

(1960) 06 GUJ CK 0009

In the Gujarat High Court

Case No : Special Civil Application No. 9 of 1960

Madanlal Mathurdas

APPELLANT

Vs

Chunilal, Income Tax Officer, Ward "C"

RESPONDENT

Date of Decision : 14-06-1960

Acts Referred:

Income Tax Act, 1922 — Section 34(1)

Citation : AIR 1960 Guj 27 : (1960) GLR 38 : (1962) 44 ITR 325

Hon'ble Judges : Desai, C.J; Miabhoy, J

Bench : Division Bench

Advocate : H.C. Shah, for the Appellant; J.M. Thakore, General and Government Pleader, for the Respondent

Judgement

Desau, C.J.

(1) A question of some importance has been raised before us on this petition and the question relates to the interpretation of the provisions imposing time-limit for issuance of a notice under S. 34 of the Income Tax Act. A notice under that section was served on the petitioner on 2-4-1938 intimating that his income for assessment year 1949-50 had escaped assessment and the competence of the Income Tax Officer to issue the same is challenged on the ground that the notice was served after the expiry of the statutory period of eight years. The petitioner is a resident of the former Gondal State, which became a part of the State of Saurashtra on 1st April, 1948. The State of Saurashtra promulgated an Ordinance (IX of 1949) dated 19-3-1949, whereby Income Tax was imposed in that State as therein laid down. The petitioner was doing business in the name of Messts Indian Industries at Gondal and was also carrying on business at Rajkot. For the assessment year 1949-50, he was assessed under the Saurashtra Income Tax Ordinance by the Income Tax Officer, Madhya Saurashtra Circle. Rajkot. The State of Saurashtra became a part of the State of Bombay after the Constitution came into operation on 26-1-1950. The Indian Finance Act, 1950 was enacted by the Central Parliament and received assent of the President on 31-3-1950. It is

not now disputed before us that the present case is governed by the Indian Income Tax Act. But what is disputed is that the notice served on the petitioner under S. 34 of the Act is beyond the period of limitation prescribed in that section. It is not necessary, therefore, to discuss the applicability of the Indian Income Tax Act to the case of the assess or to refer to S. 3 of the Indian Income Tax Act, (sic) which extended the Indian Income Tax Act to the State of Saurashtra.

(2) The Income Tax Officer Ward-B, Rajkot, issued a notice on the petitioner on 24-3-1958, intimating that he had reason to believe that the income of the assess for the year 1949-50 had escaped assessment and he, therefore, intended to re-open the same and by that notice he also required the petitioner to make a new return for the assessment year 1949-50. The notice which was issued on 24-3-1958 was served on the petitioner on 2-4-1958. These two dates, as we shall presently point out, have material bearing on the contention pressed before us by Mr. Hiralal Shah, learned counsel for the petitioner. On receipt of the notice, the petitioner carried on some correspondence with the Department and in that correspondence he raised two contentions. Our contention was that the Income Tax Officer, who issued the notice, was not the Officer, duly authorised to do so. That point of authority of the Income Tax Officer has been raised in the petition, but Mr. Shah has not pressed it before us in view of certain Notification, to which our attention has been drawn by the learned Advocate General who appears for the Revenue.

(3) The other point, and one which has been strenuously urged before us by learned counsel, is that the notice is bad and inoperative as it was given after expiry of eight years which is the period of limitation for the same laid down in S. 34. A notice served on an assess under sub-section (1) of S. 34 after eight years, for any year, if eight years have elapsed after the expiry of that year, it is argued, would be beyond the period prescribed by the section and therefore beyond the competence of the Income Tax Officer. It will be convenient to set out here the relevant part of S. 34(1) and the first proviso to that sub-section:

"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 assess to make a return of his income under 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, or

(b)

he may in cases falling under clause (a) at any time and in cases falling under clause (b) at any time within four years of the end of that year, serve on the assess, or, if the assess 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 S. 22 and may proceed to assess or re-assess such income, profits or gains or recompile 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:

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

(i) for any year prior to the year ending on 31-3-1941;

(ii) for an year, if eight years have elapsed 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 of 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 31-3-1941 ;

(iii) for any year, unless he has recorded his reasons for doing so, and, in any case falling under clause (ii), unless the Central Board of Revenue, and in any other case, the Commissioner is satisfied on such reasons recorded that it is a fit case for the issue of such notice."

(4) Now, the argument on behalf of the petitioner is that in the substantive part, the section lays down that the Income Tax Officer shall serve the notice on the assess and the Proviso states that he shall not issue the notice if eight years have expired after the year, assessment for which is to be reopened and, therefore the notice must not only be issued but also be served within the statutory period of eight years. The argument has proceeded that the notice having been served on the assess after 31-3-1958 is outside the time-limit and, therefore, invalid and inoperative.

(5) In substance and in effect, therefore, the argument requires us to equate the expression "issue" in the first proviso to sub-section (1) of S. 34 with the expression "serve" in the substantive part to that sub-section. In support of this argument Mr. Shah has leaned heavily on a decision of Chief Justice Chagla and Mr. Justice Tendolkar in Commissioner of Income Tax, Bombay South, Bombay Vs. D.V. Ghurye, . He has in particular drawn our attention to certain observations of the learned Chief Justice where he has stated that it was more appropriate that the expression "issued" used in the first part of the first proviso to S. 34 (3) of the Income Tax Act should be equated to the expression "serve" used in S. 34(1) of the Act. Unquestionably, the expression "issued: has been used in the first part of the first Proviso to S. 34(3), and the expression "serve" is used in S. 34(1) of the Act. Unquestionably again, the two expressions "issued: and "serve" have been there held to be such as could be equated one

with the other. But, it does not follow from that decision, nor could it possibly have been intended in that decision to suggest that the expression "issue" in the first proviso to S. 34(1) could be equated with the expression "serve", and that for the obvious reason that this proviso did not and could not apply to that case and had not to be considered when that decision was given. Even so it is urged that the decision in that case supports the contention of the petitioner when he asks us to equate the expression "issue" in the initial part of the Proviso to S. 34(1) with the expression "serve" in the substantive part of that sub-section. In that decision, the notice that came up for consideration was in respect of escaped income for the year 1943-44 and had been used on 20-3-1952, and served on the assess on 16-4-1952, and the notice had to be examined by applying the law prior to the amendments made in the section in 1956. The language of S. 34(1) which we have set out above is now different in a material respect from the language of S. 34(1) as it stood prior to the amending Act of 1956. Moreover, the proviso which we have set out above, was not part of S. 34(1) and had not to be considered by the Court in that case. It is not necessary to set out the language of S. 34(1) (a) as it stood prior to its amendment in 1956 as nothing turns on the same. The crucial change is in the words which prior to that amendment followed upon clause (b) of S. 34(1) and we shall only set out the same:

".....he may in cases falling under clause (a) at any time within eight years and in cases falling under clause (b) at any time within four years of the end of that year, serve on the assess..... a notice containing all or any of the requirements which may be included all or any of the requirements which may be included in a notice under sub-section (2) of S. 22 and may proceed to assess.....".

It is significant to note that in terms express and explicit that latter part of S. 34(1) laid down that in a case falling under clause (a), the notice had to be served on the assess at any time within eight years. The relevant and material part of S. 34 (1) after the amendment of 1956, it will be noticed, leaves out the words "within eight years", and it is these words which have been left out in the section as amended which make all the difference and go to defeat the argument of Mr.Shah. It was necessary, in a case to be determined by applying S. 34(1), prior to the amendment of 1956, that the notice in a case falling under clause (a) of the sub-section should be served on the assess within eight years on the end of the year of which assessment was intended to be reopened. It will be seen from the dates relating to the case that the notice under consideration, though it was issued on 20-3-1952, i.e. within eight years of the end of the relevant years had, in fact, been served on the assess on 16-4-1952, that is after eight years of the relevant year 1943-44. The decision of their Lordships in that case turned primarily and principally on the crucial words "at any time within eight yearsof the end of that year". An argument however was there urged on behalf of the Revenue that the Assessment had, in fact, been completed within eight years as required by S. 34(3). Here also, we may point out, there is an amendment in the language of the section, but it is not necessary to discuss the

same and it will suffice to state that the first Proviso to S. 34(3), considered in that been issued within the time therein limited, the assessment to be made in pursuance of such notice must be made before the expiry of one year from the date of the service of the notice, even if such period exceeded the period of eight years of four years, as the case may be. It was in negating the argument advanced by the learned Advocate General on behalf of the Revenue that the Court expressed the view that the expression "issue" in the Proviso to sub-section 93) should be equated with the expression "serve". It is true that the expression "issue: in the Proviso to sub-section (3) of S. 34 has been interpreted in that decision of the Bombay High Court relied on by Mr. Shah. It is also true that as far as possible the same expression should receive the same interpretation in the other parts of the same section. But the court in that case was considering the expression "issue" as used in S. 34(3) and in a different context and different collocation and that decision, is, therefore, clearly distinguishable. Any opinion of the learned Chief Justice and Mr. Justice Tendolkar would be considered by this Court with the greatest respect; but the provision which we are called upon to construe was not the provision which they had to examine. Not only that, but, we are here, though dealing with the same section, concerned with provisions which have been materially modified and altered by the law-maker. It is not a question merely of some modification of little importance in the section as it stood.

(6) We are here called upon to construe a very important Proviso which was incorporated in the section for the first time in 1956 an which engrafted some important limitative provisions on the power of the Income Tax Officer to issue a notice under S. 34(1) (a). We have before us a provision which in terms states that the notice contemplated by S. 34(1) in a case falling under clause (a) may be served on the assess at any time. Therefore, there is nothing in this part of the section which can be said to lend the slightest support to the argument of Mr. Shah. Indeed, it goes a long way to negative that argument. Mr. Shah had, therefore, to fall back on the sheer argument that the expression "issue" in the initial words of the Proviso should be equated with the expression "serve" notwithstanding the amendments in the section and the insertion of the new Proviso to sub-section (1). The decision so strenuously relied on in support of the petitioners case cannot advance the argument canvassed before us as the expressions "issue" and "serve" had there to be read in a wholly different context. In the context and collocation before us, we must read the words as used correctly and exactly and no loosely and in exactly and in the present context there is nothing to show that we should prefer the loose and inexact meaning of these words by an impermissible equation. As they now stand after the amendments of 1956, the relevant parts of the section relating to time limit seem to us to be plain and certain and we do not read in them any uncertainty or obscurity. We have to read this expression "issue: in the initial part of the Proviso in the context and the setting in which it finds place. Then again, the Proviso must be read as a whole and in a manner as would give fullest effect to all the

sub-clauses of the Proviso and what is more important in the collocation of and in a manner Harmon us with the substantive part of the section which states that the notice may in any such case be served at any time. These considerations are sufficient to show that the notice served on the petitioner was valid and effective.

(7) A feeble attempt was made by Mr. Shah to rely on clause (ii) of the proviso, It was suggested that the words in the beginning of that sub-clause, "for any year" if eight years have elapsed after the expiry of that year", refer to the expiry of the accounting year of the assess and not the assessment year. In our judgment, there is no warrant for this contention. Reading of S. 34 as a whole, as well as the meaning of the expression "year" in the present context and the present setting, necessarily lead to the conclusion that the year contemplated is the assessment year and not the accounting year on the previous year of the assess.

(8) The scheme and the object of these limitive provisions of S. 34(10, even if it were necessary to examine the same, go to support the conclusion reached by us. Confining our observations to clause (a) of S. 34 (1) the scheme of that sub-section is that, if Income Tax Officer has reason to believe that any income has escaped assessment in cases falling under the same, he may, at any time, serve the requisite notice on the assess and proceed to assess such escaped income. The Proviso engrafts certain safeguards on that rule. Clause (a) puts an embargo of time on the exercise of this power in case of old assessments and some reasonable limit had to be prescribed, and the limit enacted by the Legislature is that assessment and some reasonable limit had to be prescribed, and the limit enacted by the Legislature is that assessment for any year prior to 31-3-1941, is not to be disturbed. Clause (ii) of the proviso is intended to lay down another safeguard against the exercise of the wide power conferred on the Income Tax Officer. In case of any year later than 1941, the question may arise of assessment of escaped income after 10 or 14 or even more years. Such cases would not be covered by clause (i). The Legislature has divided such cases of escaped income by reference to the amount of escaped income. The power to issue a notice in case of any such year can only be exercised if the amount of income which has escaped assessment or in respect of which excessive relief has been granted or excessive depreciation granted amounts or is likely to amount to rupees one lakh or more in the aggregate. Where it is not likely to amount to one lakh of rupees or more, i.e. is less than one lakh of rupees the time-limit of eight years would operate. In such a case, the matter would be governed by the initial words of the Proviso read with the first part of clause (ii) "for any year", with the result that in any such case the Income Tax Officer would not have the power to issue any notice under clause (a) of sub-section (1). Clause (iii) of the Proviso imposes a further safeguard against any arbitrary exercise by an Income Tax Officer of the power conferred on him by S. 34. In any case the Income Tax Officer must record his reasons and in every case falling under clause (ii) i.e. where he wants to issue a notice under clause (ii), he must get the sanction of the Central Board of Revenue and in any other case that of the Commissioner,

that it is a fit case for issuance of such notice.

(9) The learned Advocate General has drawn our attention to a decision of Mr. Justice D. N. Sinha in Shri Debi Dutt Moody Vs. Shri Belan and Others, . The learned Judge has there taken the same view which we are taking in this case.

(10) For all these reasons, the contentions urged before us must be negative.

(11) In the result, the petition will stand dismissed and the rule will be discharged with costs. Costs are fixed at Rs. 200/-.

(12) Petition dismissed.