

(1968) 02 AHC CK 0028

In the Allahabad High Court

Case No : Income Tax Reference No. 262 of 1963

NIRANJAN LAL POTDAR

APPELLANT

Vs

COMMISSIONER OF Income Tax, U.P.

RESPONDENT

Date of Decision : 08-02-1968

Acts Referred:

Income Tax Act, 1922 — Section 34, 66(1)

Citation : (1969) 71 ITR 263

Hon'ble Judges : R. S. Pathak, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R. S. PATHAK J. - Upon a statement of the case submitted by the Income Tax Appellate Tribunal u/s 66(1) of the Indian Income Tax Act, 1922, in respect of the assessment years 1949-50 and 1950-51 the following four questions have been referred to this court.

"1. Whether, on the facts and the circumstances of the case, the finding of the Tribunal that the assessee failed to disclose fully and truly all material facts necessary for his assessments for those years is correct ?

2. Whether, on the facts and circumstances of the case, the finding of the Tribunal that the income had escaped assessment is correct ?

3. Whether, on the facts and in the circumstances of the case, notices u/s 34(1) were validly issued ?

4. Whether the assessments in question are invalid at law ?"

The assessee, Niranjana Lal Potdar, is a member of a Hindu undivided family carrying on business under the name, Messrs. Shiv Charan Lal Bankey Lal. The family has been assessed since the assessment year 1918-19 on income from a number of sources.

In May, 1926, a partnership firm, Messrs. Niranjanlal Ram Chander, was constituted for the purpose of carrying on business in cloth. The assessee held a share in the business. The share of profits in the firm allocated to the assessee was assessed in the hands of the family ever since the assessment year 1929-30.

In the assessment proceeding for the assessment year 1943-44, however, the assessee contended that he was the owner of the share in the firm and the consequent share of the profits received from that firm could not be included in the total income of the Hindu undivided family. This was not accepted by the Income Tax Officer, and the share was included in the assessment of the family. An appeal against the assessment was dismissed on May 19, 1947. The share in the profits of the firm continued to be thus assessed in the hands of the Hindu undivided family until the assessment year 1946-47.

In the assessment proceeding for the assessment year 1947-48 a claim was made before the Income Tax Officer that the assessee had separated from the Hindu undivided family as far back as 1924 and it was prayed that an order u/s 25A of the Act be made. The claim was rejected and the order became final in the absence of any appeal against it.

For the first time, on March 23, 1952, the assessee filed Income Tax returns for the assessment years 1947-48 to 1951-52 in the status of an individual. The returns contained a note reading :

"The assessee holds a share in Messrs. Niranjanlal Ram Chander but since that is taxed in the hands of the Hindu undivided family styled Shiv Charan Bankey Lal, the same is not included here."

The return for the assessment year 1947-48 was "filed" on March 27, 1952, by the Income Tax Officer on the ground that it was incompetent. Proceedings were taken on the remaining four returns, and notices u/s 23(2) were issued on July 11, 1952. On the date of hearing all the four cases were adjourned sine die.

For the assessment years 1949-50 and 1950-51, with which we are concerned here, the Income Tax Officer assessed the share of income from Messrs. Niranjanlal Ram Chander in the hands of the Hindu undivided family.

The family proceeded in appeal against both the assessment orders to the Appellate Assistant Commissioner. Meanwhile in the assessment proceedings relating to the family for the assessment year 1951-52, the Income Tax Officer had occasion to consider some documents produced before him concerning the division of the assets of the family. On March 31, 1955, he made an order accepting the claim that the assessee was separate from the family and, consequently, included the assessee's share in the profits of the firm in his individual assessment. In this view of the matter the appeals relating to the assessment years 1949-50 and 1950-51 filed by the family were allowed by the Appellate Assistant Commissioner by an order which in its material portion read :

"In these circumstances, I accept the appellants' appeals and hold that the

incomes assessed in the hands of the appellant belonged not to the appellant but to Sri Niranjan Lal Potdar. The Income Tax Officer is directed to assess these incomes in the hands of Sri Niranjan Lal Potdar."

Now, on August 7, 1957, the Income Tax Officer issued a notice u/s 34 of the Income Tax Act, 1922, to the assessee for each of the assessment years 1949-50 and 1950-51 and assessed him in respect of the share income from the firm. The appeals preferred by the assessee were rejected by the Appellate Assistant Commissioner. The assessee proceeded in appeal to the Tribunal. By an order dated September 4, 1961, the Tribunal dismissed both the appeals. It held that the case fell within the terms of section 34(1)(a) and that, although the assessee had voluntarily submitted the returns, he had failed to disclose fully and truly all material facts necessary for his assessment for the relevant assessment years and that, inasmuch as no assessment orders could be made upon the returns filed by the assessee by virtue of the period of limitation of four years having expired, the income must be said to have escaped assessment.

The case of the petitioner is that by nothing in the returns filed by him that he was the owner of the share of profits in the firm, Messrs. Niranjanlal Ram Chander, he had disclosed all material facts necessary for his assessment and the Tribunal has erred in law in holding that the case was covered by the terms of section 34(1)(a).

It is now settled law that an assessee is bound to disclose all primary facts necessary for the assessment of his total income for the relevant assessment year and that the duty cast upon the assessee does not extend beyond this. The law was clearly laid down by the Supreme Court in *Calcutta Discount Co. Ltd. V. Income Tax Officer, Companies District I, Calcutta*. In the instant case, for the purpose of assessing the share income from the firm, it was necessary to determine whether it was liable to be taxed in the hands of the assessee or in the hands of the Hindu undivided family. Ordinarily, an assessee who receives a share of the profits of a firm as partner thereof is liable to be taxed on that share as his individual income. But there may be cases where by virtue of the capital contribution to the firm having been made from the funds of the Hindu undivided family, of which the partner is a member, the share income may be assessed in the hands of the Hindu undivided family. The assessee stated in the returns filed by him that he was the holder of a share in the firm, Messrs. Niranjanlal Ram Chander. That was the primary fact necessary for assessment of the assessee's income in his hands. In the absence of anything else he was liable to tax on that share income. It is true that he also added in the note that, inasmuch as the share income was being taxed in the hands of the Hindu undivided family styled as Shiv Charan Lal Bankey Lal, he was not including the item of income in his returns. That was merely intended to explain the omission of the share income from his returns. By that statement the assessee did not disclaim that he held the share. Nor did he state that he was not liable to tax on the share income. He said that he was the holder of the share and that he was not including the share

income in his return merely because it was being treated by the department as taxable in the hands of the family. Regard must be had to the history of the case. The assessee had as long ago as in the assessment proceedings for the assessment year 1943-44 asserted clearly that he was the owner of the share in the firm and that the share of profits received therefrom should be treated as his individual income and should not be included in the total income of the Hindu undivided family, and thereafter a claim was made u/s 25A in the proceeding for the assessment year 1947-48 that the assessee had separated from the Hindu undivided family as far back as 1924. The Income Tax authorities, despite all this, continued year after year to assess the share income in the hands of the Hindu undivided family.

It is urged for the revenue that the assessee should have disclosed that the inclusion of the share income in the hands of the Hindu undivided family was being contested. In our opinion, no such duty lay upon the assessee. What the Hindu undivided family did in respect of the assessment made against it was a matter for the family to decide and it was not for the assessee, who, in any event, has not been shown to be the karta of the family, to indicate the course of action to which the family was committing itself. Moreover, it appears from the record before us that while the returns for the assessment years 1949-50 and 1950-51 were filed by the assessee on March 23, 1952, the appeals by the Hindu undivided family had not been filed until August 4, 1954, and December 10, 1954, for the two assessment years respectively. It would appear that the assessment proceedings against the Hindu undivided family had not even matured to the point of an assessment order when the returns containing the aforesaid note were filed by the assessee. It could not have been possible for the assessee at the time when he filed his returns to state that the Hindu undivided family was contesting the inclusion of the share income in its assessment. Again, that the Hindu undivided family was challenging the inclusion of that share income or it was not doing so was not a fact determinative of the question whether the share income was liable to be assessed in the hands of the assessee.

The Tribunal has relied upon the following circumstances in respect of its finding that the assessee did not disclose fully and truly all the material facts necessary for his assessment. It points out that the assessee did not disclose his actual income in the partnership, that he did not state that he disputed the assessment of the income in the hands of the Hindu undivided family, nor did he state that he had evidence to prove that the income belonged to him personally, nor that he proposed to challenge the assessment of that income in the hands of the Hindu undivided family. The Tribunal continued :

"He deliberately observed silence on this point and created an impression that he was quite content with the assessment of that income in the hands of the Hindu undivided family and that was why he did not include it in his return. He did not indicate that he intended to adopt an inconsistent stand in the Hindu undivided family case and thus beguiled the Income Tax Officer to refrain from assessing

this income in his hands.... Had he disclosed in the return that he did not accept the position adopted by the department of that he was going to contest the correctness of the departments conclusions or that he had fresh material to prove his stand, the Income Tax Officer would not have refrained from assessing this income in his hands and the income would not have escaped assessment."

Excepting the first ground, namely, that the assessee did not disclose the figure of the share income, the remaining reasons set out by the Tribunal betray a curious naivete. The Tribunal apparently viewed with disfavor the omission of the assessee to state that he did not agree with the assessment of the share income in the hands of the family. That circumstance, according to it, "beguiled" the Income Tax Officer into refraining from assessing the share income in his hands. But if the note in the assessee's returns is examined again, it will be clear that the assessee quite positively asserted that he held the share in the firm and the only reason for not including it in the return was that it was taxed in the hands of the family. The assessee, it may be repeated, did not say that the share income was not liable to be taxed in his hands. It is true that he did not enter the specific figure of income in the return, but that was not the reason for the failure of the Income Tax Officer to assess it. The income escaped assessment because apparently the Income Tax Officer was relying on past practice and had decided to assess it in the hands of the family. He issued notice u/s 23(2) upon the returns filed by the assessee, and then adjourned them sine die. The Tribunal considered the question whether the assessee had made a full and true disclosure of all material facts necessary for making the assessment, and one of the facts, says the Tribunal, which was not disclosed by the assessee was the actual share income from the firm. But the Tribunal does not say that the omission to state the figure of income was responsible for its escape from assessment. Section 34(1)(a) contemplates not only that the assessee should have omitted or failed to disclose fully and truly all material facts necessary for his assessment, but also that they must be facts the non-disclosure of which has led to income escaping assessment. The reason for the escape in the instant case, according to the Tribunal, was the impression given by the assessee that he was "quite content" to have the income assessed in the hands of the family. We have extracted above the relevant observations from the Tribunal's order. They, in our opinion, do not make out a case for invoking section 34(1)(a). The assessee having made it clear in his return that he was the holder of the share, and not having said that he was not liable to tax in respect of it, the Income Tax Officer should have investigated the true position and not adjourned the proceeding sine die.

In our opinion, the Tribunal misdirected itself in law in holding that the conditions of section 34(1)(a) were satisfied. The first question is answered in the negative.

In the circumstances, it is not necessary to consider the remaining questions referred by the Tribunal.

The assessee is entitled to his costs, which we assess at Rs. 200. Fee of counsel

is assessed at the same figure.