

(1968) 08 AHC CK 0019

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3410 of 1967

Sardar Inder Singh

APPELLANT

Vs

Income Tax Officer, C-Ward and Others

RESPONDENT

Date of Decision : 23-08-1968

Acts Referred:

Income Tax Act, 1922 — Section 34(1)
Income Tax Act, 1961 — Section 147, 148, 149

Citation : (1969) 72 ITR 349

Hon'ble Judges : V.G. Oak, C.J; T.P. Mukerjee, J

Bench : Division Bench

Advocate : P.N. Pachauri and S.B.L. Srivastava, for the Appellant; Gopal Behari, for the Respondent

Final Decision : Allowed

Judgement

Oak, C.J.—This petition under Article 226 of the Constitution is directed against proceedings for reassessment u/s 147 of the Income Tax Act, 1961 (hereafter referred to as the Act or the 1961 Act), The assessee is a Hindu undivided family. It was assessed under the name and style " Punjab Khalsa Hindu Hotel" for the assessment year 1948-49. At that time Sardar Sunder Singh was the manager of the Hindu undivided family. When the Income Tax Officer, Varanasi, took up proceedings for assessment of the Hindu undivided family for the year 1958-59, he thought that income to the extent of Rs. 80,000 received by the family in the year 1947 had escaped assessment. So, on March 26, 1965, he issued to the assessee a notice u/s 147/148 of the Act proposing reassessment. Sardar Inder Singh, representing the Hindu undivided family has filed this writ petition challenging the notice u/s 148, dated March 26, 1965. Annexure F to the writ petition is a copy of the impugned notice.

2. The main contention of Mr. P. N. Pachauri appearing for the petitioner is that reassessment proceedings were barred by time under the Indian Income Tax Act, 1922 (hereafter referred to as the old Act or the 1922 Act). Consequently,

reassessment proceedings cannot be initiated under the 1961 Act. This position has been disputed by Mr. Gopal Behari appearing for the respondents. Firstly, he contended that reassessment proceedings were not barred under the 1922 Act. Secondly, even if they were barred under the 1922 Act, that does not prevent the respondents from initiating reassessment proceedings under the 1961 Act.

3. Before taking up the question of limitation, it will be convenient to fix the amount, which is alleged to have escaped assessment. Annexure " E " to the petition is a copy of the assessment order for the year 1958-59. During the course of that order the Income Tax Officer observed :

" As a sum of Rs. 80,000 had been introduced in the year 1947 action u/s 147 will be taken for the assessment year 1948-49. "

4. The petitioner filed a supplementary affidavit on the question of the extent of the alleged income of the year 1947. In paragraphs 2 and 3 of the supplementary affidavit it is stated that the Income Tax Officer approached the Central Board of Direct Taxes for sanction on the footing that the sum involved was Rs. 90,000. It is further stated in paragraph 4 of the supplementary affidavit that the order sheet indicated that action was being taken with respect to a total sum of Rs. 90,000. The respondents have filed several counter-affidavits. There is no indication in any counter-affidavit that the amount, which escaped assessment, may exceed Rs. 90,000. On the other hand, in one of the counter-affidavits it has been expressly stated that the contents of paragraphs 1, 2, 3 and 4 of the supplementary affidavit were admitted. We may, therefore, take it that the notice (annexure " F ") was issued to the assessee on the footing that a sum of Rs. 90,000 had escaped assessment with reference to the assessment year 1948-49.

5. Section 34 of the 1922 Act dealt with income escaping assessment. Sub-section (1) of Section 34 of the 1922 Act ran thus :

"(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...

he may in cases falling under Clause (a) at any time...

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 elapsed after the expiry of that year, unless the income, profits or gains chargeable to Income Tax which have escaped assessment...amount to, or are likely to amount to, one lakh of rupees or more...
"

6. Sub-section (1) of Section 34 of the 1922 Act indicates that, although there

was no limitation if the amount involved exceeded one lakh of rupees, in other cases the period of limitation was eight years. We have seen that in the present case the amount involved is Rs. 90,000. The present, case is, therefore, governed by the eight years rule. The assessment year 1948-49 ended on March 31, 1949. The period of eight years contemplated by Clause (ii) of the proviso ended on March 31, 1957.

7. Mr. Gopal Behari put forward several suggestions in support of his contention that there was no limitation to reassessment under the 1922 Act. Reliance was placed upon Sub-section (3) of Section 34 of the 1922 Act. Sub-section (3) of Section 34 of the 1922 Act ran thus :

" No order of assessment or reassessment, other than an order of assessment u/s 23 to which Clause (c) of Sub-section (1) of Section 28 applies...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... "

8. Reliance was placed upon a decision of the Punjab High Court in *S. KANWAL TEJ SINGH Vs. Income Tax OFFICER, A-II DISTRICT, NEW DELHI, AND ANOTHER.*, . In that case it was held that if at the time of making his order the Income Tax Officer found that the assessee had concealed the particulars of his income or deliberately furnished inaccurate particulars of his income, then the Income Tax Officer would be entitled to make the assessment order without any bar of limitation u/s 34(3) as the case would fall within the provisions of Section 28(1)(c). On examining the facts of that case, it appears that the petitioner's mother filed a voluntary return. The authorities attempted to initiate proceedings for reassessment u/s 34(1)(a) of the 1922 Act. Those proceedings were quashed for want of jurisdiction. The authorities thereupon proceeded with the voluntary return, and made assessment. It was under those circumstances that it was observed that there was no limitation. That observation was not with reference to reassessment proceedings u/s 34(1)(a) of the 1922 Act.

9. It may further be pointed out that Sub-section (3) of Section 34 of the 1922 Act deals with limitation as regards an order of assessment or reassessment. In the present case we have not reached the stage of assessment or reassessment. The point under consideration is whether a notice u/s 34(1)(a) was permissible after March 31, 1957.

10. Mr. Gopal Behari also relied upon the Indian Income Tax (Amendment) Act, 1959 (Act No. 1 of 1959). It appears that that statute was enacted in order to get over certain difficulties created by a decision of the Calcutta High Court. By Section 2 of the Amendment Act Sub-section (4) was inserted in Section 34 of the 1922 Act. The sub-section so inserted ran thus :

" A notice under Clause (a) of Sub-section (1) may be issued at any time notwithstanding that at the time of the issue of the notice the period of eight years specified in that sub-section before its amendment by Clause (a) of Section 18 of the Finance Act, 1956...had expired in respect of the year to which the

notice relates."

11. Section 4 of the Amendment Act ran thus :

" No notice issued under Clause (a) of Sub-section (1) of Section 34 of the principal Act at any time before the commencement of this Act and no assessment, reassessment or settlement made or other proceedings taken in consequence of such notice shall be called in question in any court... "

12. This provision was intended to cure any possible defect in a notice issued u/s 34 of the 1922 Act. In the instant case, admittedly, no action was taken against the assessee u/s 34(1)(a) of the 1922 Act. In the objects and reasons for the Bill it was stated :

" Section 34(1)(a) of the Income Tax Act, as it stood prior to its amendment by Section 18 of the Finance Act, 1956...permitted assessment or reassessment as contemplated in Clause (a) of Sub-section (I) of Section 34 within a period of eight years from the assessment year to which such assessment or reassessment related. This time limit was removed by an amendment in 1956 which empowered the Income Tax department to reopen assessments in cases of escapement amounting to rupees one lakh or more for any back year without limitation of time..... "

13. It will thus be seen that Act No. 1 of 1959 was mainly concerned with amounts exceeding a lakh of rupees which had escaped assessment. In the present case the amount involved is below one lakh of rupees. So, the respondents cannot derive much assistance from Act No. 1 of 1959.

14. The amount involved is below one lakh of rupees. The period of limitation was, therefore, as indicated in Clause (ii) of the first proviso to Sub-section (1) of Section 34 of the 1922 Act. The petitioner is right in its contention that proceedings for reassessment u/s 34(1)(a) of the 1922 Act were barred after March 31, 1957.

15. Next we have to consider whether reassessment proceedings are permissible under the 1961 Act, although such proceedings were barred under the 1922 Act. Section 149 of the 1961 Act contains the rule of limitation. Section 149 of the 1961 Act states :

"No notice u/s 148 shall be issued,

(a) in cases falling under Clause (a) of Section 147--...

(ii) for the relevant assessment year, where eight years, but not more than sixteen years, have elapsed from the end of that year, unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees fifty thousand or more for that year..."

16. In the instant case the notice (annexure " F") was issued to the assessee within 16 years from the close of the assessment year 1948-49. The respondents

are, therefore, right in their contention that the notice u/s 148 is within time so far as Section 149 of the 1961 Act is concerned. The question remains whether action for reassessment under the 1961 Act is permissible in spite of the fact that action for reassessment had become barred by time under the 1922 Act.

17. Mr. Gopal Behari relied upon Section 297 of the 1961 Act. Section 297 provides for repeals and savings. Sub-section (1) of Section 297 states that the Indian Income Tax Act, 1922, was being repealed. Sub-section (2) of Section 297 of the 1961 Act runs thus :

"Notwithstanding the repeal of the Indian Income Tax Act, 1922. . .

(d) where in respect of any assessment year after the year ending on the 31st day of March, 1940--

(i) a notice u/s 34 of the repealed Act had been issued before the commencement of this Act, the proceedings in pursuance of such notice may be continued and disposed of as if this Act had not been passed;

(ii) any income chargeable to tax had escaped assessment within the meaning of that expression in Section 147 and no proceedings u/s 34 of the repealed Act in respect of any such income are pending at the commencement of this Act, a notice u/s 148 may, subject to the provisions contained in Section 149 or Section 150, be issued with respect to that assessment year and all the provisions of this Act shall apply accordingly."

18. Relying on Sub-clause (ii) of Clause (d) of Section 297(2) of the 1961 Act, Mr. Gopal Behari contended that action under Sections 148 and 149 of the Act is permissible in cases where no action had been taken u/s 34 of the 1922 Act, and no question of limitation arises.

19. Reliance was placed upon a decision of the Madhya Pradesh High Court in BALCHAND Vs. Income Tax OFFICER, SAGAR., . In that case it was held that the Act of 1961 creates a new liability for action u/s 147 where the escaped assessment amounts to or is likely to amount to Rs. 50,000 or more, and expressly provides in Section 297 for enforcement of the liability. The fact that action under the Act of 1922 had become time-barred when the Act of 1961 came into force is no bar to the initiation of proceedings u/s 147 of the new Act. Dixit C.J. observed on page 659 :

" The firmly established principle is that an amending Act or a new Act repealing an old Act enabling the Income Tax department to make an assessment or a reassessment in respect of the years which were over when the amending Act or the new Act came into force should not be construed as authorising action in respect of a year for which action was already time-barred at the time when the amending or the new Act came into force, unless the statute clearly provides to the contrary."

20. The learned Chief Justice further observed that the Act of 1961 does contain

a provision to the contrary.

21. A different view was, however, taken by the Gujarat High Court in *Induprasad Devshanker Bhatt Vs. J.P. Jani and Another*, It was held that where the right to re-open assessment u/s 34(1) of the Act was barred, the new Act which provides an enlarged period of time for re-opening an assessment does not give a fresh right to the Income Tax Officer to re-open the assessment, as it is settled law that if the right of the Income Tax Officer to re-open an assessment is barred under the law for the time being in force, no subsequent enlargement of the time can revive such right in the absence of express words or necessary intendment. No statute should be construed as retrospective in operation if it has the effect of altering, modifying or affecting existing rights, unless the statute says so in express words or by necessary implication. There is no indication in Section 297(2)(d)(ii) either in express words or by necessary implication that it has retrospective effect.

22. In *Prashar v. Vasantsen Dwarkadas* [1963] 49 ITR (S.C.) 1, it was observed by Kapur J. that change in the law as to the period in which a suit can be brought to recover a debt or action can be taken by the Income Tax Officer to commence an assessment or reassessment does not impair the rights already acquired by the bar of limitation or revive the power of the Income Tax Officer which has already become incapable of being exercised by lapse of time.

23. We have carefully examined the provisions of Sections 149 and 297 of the 1961 Act. We find no indication in these provisions that the legislature intended that reassessment proceedings, which had become barred by time under the 1922 Act, could be re-opened under the new Act. Section 297 of the 1961 Act is; merely a transitory provision. Clause (d) contemplated reassessment proceedings. Under Sub-clause (1) proceedings already taken u/s 34 of the repealed Act could be continued. Under Sub-clause (ii) of Clause (d) action is permissible under the new Act even if action had not been taken u/s 34 of the repealed Act. The two Sub-clauses (i) and (ii) merely lay down alternative procedures for different situations. These provisions do not relate to the question of limitation at all. Whether a proceeding is barred by time or not has to be decided on general principles. The general principle is that once a right has been extinguished, the right is not to be deemed to have been revived unless the new statute makes provision for such revival either expressly or by necessary implication. We find no such indication in the 1961 Act. It must, therefore, be held that if the right of the respondents to reassess the petitioner for the year 1948-49 became barred by time under the 1922 Act, such a proceeding cannot be initiated under the 1961 Act.

24. Lastly, Mr. Gopal Behari contended that this is a matter which may well be left to the Income Tax Officer for decision; and this court should not interfere under Article 226 of the Constitution. Reference was made to *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, . On page 375 it was pointed out that two conditions have to be satisfied in order to

confer jurisdiction u/s 34 of the Indian Income Tax Act, 1922. In that case it was not the petitioner's contention that the proceedings were barred by time. The petitioner's objection was of a different kind.

25. In *Kantamani Venkata Narayana and Sons Vs. First Additional Income Tax Officer, Rajahmundry*, it was held by the Supreme Court that, in proceedings under Article 226 of the Constitution challenging the jurisdiction of the Income Tax Officer to issue a notice u/s 34(1)(a), the High Court is only concerned to decide whether the conditions which invested the Income Tax Officer with power to reopen the assessment did exist. It is not within the province of the High Court to record a final decision about the failure to disclose fully and truly all material facts bearing on the assessment and consequent escapement of income from assessment and tax.

26. One of the preliminary conditions, which this court is entitled to examine, is whether the proceedings are within limitation. We have seen that the notice issued to the petitioner u/s 148 of the 1961 Act is barred by time. It is, therefore, open to this court to quash the notice on the short ground that the notice is barred by time. If the notice itself is barred by time, it would mean unnecessary harassment to the petitioner to proceed with the proposed reassessment.

27. The petition is allowed with costs. The notice dated March 26, 1965 (annexure " F " to the petition), is quashed.