
(1975) 07 AHC CK 0020

In the Allahabad High Court

Case No : Income-tax Reference No. 109 of 1973

Commissioner of Income Tax

APPELLANT

Vs

Surajpal Singh

RESPONDENT

Date of Decision : 11-07-1975

Acts Referred:

Income Tax Act, 1922 — Section 22, 22(2), 22(4), 23, 23(4)
Income Tax Act, 1961 — Section 143(3), 271(1), 297(2)

Citation : (1977) 108 ITR 746

Hon'ble Judges : R.L. Gulati, J;C.S.P. Singh, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; Raja Ram Agarwal, amicus curiae, for the Respondent

Final Decision : Allowed

Judgement

R.L. Gulati, J.—This reference under the Income Tax Act raises some important and difficult questions of law. But, unfortunately, the assessee is not represented. We have, therefore, requested Sri Raja Ram Agarwal to assist us as amicus curiae.

2. The assessee is a Hindu undivided family. The assessment year involved is 1961-62. The assessee filed its return on 19th August, 1961. A year later on 1st August, 1962, he filed a revised return including therein income from property which had not been included in the original return. However, no action was taken by the Income Tax Officer either on the original return or on the revised return. It may be mentioned here that the assessee was an old assessee and was being assessed to Income Tax for the past several years. His case fell within the jurisdiction of District III(1), Kanpur. Meanwhile on the basis of a survey report, the Income Tax Officer, Special Survey Circle, Kanpur, issued a notice to the assessee u/s 22(2) of the Indian Income Tax Act, 1922, followed by a notice u/s 22(4). Both these notices remained uncomplited with and the Income Tax Officer made an ex parte assessment order u/s 23(4) of the Act on a total income of Rs.

10,000 including a sum of Rs. 6,000 being income from property. The assessee moved an application u/s 27 of the Act. This application was allowed and the assessment made by the Income Tax Officer, Special Survey Circle, Kanpur, was cancelled, on the ground that the assessee had already filed its return before the Income Tax Officer, District III(I), Kanpur, and as such the assessment made by the Income Tax Officer, Special Survey Circle, was unauthorised. This order was passed on 15th March, 1966. However, no assessment was completed by 31st March, 1966, on which date the normal period of four years' limitation for making an assessment expired. The assessment order was passed as late as 25th of March, 1970, on a total income of Rs. 66,504 made up as under:

Rs.

Business income

10,000

Income from other sources

55,000

Property income

1,504

Total

66,504

3. This assessment order was made u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the "new Act"). The Income Tax Officer also directed the issue of a notice u/s 271(1)(c) of the new Act as he was of the opinion that the assessee had concealed a part of its income. It may be mentioned here that the assessee had disclosed the following income in its return:

Rs.

Business income

7,341

Property income

1,504

Total

8,845

4. The assessee had taken an objection before the Income Tax Officer that the assessment was time-barred. The Income Tax Officer repelled this contention on two grounds : (1) that the assessment having been reopened u/s 146 of the new Act there was no period of limitation for the completion of the assessment; and

(2) that the case being one to which the provisions of Section 271(1)(c) applied, the assessment could be completed within a period of eight years from the end of the assessment year as laid down in Section 153(1)(b) of the new Act.

5. Before we proceed further it must be stated that the Income Tax Officer was wrong in relying on the provisions of the new Act. The new Act came into force with effect from 1st April, 1962. In Section 297(2)(a) of the new Act a provision is made that where before the commencement of the new Act any proceedings under the old Act were pending, the provisions of the new Act will not apply and the proceedings would continue under the old Act. Now, in the instant case, the proceedings had commenced when the assessee filed its return on 19th of August, 1961. At that time the new Act had not come into force. The revised return, no doubt, was filed after the new Act had come into operation. But the proceedings having commenced by the filing of the original return, Clause (a) of Subsection (2) of Section 297 was attracted and as such the assessment could be completed only with reference to the provisions of the old Act. This position is supported by a decision of this court in *Dhampur Sugar Mills Ltd. Vs. Commissioner of Income Tax*, . However, nothing turns on this mistake because the validity of the assessment has not been questioned on this ground, nor indeed such a mistake can in any way invalidate the proceedings because the Income Tax Officer enjoys similar powers under the corresponding provisions of the old Act and there is no material difference on the point in issue between the provisions of the old and the new Acts. We shall, therefore, refer to the corresponding provisions of the old Act wherever necessary.

6. Sub-section (3) of Section 34 prescribes a period of limitation for assessment. It provides that:

"No order of assessment or reassessment, other than an order of assessment u/s 23 to which Clause (c) of Sub-section (1) of Section 28 applies.....shall be made after the expiry of four years from the end of the year in which the income, profits or gains were first assessable."

7. Then there is the second proviso which says that I "...nothing contained in this section limiting the time within which any action may be taken or any order, assessment or reassessment may be made, shall apply to a reassessment made u/s 27....."

8. Thus the normal period for completing the assessment is four years from the end of the assessment year in which the income, profits or gains are first assessable. There are two exceptions to it: (i) when the assessment is made u/s 27, or (ii) u/s 23 to which the provisions of Clause (c) of Section 28(1) apply. In either case there is no period of limitation. In the opinion of the Income Tax Officer the case was covered by both the exceptions. On appeal, the Appellate Assistant Commissioner of Income Tax has held and, very rightly, that the proviso to Section 34(3) could not be availed of because the assessment which was set aside u/s 27 was an assessment made against an individual, whereas the

assessment under appeal was made against a Hindu undivided family. The Income Tax Appellate Tribunal agreed with the Appellate Assistant Commissioner of Income Tax that the assessment was not saved by Section 146 of the new Act. The Tribunal also held that the case was not one to which the provisions of Section 271(1)(c) of the new Act (corresponding to Section 28(1)(c) of the old Act) apply inasmuch as the Income Tax Officer had not recorded any finding or brought any material on the record within a period of four years to show that it was a case of concealment. In the opinion of the Tribunal, the assessment was, therefore, clearly time-barred. At the instance of the Commissioner of Income Tax, the Tribunal has submitted the following question of law for the opinion of this court;

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessment made by the Income Tax Officer was barred by limitation?"

9. The first point to be considered is as to whether the assessment is saved by Section 146 of the new Act (corresponding to Section 27 of the old Act). From the facts on the record, it is clear that the Income Tax Officer, Special Survey Circle, Kanpur, made an assessment against Surajpal Singh in his individual capacity. It is this assessment which was set aside u/s 27 of the old Act. The assessment order which was subsequently made was against the Hindu undivided family of Surajpal Singh. The latter assessment could not be said to be u/s 27 because no assessment against the Hindu undivided family of Surajpal Singh had been set aside u/s 27. Indeed, no such assessment had been made at all. This view finds full support from a decision of the Supreme Court in Commissioner of Income Tax, Assam, Tripura, Manipur and Nagaland Vs. Rameshwarlal Sanwarmal, .

10. Next comes the question as to whether the case was one to which the provisions of Section 28(1)(c) of the old Act applies. In other words, it had to be seen whether it was a case of concealment or of furnishing inaccurate particulars by the assessee. The concealment attributed to the assessee is two-fold. First, that it had not included in its original return the income from property, and, secondly, that it had not disclosed its investments in the construction of the house which was estimated by the Income Tax Officer at Rs. 55,000 and was treated as income of the assessee from other sources on the ground that the assessee had failed to explain the source of the investment.

11. So far as the income from property is concerned, the assessee had included the same in the revised return filed by it before the Income Tax Officer detected the omission. On these facts the Tribunal has held that the assessee could not be said to be guilty of concealment. We agree with this view of the Tribunal without laying down the proposition that an assessee can always escape penal consequences by filing a revised return. On the facts found by the Tribunal, we are satisfied that no penalty could be levied upon the assessee in respect of the income from property.

12. As regards the second charge, namely, that the assessee had concealed its investment in the property, we are of opinion that even this charge of concealment has not been made out against the assessee. In the form of return prescribed u/s 22 there is no column for showing investments. The assessee was thus under no obligation to disclose its investment in the property, in the return. The Income Tax Officer could, of course; question him about the source of investment during the assessment proceedings. The Income Tax Officer did question the assessee about "the source of that investment. The assessee gave an explanation, the explanation being that he had raised the amount by sale of jewellery, silver ornaments, and coins, old engine, agricultural produce and past savings. This explanation was not accepted by the Income Tax Officer. On appeal the Appellate Assistant Commissioner of Income Tax found that the Income Tax Officer had not properly applied his mind to the explanation and he, therefore, set aside the assessment and directed the Income Tax Officer to reconsider the matter. The Tribunal expressed the opinion that in order to rely upon the exception contained in Section 34(3), it was necessary for the Income Tax Officer to have recorded a finding or to have placed on record within the normal period of limitation, namely, four years, some material to show that the assessee was guilty of concealment. This the Income Tax Officer had failed to do. He had merely allowed the four year period to pass without taking any action and in these circumstances the Income Tax Officer was not permitted to avail of the exception contained in Section 34(3). This indeed raises a very important and difficult question. There appears to be some substance in the following observation of the Tribunal:

"Section 153(1)(b) (which corresponds to Section 34(3) of the old Act) does not apply to cases where the Income Tax Officer suspects concealment or expects to detect concealment if the assessment proceedings are allowed to drag on for 8 years. Otherwise the said section would lead to dangerous and undesirable possibilities. An Income Tax Officer may sleep over the assessment for full four years and finding that the assessment has already got time-barred may try to infuse life into it artificially by issuing a penalty notice u/s 271(1)(c) of the Act on the ground of some imaginary concealment. This is not certainly the purpose for which Section 153(1)(b) is put in in the statute."

13. This view finds support from a decision of Manchanda J. in RAM BILAS KEDAR NATH AND OTHERS Vs. Income Tax OFFICER, DISTRICT III (I), KANPUR, AND ANOTHER., . There it was held that the Income Tax Officer was bound to complete the assessment u/s 23 of the Act within the normal period of 4 years provided for the completion of all assessments u/s 34(3) of the Act, unless there existed a prima facie case for the applicability of the provisions of Section 28(1) (c) of the Act, and if for four long years the Income Tax Officer had not been able to glean any information from any outside source of any concealment and no notice u/s 28(1)(c) was issued when the assessment u/s 23(4) was completed by him, he could not on any theoretical considerations or on the remote possibility of discovering some concealment in the future arrogate to himself the right to

complete the assessment after the lapse of four years. The learned judge then made the following observation (page 15):

"If that were the law then no assessment need ever be completed within the normal period of four years and the sword of Damocles could be kept hanging over the head of the assessee for all time to come. The Income Tax Officer cannot by merely saying to himself that some day he may discover something which might justify his applying the provisions of Section 28(1)(c) confer upon himself the necessary jurisdiction to make an assessment u/s 23 without any bar of limitation."

14. The learned judge further went on to observe (page 15):

"Some sanctity requires to be attached to the period of limitation of four years which the legislature at the relevant time had provided in Section 34(3) for the completion of assessments. That limitation, on the interpretation sought to be placed by the department in this case, would virtually be a dead letter, as in every case the Income Tax Officer could keep assessments pending, again theoretically speaking, till the end of time on the ground that some concealment or the furnishing of inaccurate particulars might come to light at some distant future date." There is, however, a decision of a Division Bench in *MIR SUBA HARI BHAKTA Vs. Income Tax OFFICER, A-WARD, DEHRA DUN.*, which says that the proceedings u/s 22(4) or Section 23(2) can be taken even after the expiry of four years, because the appropriate stage for finding out as to whether the period of limitation is four years or longer is when the assessment order is passed. The period of limitation contained in Section 34(3) applies to the passing of the order and not to any anterior stage of taking proceedings. This decision lays down that an assessee cannot question the jurisdiction of the Income Tax Officer to take assessment proceedings after the expiry of the period of four years from the end of the relevant assessment year on the ground of limitation. But this decision is no authority against the proposition that the Income Tax Officer must within the normal period of four years initiate penalty proceedings by issuing a notice u/s 28(3), or may record a finding or place some material on record to indicate that the case is one to which Section 28(1)(c) will apply and as such the assessment can be made without the period of limitation. If the Income Tax Officer does anything after the expiry of four years, he can certainly be challenged before a court of law to disclose the material on the basis of which he proposes to take the case out of the normal period of limitation. However, it is not necessary to dwell upon this point any further, because the instant case is one to which Section 28(1)(c) would never be attracted.

We have already indicated that the form of return does not require an assessee to reveal his investments. Obviously, therefore, when the assessee filed its return without disclosing the investment, he did not commit any default, nor could he be said to be guilty of any concealment. When the assessee was called upon to disclose the source of investment, he did offer an explanation. May be, the explanation was not acceptable to the Income-Officer, but that fact by itself will

not attract Section 271(1)(c) of the new Act or Section 28(1)(c) of the old Act. This proposition admits of no doubt after the decision of the Supreme Court in Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, . There the Supreme Court has held that the gist of the offence u/s 28(1)(c) is that the assessee had concealed the particulars of his income or deliberately furnished inaccurate particulars thereof and the burden is upon the department to establish that the amount in dispute is the assessee's income and that the assessee had deliberately concealed it. If there is no evidence on the record except the explanation offered by the assessee, which explanation has been found to be false, it does not follow that the receipt constitutes his taxable income. The Supreme Court went on to observe that :

"It would be perfectly legitimate to say that the mere fact that the explanation of the assessee is false does not necessarily give rise to the inference that the disputed amount represents income.....the income tax Officer had to find some material apart from the falsity of the respondent's explanation to support his finding that the receipt from undisclosed sources was income."

15. These observations apply with full force to the facts of the present case. The assessee had made certain investment in property. The assessee gave an explanation with regard to its source. Now, merely because the Income Tax Officer was not satisfied with the explanation would not lead to the inference that the investment represented the assessee's concealed income. There ought to be some material apart from the explanation of the assessee and that material is missing.

16. In this view of the matter the case does not fall within the exceptions mentioned in Section 34(3) because it is not a case to which the provisions of Section 28(1)(c) apply. The assessment, therefore, which has admittedly been made after the expiry of four years was clearly barred by time.

17. We, accordingly, answer the question in the affirmative, in favour of the assessee and against the department. The assessee is not represented; and, therefore, we make no order as to costs.