
(1957) 03 AP CK 0008
In the Andhra Pradesh High Court

Koppuravari Venkateswarlu	Vs	APPELLANT
Ii Additional Income Tax Officer		RESPONDENT

Date of Decision : 12-03-1957

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1957) 32 ITR 644

Hon'ble Judges : Bhimasankaram, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Bhimasankaram, J.—This is a petition under article 226 of the Constitution of India seeking the issue of a writ of prohibition restraining the II Additional Income Tax Officer from taking action against the petitioner u/s 34 of the Indian Income Tax Act The facts are as follows : One of the sources of the petitioner's income is his share as partner of a registered firm Sri Lakshmi Narayana Shelling and Oil Mill Company, Siripuram. When the petitioner was assessed to Income Tax for the assessment year 1951-52, on 22nd January, 1952, his income from that share was "provisionally taken at Rs. 8, 831-0-0" and the assessment order contained this remark.

"Action u/s 35 will be taken when correct share income is known."

2. On that basis, he was assessed to tax for that year and it is not disputed that the tax so determined was duly paid. The assessment of the aforesaid firm itself for that year was completed on 31st March, 1955, and from that assessment it was clear that the petitioner's income for that year from his share was nearly Rs. 24, 000. Thereupon, with the previous consent of the Commissioner of Income Tax, Hyderabad, the Income Tax Officer served a notice upon the petitioner on 28th March, 1956, u/s 22(2) read with section 34(1)(b) of the Indian Income Tax Act and he was directed to make a fresh return before a specified date. The petitioner objected to any action being taken against him u/s 34(1)(b). The

Income Tax Officer, however, overruled, the petitioner's objection by an order dated 23rd November, 1956. The petitioner, therefore, seeks the aid of this Court to prohibit the Income Tax Officer from taking action in pursuance of the notices issued by him.

3. Now, it appears to have been a general practice of the Officers of the Department, while determining the income of a partner of a firm, to defer the determination of his income, if any, from his share in the firm till after the assessment of the firm itself was completed and then proceed either u/s 34 or u/s 35 of the Act because a completed assessment could be re-opened only under either of those sections. Section 34, roughly speaking, provides for rectification of mistakes. As some Courts ruled that section 34 as it stood before the year 1948 was inapplicable to such a case, the Department was resorting to section 35. But even the language of section 35 as it stood at first could hardly be said to authorise such a procedure. In 1953, therefore, section 35 was amended and the following sub-section inserted"(5) Where in respect of any completed assessment of a partner in a firm it is found on the assessment or reassessment of the firm or on any reduction or enhancement made in the income of the firm u/s 31, section 33, section 33-A, section 33-B, section 66 or section 66-A that the share of the partner in the profit or loss of the firm has not been included in the assessment of the partner or, if included, is not correct, the inclusion of the share in the assessment or the correction thereof, as the case may be, shall be deemed to be a rectification of a mistake apparent from the record within the meaning of this section, and the provisions of sub-section (1) shall apply thereto accordingly, the period of four years referred to in that sub-section being computed from the date of the final order passed in the case of the firm."

4. A divisional Bench of the Andhra High Court ruled on 9th December, 1955, in *Lakshminarayana Chetty v. Additional Income Tax Officer, Nellore*, that this sub-section must be deemed to have come into force on the 1st April, 1952, and does not have retrospective operation. The petitioner's assessment having been completed before 1st April, 1952, the present Income Tax Officer called in aid section 34 of the Act. Section 34, it is argued, cannot apply to a case of a deliberately deferred assessment. Reliance is placed upon two decisions--one of the Allahabad High Court and another of the Madras High Court.

5. In *Debi Prasad Malviya v. Commissioner of Income Tax, United Provinces, Lucknow*, the learned Judges of the Allahabad High Court held that it was not open to an Income Tax Officer to make assessments piecemeal and in a case where he has proceeded to assess one part of the income and has decided to assess the rest of the income on a later date, he could not rely on the provisions of section 34 for the purpose of reopening the assessment. In the case before them, however, they were dealing with section 34 as it stood unamended by the Act XLVIII of 1948. The Income Tax Officer could only take action under the section as it then stood, if he "discovered" that income, profits or gains chargeable to Income Tax had escaped assessment in any year, or had been

under-assessed, or had been assessed at too low a rate, or had been the subject of excessive relief under the Act in consequence of definite information which came into his possession. The present section 34 was substituted for the original section by section 8 of the Amendment Act and so far as it is relevant for our purposes, it runs as follows"34. (1) If-

(a)

(b) the Income Tax Officer has in consequence of information in his possession reason to believe that income, profits and gains chargeable to Income Tax have escaped assessment for any year....., he may.....at any time within four years of the end of that year, 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 and may proceed to assess or reassess such income, profits or gains..... ; 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."

6. With reference to the language of the old section, the learned Judges, therefore, observed that where an assessment takes place with full knowledge that the assessee was being under-assessed, it could not be said that the fact was "discovered" later. That decision, however, cannot apply to the language of section 34 above-quoted with which I have to deal now.

7. The Madras case also in *Manavedan Tirumalpad v. Commissioner of Income Tax, Madras*, it is clear, was dealing with the previous section, though the learned Judges do not say so. They were dealing with an assessment of the year 1941-42 and observed as follows:

"What section 34 requires is "definite information", and as a consequence of that definite information a "discovery" by the Income Tax Officer that a portion of the assessee's income had escaped assessment."

8. The petitioner cannot derive any assistance from these decisions, because under the new section, what is required is something different ; all that it requires is (1) that the Officer must have reason to believe that income, profits and 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 and (2) that this must rest on information in his possession. In, the present case, the later assessment of the firm furnished to the Income Tax Officer information that a part of the petitioner's income had escaped assessment and the Officer had not merely reason to believe that it was so but indeed he had proof positive to that effect. It seems to me that both the conditions laid down in section 34(1)(b) are satisfied, there being no question of any "discovery" such as was necessary before 1948. The language of the section, as it now stands, is quite apt and applicable to the facts before me, is, however, alternatively contended that as section 35(5) expressly provides for a case like the present one, that special provision excludes

the applicability of a general provision like section 34. Whatever force there may be in the argument, I do not think I am called upon to pronounce upon its merits ; for, in accordance with the decision of this Court, cited above, it must be held that that provision was not effective to deal with assessments completed before 1st April, 1952. That being so, the petitioner's assessment having been completed on 22nd January, 1952, it cannot be said that section 35(5) governs this case.

9. I see no substance in the contentions raised on behalf of the petitioner. The writ petition fails and is dismissed with costs. Advocate's fee Rs. 100.