

(1963) 11 AP CK 0026

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 757, 758, 761, 762, 763, 775 and 776 of 1961

Sowdagar Ahmad Khan

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 18-11-1963

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Income Tax Act, 1922 — Section 22, 22(2), 34, 34(1), 34(1)(a)

Citation : (1967) 66 ITR 55

Hon'ble Judges : P. Chandra Reddy, C.J.; Sharfuddin Ahmed, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

P. Chandra Reddy Reddy, C.J.—The relief claimed in all these petitions under article 226 of the Constitution is the issuance of a writ of prohibition, directing the Income- tax Officer, Nellore, to forbear from proceeding further in pursuance of the notice dated 5th September, 1959. All these petitions raise a common question relating to the interpretation of section 34 of the Indian income tax Act. The petitioner is the same and, hence, these petitions could be disposed of in one judgment.

2. The facts material for the purpose of this enquiry may be briefly narrated: The petitioner carries on business in the exhibition and distribution of films and also owns a cinema theatre called New Talkies in Nellore. Assessments for the years 1943-44 to 1949-50 were made between 1944 and 1950. In the course of the assessment for the assessment year 1957-58, the assessing authority seems to have detected that several cash credits in the names of the petitioner's near relations appeared to be bogus. Further investigation led him to the belief that there was concealment of income, and that the petitioner had not disclosed fully and truly all the material facts. Consequent upon this, the concerned officer, by a notice issued in 1958, called upon the petitioner to prove the various credits which had been brought forward from year to year. The assessee declined to

comply with this demand, contending that these credits were already considered previously. This attitude of the petitioner obliged the income tax Officer to issue a show-cause notice to the petitioner asking him why the assessments for the years 1943-44 to 1949-50 should not be reopened u/s 34, the amount escaped being more than a lakh of rupees. The petitioner replied that there was no case for invoking section 34 and that, in any event, no action could be taken for reopening the assessment after 31st March, 1956. Thereupon, the proper income tax Officer submitted proposals to the Central Board of Revenue to reopen the assessment for the years mentioned above and the Central Board, on being satisfied that it was a fit case for reopening the assessment, permitted the income tax Officer to issue the notice. Pursuant to this, the income tax Officer, by his notice dated 5th September, 1959, required the petitioner to file a return of his total income as contemplated by section 22, stating that he had reason to believe that his income assessable to tax for the years 1943 to 1949 had escaped assessment. Returns of income were filed by the petitioner in October, 1959, under protest. Then followed correspondence between the proper officer and the petitioner regarding certain cash credits and the income derived from some properties standing in the name of the petitioner's wife and children which, according to the department, ought to have been included in the petitioner's assessable income. Thereafter, the enquiry was posted to 26th October, 1959, and, after it was adjourned several times at the request of the petitioner, the petitioner filed these petitions for the reliefs mentioned above.

3. In support of these petitions, two contentions are urged by Sri Rama Rao, viz., (i) that having accepted the several cash credits and the entries in the account books to be genuine, it is not competent for the income tax department to have recourse to section 34, and (ii) that the notices as regards the assessment years 1943-44 to 1946-47 are bad as section 34(1)(a) is a bar to the initiation of proceedings for reassessment in respect of any of the years 1939-40 to 1946-47, since the notices in regard thereto were not issued before 31st March, 1956.

4. As the problems posed have to be solved with reference to section 34, it is necessary to quote it here, omitting the unnecessary portions:

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 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) 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 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 and in cases falling under clause (b) at any time within four years of the end of that year, serve on 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:

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 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 31st day of March, 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:

Provided further that the income tax Officer shall not issue a notice under this sub-section for any year, after the expiry of two years from that year, if the person on whom the assessment or reassessment is to be made in pursuance of the notice is a person deemed to be the agent of a non-resident person u/s 43:

Provided further that the tax shall be chargeable at the rate at which it would have been charged had the income, profits or gains not escaped assessment or full assessment, as the case may be....

(1A) If, in the case of any assessee, the income tax Officer has reason to believe-

(i) that income, profits or gains chargeable to income tax have escaped assessment for any year in respect of which the relevant previous year falls wholly or partly within the period beginning, on the 1st day of September, 1939, and ending on the 31st day of March, 1946; and

(ii) that the income, profits or gains which have so escaped assessment for any such year or years amount, or are likely to amount, to one lakh of rupees or more;

he may, notwithstanding that the period of eight years for, as the case may be, four years specified in sub-section (1) has expired in respect thereof, serve on 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 the income, profits or gains of the assessee for all or any of the years referred to in clause (i), and thereupon the provisions of this Act (excepting those contained in clauses (i) and (iii) of the proviso to sub-section (1) and in sub-sections (2) and (3) of this section) shall, so far as may be, apply accordingly:

Provided that the income tax Officer shall not issue a notice under tills sub-section unless he has recorded his reasons for doing so, and the Central Board of Revenue is satisfied on such reasons recorded that it is a fit case for the issue of such notice:

Provided further that no such notice shall be issued after the 31st day of March, 1956.

(1B) Where any assessee to whom a notice has been issued under clause (a) of sub-section (1) or under sub-section (1A) for any of the years ending on the 31st day of March of the years 1941 to 1948 inclusive applies to the Central Board of Revenue at any time within six months from the receipt of such notice or before the assessment or reassessment is made, whichever is earlier, to have the matters relating to his assessment settled, the Central Board of Revenue may, after considering the terms of the settlement proposed and subject to the previous approval of the Central Government, accept the terms of such settlement, and, if it does so, shall make an order in accordance with the terms of such settlement specifying among other things the sum of money payable by the assessee.

5. We first take up the question whether section 34(1A) precludes the department from taking any action for reopening the assessment in respect of the years 1943-44 to 1946-47 after 31st March, 1955. What is urged by Sri Rama Rao is that section 34(1)(a) is a general provision while section 34(1A) is a special provision governing the war years and consequently it is the former provision that governs the years 1943-44 to 1946-47 in the present case. It is argued by him that, while sub-section (1)(a) deals generally with all cases of escapement of assessment without any time-limit, the operation of clause (1A) is confined to the war years, and that it is the latter section that should be applied to any of the war years.

6. In support of his submission, he invokes the doctrine of *generalia specialibus non derogant*. We have, therefore, to consider whether there is any scope for

treating sub-section (1)(a) as a general provision and sub-section (1A) as a special one. We think such a question could arise only if both the provisions could operate simultaneously in respect of the war years.

7. It is in the context of this enquiry that the historical background of section 34(1)(a) becomes relevant.

8. Shortly after the Second World War, the Central Legislature enacted the Taxation on Income (Investigation Commission) Act, 1947, by and under which cases of certain assesseees, whose income during the war period had escaped assessment, could be referred to a commission appointed under the Act. Section 5(4) of this Act, which enabled the Government to refer suspected cases of tax evasion, was declared invalid by the Supreme Court as it was opposed to article 14 of the Constitution. Therefore, escaped income during the war years could no longer be charged by adopting the procedure laid down in the Taxation on Income (Investigation Commission) Act, on the ground of non-disclosure of material facts.

9. Section 34(1)(a) of the Act, as amended in 1948, and as it stood then, could not at that time help the department to achieve the object of reopening the assessments for the war years on the ground of non-disclosure of all the material facts since the limitation prescribed for the issue of notice under that clause was 8 years and hence no notice could issue in respect of the assessment year prior to 1946-47. The resultant position was that the Government could not bring 10 tax escaped income during the war years.

10. It is to get over this difficulty that Parliament inserted section 34(1A) in the income tax Act so that cases which have been started under the provisions declared invalid by the Supreme Court could be taken over. This section conferred powers on the officers concerned to reopen all cases of tax evasion during the war years of more than rupees one lakh. It is also manifest from the section that this power could be exercised only up to 31st March, 1956. It is thus clear that except for the accounting year ending 31st March, 1946, section 34(1)(a) and section 34(1A) cannot be said to operate simultaneously. In such a situation, it is difficult to posit that the maxim *generalalia specialibus non derogant* comes into play in respect of all the war years.

11. It is true that a ruling of the Punjab High Court in *Shahzada Nand and Sons and Others Vs. Central Board of Revenue and Others*, lends countenance to the theory propounded on behalf of the petitioner. There, the income tax Officer initiated proceedings u/s 34(1)(a) on 25th July, 1958, for the assessment year 1946-47. The validity of the notice issued under that section was challenged by the assessee by a petition under article 226 of the Constitution contending that the notice in question fell within the ambit of section 34(1A). The argument advanced on behalf of the petitioner, that section 34(1A) was a specific provision and as such an exception to the general provision contained in section 34(1)(a), was accepted by the learned judges, and the petition was allowed. At page 246

of the report, it was remarked:

Now considering the language and scope of the two sub-sections in question before us, sub-section (1A) would prima facie appear to be an exception to the cases covered by sub-section (1)(a) and if this be the correct view, then the notice in question cannot but be held to fall under sub-section (1A).

12. With great deference to the learned judges, we express our dissent from this dictum. We have already indicated earlier that by the time this provision of law came into being, the period of limitation prescribed for starting reassessment proceedings under clause (1)(a) had lapsed except as respects the accounting year 1946-47.

13. In this context, we cannot ignore the wide language of section 34(1) as it stood after the amendment of 1956. That section empowered the proper income tax Officer to serve on an assessee a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22 at any time in cases where the income escaping assessment amounts to a lakh of rupees and more. The only restriction placed on the power of the officer in this behalf is that such notices could not issue for any period prior to 31st March, 1956, and that the Central Board of Revenue, whose sanction should be sought, should be satisfied that it was a fit case for action under that section. Thus, clause (ii) of the proviso to section 34(1) has removed the lime-limit of 8 years for concealment cases and for cases of total escapement of income arising from the non-submission of returns of income u/s 22, where the amount involved amounted to a lakh of rupees or more in the aggregate. If we interpret this section as being subject to section 34(1A), that will be nullifying the provisions of this Act in so far as the war years are concerned. As already remarked, the only limitation imposed by the sub-section is that this notice should not cover any period prior to 31st March, 1941. It means that proceedings could be initiated under that section for any year subsequent to 1st April, 1941, at any time, and the duration of the operation of this section is not limited, whereas u/s 34(1A), no action could be taken after 31st March, 1956; in other words, it ceases to be operative after 31st March, 1956.

14. This intendment could also be gathered from the language employed in the proviso, viz., "provided that no such notice shall be issued after the 1st day of March, 1956 ", thereby implying that resort could not be had to section 34(1A) after that date. The proviso does not preclude the department from issuing a notice u/s 22 of the Act invoking section 34(1)(a).

15. Here, we may contrast the language of this proviso with that of the proviso to section 34(1), viz., "provided that the income tax Officer shall not issue a notice under clause (a) of sub-section (1)". This enacts a prohibition against the issue of notice under clause (a) of sub-section (1) unlike the second proviso for any year prior to the period indicated therein. That being the position, we fail to see why we should read a period of limitation into section 34(1)(a) or read a

repugnancy between the two.

16. As far as possible, courts must construe the provisions of a statute harmoniously in order to ascertain the true legislative intent. It should also be so construed that no part of them becomes inoperative or insignificant and that the entire statutory scheme becomes effective.

17. The mere fact that this proviso is retained in the statute book cannot lead to the conclusion that it should be applied to any of the war years even if it had become inoperative. Presumably, it was allowed to be on the statute book to obviate an argument that actions taken under sections 34(1A) or 34(1B) could not be continued after its deletion. It is seen from section 34(1B) that any assessee who had received notice under clause (a) of sub-section (1) or under sub-section (1A) could apply for settlement of the tax payable by him and the Central Board could, subject to the previous approval of the Central Government, settle the matter with him. So, to avoid any controversies regarding the effect of deletion of section 34(1A) on action already taken under it or under sub-section (1B), sub-section (1A) might have been retained.

18. That section 34(1A) ceased to be operative after 31st March, 1956, except for the purpose of continuance of proceedings initiated under it or u/s 34(1B) and that it was section 34(1)(a) that covered all the years subsequent to 31st March, 1941, whether some of them are war years or not, could also be gleaned from sub-section (4) of section 34 added by the Indian income tax (Amendment) Act, 1959.

19. That sub-section recites:

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 8 years specified in that sub-section before its amendment by clause (a) of section 18 of the Finance Act, 1956 (XVIII of 1956), had expired in respect of the year to which the notice relates.

20. This sub-section reveals the intention of Parliament that none should escape proceedings u/s 34(1)(a) on the ground of limitation. In our considered judgment, this sub-section proceeds on the assumption that the only operative provision for reopening the assessment after 1956 was the one contained in clause (1)(a) and that sub-section (1A) was no longer operative. If section 34(1A) was still applicable in respect of some years, say up to the assessment years 1946-47, and to that extent section 34(1)(a) was inapplicable, sub-section (4) would have been cast in a mould which would take in notices to be issued u/s 34(1A). If sub-section (1A) was still in the field, there was no ostensible reason why Parliament would have thought of omitting the war years from the purview of this section.

21. The whole scheme of section 34 is to bring to tax income which has escaped assessment or was under-assessed by reason of the non-disclosure of material

facts at any time in respect of any year subsequent to 31st March, 1941. That being the object and purpose of this section, there is no justification to think that Parliament, in enacting sub-section (4), excluded the war years from the scope of that section. We feel that this sub-section establishes that, after 1956, it was only section 34(1)(a) that governs the initiation of action for re-opening the assessment and it pervades all the years subsequent to 31st March, 1946, and it cannot be read as being subject to section 34(1A).

22. This view of ours is in consonance with the principle enunciated by a Division Bench of the Bombay High Court in Reported as Laxminarayan R. Rathi Vs. Income Tax Officer, Poona, The learned judges overruled similar contentions based upon section 34(1A) and upheld the validity of a notice after 31st March, 1956, u/s 34(1)(a) in regard to the assessment years 1941-42 and 1943-44.

23. For the above reasons, we reject the argument that no action could be taken u/s 34(1)(a) after 31st March, 1956, for the years 1943-44 to 1946-47. It follows that it was within the jurisdiction of the income tax Officer to issue the notice u/s 22 of the income tax Act.

24. We shall next deal with the contention that it was not open to the department to reopen the assessment and to call upon the petitioner to explain the cash credits and other objectionable features in his accounts, having accepted all the accounts, especially the cash credits as genuine. It is further argued by Sri Rama Rao for the petitioner that as all the accounts of the petitioner were filed before the concerned officer and he had every opportunity to look into them, it is not permissible for the income tax Officer to issue a notice u/s 34(1)(a) on the ground that there was non-disclosure of material facts which led to the income escaping assessment without stating why the cash credits could not be treated as genuine and without disclosing all the materials in the notice which would establish the escapement contemplated by the section.

25. We do not think that this argument is admissible. It is precisely to cover cases where the original assessment was made accepting the accounts or the entries therein as genuine that this section was enacted. The fact that the return was accepted to be true does not stand in the way of the income tax Officer to have recourse to this section, provided he has reason to believe that the acceptance of the return or of the books filed in support thereof was the result of the petitioner not disclosing fully and truly all the material facts necessary for the assessment.

26. It has been repeatedly laid down by the Supreme Court and by several of the High Courts that the mere production of accounts or other evidence from which material facts with due diligence could be discovered will not amount to disclosure of material facts. It was the duty of the assessee to disclose all the primary facts including particular entries in the account books, particular portions of documents and other evidence which could have been discovered by the assessing authority from the documents and other evidence. For the purpose of

computing the proper tax from the assessee, the assessing authority requires to know all the facts which help him in coming to correct conclusions. If subsequent to the assessment, the entries or cash credits which were overlooked in the original assessment were detected, it was open to the department to reopen the proceedings.

27. Further, as laid down by their Lordships of the Supreme Court in *Kale Khan - KALE KHAN MOHAMMAD HANIF Vs. COMMISSIONER OF Income Tax, MADHYA PRADESH AND BHOPAL.*, the taxing authorities are not precluded from treating the amounts of the credit entries as income from undisclosed sources simply because the entries appeared in the books of a business whose income they had previously computed on a percentage basis. It is also laid down there that in reassessment proceedings u/s 34 of the Indian income tax Act, the onus of proving the source of a sum of money found to have been received by the assessee is on him, that if he contested his liability for tax, it is for him to establish that the receipt was not income or that it was exempt from taxation under the provisions of the income tax Act and that if he failed to do so, the income tax Officer is entitled to treat it as taxable income.

28. It is also now well-settled that when once an assessment is reopened u/s 34, the income tax Officer proceeds de novo under the relevant sections of the income tax Act and is obliged to follow the same procedure as in the case of a first assessment. The proceedings u/s 34 must be deemed to relate to proceedings which commenced with the publication of a notice u/s 22(2) : see *Commissioner of income tax v. Mahaliram Ramjidas* [1910] 8 ITR 442 (PC). Thus the circumstance relied on by the assessee does not place any embargo upon the department to reopen an assessment.

29. Nor is the submission, that since the material forming the basis of the belief envisaged in section 34(1)(a) is not given in the notices the notices are bad, valid. It is no part of the duty of an income tax Officer to draw the attention of the assessee to the material he proposes to rely upon and the several circumstances that are against him before resorting to section 34. In *Ramjida's* case (*supra*) already referred to, their Lordships of the Privy Council stated that the income tax Officer is not required by section 34 to intimate to the assessee the nature of the alleged escapement or to give him an opportunity of being heard before deciding to operate the powers conferred by that section. The assessee has every opportunity after the institution of the proceedings u/s 34 to place all the material in support of the return filed by him or her.

30. Moreover, in the correspondence that ensued between the assessee and the concerned officer, between May, 1958, and the issue of the impugned notice in September, 1958, some material which would justify the inference that income chargeable to income tax had escaped assessment for the relevant years has been indicated. Further, the counter-affidavit filed in this case has set out all particulars in support of the theory that all the primary facts have not been fully and truly set out and that the income and profits which could be subject to tax

have escaped assessment.

31. Again, it is open to the assessee to prove that no part of his income has escaped assessment, that the cash credits referred to either in the correspondence between the parties or in the counter-affidavit were genuine ones and that the income derived from the properties standing in the name of his wife or children really belonged to them and not to him.

32. For all these reasons, we are unable to grant the relief asked for in these petitions. In the result, all these writ petitions are dismissed with costs.