

(1958) 10 KAR CK 0007
In the Karnataka High Court
Case No : Writ Petition No. 114 of 1957

H.N.S. Iyengar

APPELLANT

Vs

First Additional Income Tax Officer, Mysore City

RESPONDENT

Date of Decision : 01-10-1958

Acts Referred:

Income Tax Act, 1922 — Section 34, 34 (1) (a), 34 (1) (b)

Citation : (1958) ILR (Kar) 712 : (1960) 38 ITR 109

Hon'ble Judges : S.R. Das, C.J;A. Narayana Pai, J

Bench : Division Bench

Advocate : V. Krishnamurthy, for the Appellant; D.M. Chandrasekhar, for the Respondent

Judgement

S.R. Das Gupta, C.J.—The petitioner before us was assessed under the Indian Income Tax Act for the assessment year 1948-49. On November 27, 1956, he was served with a notice u/s 34 of the Income Tax Act. In the said notice it was stated that whereas the Income Tax Officer has reason to believe that the income of the petitioner assessable to Income Tax for the year ending March 31, 1949, has escaped assessment, he is required to deliver within 35 days of the receipt of this notice a return in the attached form of his total income and world income assessable for the year ending March 31, 1949. The petitioner appeared before the Income Tax Officer pursuant to the said notice and challenged the right of the Income Tax Officer to proceed under the said section. The main contention of the petitioner before the authority concerned was that the notice was given beyond the period mentioned in section 34 of the Income Tax Act. The Income Tax Officer did not accept that contention. The present petition has been filed as a result thereof.

2. Two points were urged before us by Mr. Krishnamurthi appearing on behalf of the petitioner. In the first place he contended that the period within which a notice under clause (a) of sub-section (1) of section 34 can be served would be eight years from the end of the accounting year, that is, the year for which a

return of the assessee's income has to be furnished u/s 22 of the Income Tax Act. Mr. Krishnamurthi contended that the said year expired on March 31, 1948, and the last date, therefore, within which such notice could have been given would be March 31, 1956. The notice in question was net on November 27, 1956 i.e., beyond the period of eight years commencing 31st March, 1948. In the second place Mr. Krishnamurthi contended that in the notice it should have been mentioned that the petitioner did not disclose all facts fully and truly necessary for his assessment for the year in question. He contended that it was incumbent on the Income Tax Officer to do so.

3. So far as the first ground urged before us by Mr. Krishnamurthi is concerned, it seems to me to be sound. It would be necessary at this stage to refer to the material provisions of section 34. They are as follows :

"34. (1) If -

(a) the Income Tax officer has reason to believe that by reason of the omission or failure on the part of an assessee to make a return of his income u/s 22 for any year or to disclose fully and truly all material facts necessary for this assessment for that year, income, profits or gains chargeable to Income Tax have escaped assessment for that year, or have been under-assessed, or assessed at too low a rate, or have been made the subject of excessive relief under the Act, or excessive loss or depreciation allowance has been computed, or

(b) notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assessee, the Income Tax Officer has in consequence of information in his possession reason to believe that income, profits or gains chargeable to Income Tax have escaped assessment for any year, or have been under-assessed, or assessed at too low a rate, or have been made the subject of excessive relief under this Act, or that excessive loss or depreciation allowance has been computed.

He may in cases falling under clause (a) at any time within eight year and in cases falling under clause (b) at any time within four years of the end of that year, serve not the assessee, or, if the assessee is a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22 and may proceed to assess or reassess such income, profits or gains or recompute the loss or depreciation allowance; and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section."

4. It appears from the provisions of the said section to which I have referred that the Income Tax Officer can proceed under clause (a) of sub-section (1) if there has been an omission or failure on the part of the assessee to make a return of his income u/s 2 for any year, or if there has been a failure to disclose fully and truly all material facts necessary for this assessment for that year. The question is, what is the year which is mentioned in clause (a) of sub-section (1) of section 34. It is accounting year or assessing year ?

5. It should be noted that in the first part of the said clause it is mentioned that there should be a failure to make a return of his income u/s 22 for "any year". In the other parts of the said clause reference is made to "that year." In order to understand, therefore, what is the year which is mentioned in the earlier part of clause (a) we shall have to refer to section 22 of the Income Tax Act, because the failure in question as mentioned in the said part of clause (a) should be the failure on the part of the assessee "to make a return of his income u/s 22 for any year." Section 22 of the Income Tax Act inter alia provides that the Income Tax Officer shall, on or before the 1st day of May in each year, give notice by publication in the prescribed manner requiring every person whose total income during the previous year exceeded the maximum amount which is not chargeable to Income Tax to furnish, within such period as mentioned in the said section a return in the prescribed form and verified in the prescribed manner setting forth his total income and total world income during that year. It is clear from the provisions of section 22 that the return which has to be furnished is the return of the income of the previous year. The return mentioned in clause (a) of sub-section (1) of section 34 is the return of the income u/s 22 for any year. It seems to me, reading the said clause along with the provisions of section 22, that "any year" mentioned therein would be the "previous year", and the return of the income referred to therein would be the return of the income of the previous year. As I have mentioned before, the year referred to in the subsequent portions of section 34 is the year which is mentioned in the earlier part of the said clause. It follows, therefore, that the starting point of limitation so far as it relates to a matter falling under clause (a) of sub-section (1) of Section 34 would be the end of the year for which the return of the income has to be made u/s 22, and that is the year previous to the year of assessment. In my opinion, the language used in section 34 makes that position quite clear.

6. The learned Government Pleader referred us to clause (b) of sub-section (1) of section 34 and contended that it is clear from the language used therein that the year referred to therein is the assessing year and not the accounting year. But, it seems to me that clause (b) of sub-section (1) of section 34 deals with a matter different from that is contained in clause (a). In other words, a different provision has been made in respect of matters coming under clause (b). That the legislature wanted to keep the two matters, one falling under clause (a) and the other under clause (b), different also appears from the fact that different periods of limitation have been prescribed for each of them. In my opinion, it is not possible to hold that because in clause (b) of sub-section (1) of section 34 the year referred to is the assessing year, the year referred to in clause (a) of sub-section (1) of section 34 must also be the assessing year. I am, therefore, of the opinion that the view contended for by the learned advocate for the petitioner is sound and should be upheld.

7. Coming to the second contention of the learned advocate for the petitioners, I do not think that there is any substance in the same. The section does not require a notice to state that the assessee did not disclose fully all facts

necessary for his assessment for the year in question. All that is required u/s 34 is that a notice should contain all or any of the requirements which may be included in a notice under sub-section (2) of section 22. When we turn to sub-section (2) of section 22, we find that the requirement under that sub-section is that the notice should call upon the assessee to submit his return in the prescribed form and verified in the prescribed manner setting forth along with such other particulars as may be provided in the notice his total income and total world income during the previous year. The said sub-section does not require the Income Tax Officer to make any other statement in the said notice. That being so, this contention of the learned advocate for the petitioner must fail.

8. The return, therefore, is that this petition succeeds and is allowed. The notice issued u/s 34 of the Indian Income Tax Act dated November 27, 1956, is quashed and the proceedings which have taken place pursuant to the said notice are also quashed. The petitioner is entitled to costs of this petition. (Advocate's fee Rs. 100.)

Narayana Pai, J.

I agree.

9. On the application of the Government Pleader to Reargue the matter the case came before their Lordships again on October 1, 1958.

S.R. Das Gupta, C.J.

10. A few days after this judgment was delivered, the learned government Pleader mentioned this case to us and asked for leave to reargue the matter. His application was really an application for review although an oral one. The learned government Pleader wanted to argue that section 34 as it now stands after the amendment in 1956 does not warrant the view which we have taken in this matter. We permitted him to argue the case on this point.

11. The learned government Pleader placed before us section 34 of the Income Tax Act as it now stands after its amendment in 1956 and contended that on a proper construction of the said section, we should hold that the period of eight years mentioned therein would start from the end of the assessment year, as originally contended by him. The material provisions of section 34 of the Indian Income Tax Act after its amendment in 1956 reads as follows :

"34. Income escaping assessment. - (1) If -

(a) the Income Tax Officer has reason to believe that by reason of omission of failure on the part of an assessee to make a return of his income u/s 22 for any year or to disclose fully and truly all material facts necessary for his assessment for that year, income, profits or gains chargeable to Income Tax have escaped assessment for that year, or have been under-assessed, or assessed at too low a rate, or have been made the subject of excessive relief under the Act, or excessive loss or depreciation allowance has been computed,...

he may in cases falling under clause (a) at any time... serve on the assessee... a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22...

Provided that the Income Tax Officer shall not issue a notice under clause (a) of sub-section (1) -

(i) for any year prior to the year ending on the 31st day of March, 1941;

(ii) for any year, if eight years have lapsed after the expiry of that year, unless the income, profits or gains chargeable to Income Tax which have escaped assessment or have been under-assessed or assessed at too low a rate or have been made the subject of excessive relief under this Act, or the loss or depreciation allowance which has been computed in excess, amount to, or are likely to amount to, one lakh of rupees or more in the aggregate, either for that year, or for that year and any other year or years after which or after each of which eight years have elapsed, not being a year or years ending before the day of March 31, 1941."

12. It appears on a proper reading of the said section that no change has been effected as to the period from which the computation of eight years mentioned in the said section has to start. The position, in my opinion, is exactly the same as it was before the amendment in 1956. The learned government Pleader drew our attention to the proviso, wherein it is inter alia stated that the Income Tax Officer shall not issue a notice under clause (a) of sub-section (1) for any year if eight years have elapsed after the expiry of that year. He contended that "any year" mentioned therein is the assessment year for which notice has to be issued u/s 34. In my opinion, this contention is not tenable. The notice mentioned in the proviso is a notice under clause (a) of sub-section (1). When we refer to clause (a) of sub-section (1), we find that the Income Tax Officer may in cases falling under clause (a) serve on the assessee a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22. Sub-section (2) of section 22 provides that the Income Tax Officer may serve a notice upon the assessee requiring him to furnish a return setting forth his total income during the previous year. Thus, the notice which has to be given under clause (a) of section 34 is a notice requiring the assessee to furnish a return setting forth his total income during the previous year. Thus, the notice which has to be given under clause (a) of section 34 is a notice requiring the assessee to furnish a return of his total income during the previous year. Thus, it is clear that "any year" would be the year for which the return has to be furnished, i.e., the accounting year. In my opinion, therefore, there is no reason for us to alter our judgment already delivered.

Narayana Pai, J.

I agree.

13. Petition allowed.