1957-58 were completed. This overt act on his part is sufficient to negative any relief to him under the provisos to Section 17. The mere acceptance of the declaration under the second proviso to Section 17 does not make any difference in so far as the principle is concerned. We are, therefore, of the view that the declaration filed by the assessee u/s 17(1) in respect of the assessment year 1958-59 cannot be operative and

be availed of by the assessee in relation to the reassessments proposed by the revenue in respect of the previous assessment years referred to

above. We, therefore, answer the question against the assessee with costs ;
counsel's fee Rs. 250.