

(1962) 03 AHC CK 0010

In the Allahabad High Court

Case No : Miscellaneous Income Tax Reference No. 124 of 1956

DALIP SINGH

APPELLANT

Vs

COMMISSIONER OF Income Tax, U.P.

RESPONDENT

Date of Decision : 26-03-1962

Acts Referred:

Income Tax Act, 1961 — Section 22, 23, 34, 66

Citation : (1962) 46 ITR 284

Hon'ble Judges : Brijlal Gupta, J

Bench : Division Bench

Judgement

BRIJLAL GUPTA J. - This is a reference u/s 66(1) of the Income Tax Act. The question referred to us for opinion is :

"Was the assessment completed within the time limit prescribed by section 34(3) of the Act ?"

For appreciation of the point of limitation raised by the question it is necessary to mention the following facts and dates. The assessment year in question is 1948-49. Up to February 16, 1950, the assessee had not been assessed to Income Tax. On February 16, 1950, the Income Tax Officer issued a notice to the assessee u/s 34. The notice was served on February 23, 1950. The assessment was completed on March 28, 1953, u/s 34 read with section 23(3). The point raised by the assessee was that notice having been served on February 23, 1950, the assessment should have been completed within one year of the date of the service of the notice, viz., by February 23, 1951, according to the provisions of section 34(3), first proviso, and the assessment completed on March 28, 1953 was beyond time.

The relevant portion of section 34 relating to limitation, as it stood at the material time, may be stated as follows :

34. (1)... The Income Tax Officer may, in cases falling u/s 34(1)(a) at any time within eight years and in cases falling u/s 34(1)(b) at any time within four years

of the end of the year in respect of which the assessment is to be made, serve on the assessee a notice containing all or any of the requirements which may be included in a notice u/s 22(2) and may proceed to assess or reassess the escaped income or recompute the loss or depreciation allowance.

34. (3) No order of assessment or re-assessment in case falling within section 34(1)(a) shall be made after the expiry of eight years and no order of assessment or re-assessment in any other case 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 :

Provided that where a notice u/s 34(1) has been issued within the time therein limited the assessment or re-assessment to be made in pursuance of such notice may be made before the expiry of one year from the date of the service of the notice even if such period exceeds the period of eight years or four years as the case may be.

From these provisions it is clear that a notice for initiation of proceedings u/s 34 has to be issued within eight years or four years of the end of the assessment year in question according as the case falls under clause (a) or (b) of section 34(1) and the assessment also has to be completed within these time limits.

It takes time for an assessment to be completed after a notice for initiation of assessment proceedings has been issued. Though a notice is allowed to be issued before the expiry of eight years or four years from the end of the assessment year in question, it may not be possible to complete the assessment before the expiry of eight or four years if it was issued very late. To provide for this contingency the proviso to sub-section (3) was added allowing an assessment to be completed within one year from the date of the service of the notice even if the period of eight years or four years has expired. The proviso comes into application only when a notice is issued in the eighth or fourth year; in such a case one year from the date of the service of the notice is allowed for completing the assessment. It appears that the legislature thought that when a notice is issued late the assessment should be completed within one year of the service of the notice. It did not intend that in every case the assessment should be completed within one year from the service of the notice because otherwise the provision in section 34 would have been quite different; it would have been far simpler to lay down in section 34 that the assessment should be completed within one year of the service of the notice. The proviso was plainly an exception to the mandatory rule contained in sub-section (3) that the assessment must be completed within eight years or four years of the end of the assessment year. The only case covered by the exception was the case in which one year from the service of the notice ended after eight or four years. The proviso was intended to cover only this exceptional case. It is to be noted that the proviso using the verb "may" is an enabling one : it allows the assessment to be completed even though eight years and four years have expired, provided one year has not expired since the receipt of the notice. Having permitted a notice to be issued at any time

within eight or four years, it would have looked ridiculous if the legislature had insisted upon the completion of the assessment also within eight or four years. It had to make the provision regarding completion of the assessment reasonably consistent with the provision that a notice can be issued at any time within eight or four years, and it did so through the proviso. The language of section 34(3) together with its proviso does not lend any support to the contention that the legislature intended that the assessment must be completed in every case within one year of the receipt of the notice; the main section, laying down that it must be completed within eight or four years, is clearly against any such intention. The last clause of the proviso makes it clear that the object behind it was to extend the period of eight years or four years in case the notice was issued in the eighth or the fourth years. In *Johilla Coalfields Co. Ltd. v. Commissioner of Income Tax*, it was observed that this period of one year is in addition to the period of eight or four years.

We are concerned with the assessment year 1948-49. The period of four years during which the assessment must be completed, as required by section 34(1)(b) and (3), expired on March 31, 1953, and the assessment made on March 28, 1953, was within time. The first proviso to section 34(3) did not come into play at all; it makes no sense to read it as laying down that the assessment "may be made before February 23, 1951, even if this period exceeds the period of four years". Since the period of four years did not expire before the last day of the assessment year, the last words make no sense at all. The notice was served upon the applicant on February 23, 1950, and what was obligatory upon the Income Tax Officer was to pass the assessment order within four years of the last day of the assessment year, i.e., on or by March 31, 1953. Even if one were to apply the proviso, it would only mean that the assessment could be made before February 23, 1951, and not that it must be made before that date. The mandatory provision fixing the maximum time is in section 34(3) according to which the assessment must be made on or by March 31, 1953. If there are two provisions, one laying down that the assessment must be made on or by March 31, 1953, and the other laying down that it may be made by February 23, 1951, an assessment made on March 28, 1953, cannot be said to be against either of them.

In the result we answer the reference in the affirmative. The department shall get its costs of the reference, which we assess at Rs. 200 from the assessee.

Let a copy of this judgment under the seal of the court and the signature of the Registrar be sent to the Appellate Tribunal, as required by section 66(5).

Question answered in the affirmative.