

(1957) 08 BOM CK 0005

In the Bombay High Court

Case No : Appeal No. 18 of 1957 (Misc. No. 347 of 1956)

V.R. Indurkar and Others

APPELLANT

Vs

Pravinchandra Hemchand

RESPONDENT

Date of Decision : 26-08-1957

Acts Referred:

Income Tax Act, 1922 — Section 31, 34(3)

Citation : (1958) 34 ITR 397

Hon'ble Judges : Tendolkar, J;S.T. Desai, J

Bench : Division Bench

Advocate : R.J. Joshi, for the Appellant; H.D. Banaji, for the Respondent

Judgement

Tendolkar, J.—This is a perfectly hopeless appeal against a judgment and order of K. T. Desai, J., whereby the learned judge ordered that the respondent to the writ petition who are the appellant before us, are restrained from continuing or further proceeding with the assessment proceedings. The petition arose under these circumstances. The petitioner was an assessee to whom, on the 6th of March, 1954, a notice was issued u/s 34 of the Income Tax Act that in respect of the assessment year 1945-46 certain income had escaped assessment. This consisted of two sums of Rs. 50,000 and Rs. 3,500 which were found to be deposited in the joint names of the petitioners and another in the International Bank of India at Navsari and Zaveri Bazar branches respectively. Both the deposits were in December, 1943. On the 9th February, 1955, an assessment order was made holding that these two deposits constituted income from undisclosed sources and adding them to the income of the assessee as previously found. There was an appeal to the Appellate Assistant Commissioner, who on the 10th of February, 1956, allowed the appeal holding that, assuming that the is was income form undisclosed sources, it was not the income for the assessment year 1945-46. But thereafter, on the 14th of May, 1956, another notice u/s 34 was issued to the petitioner this time seeking to include these two item of Rs. 50,000 and Rs. 3,500 as income from undisclosed sources in the

assessment year 1944-45. It is this notice that was challenged before the learned trial Judge on the writ petition. Obviously, this notice had been issued eight years after the relevant assessment year and unless it was saved by the second proviso to section 34, sub-section (3), of the Income Tax Act, the notice was bad and the Income Tax Officer would be acting without jurisdiction in proceedings to assess the petitioner. The plea of the Income Tax Officer was that this notice was covered by the second proviso to section 34, sub-section (3), and the relevant part of that proviso is in these terms :

"Provided further that nothing contained in this a sections limiting the time within which any action may be taken or any order, assessment or reassessment may be made shall apply.....to an assessment or reassessment made to on the assessee.....to give effect to any finding or direction contained in an order u/s 31....."

2. This contention of the Income Tax Officer was negated by the learned trial Judge and what we have to consider is whether the learned Judge was right in doing so.

3. Now, the proviso which we have set out above is very clear and unambiguous and it saves from the limitation prescribed any action taken "in consequences of or to give effect to any or direction" contained in an order u/s 31, which means an order by an Appellate Assistant Commissioner in appeal. Therefore, all that one has got to do is to look to the order of the Appellate Assistant commissioner and to see whether there is any finding or direction in consequences of which, or to give effect to which, the present notice u/s 34 was issued. Now, when one turns to the order of the Appellate Assistant Commissioner, it is clear that the Appellate Assistant Commissioner found that these two amounts totalling to Rs. 553,500 did not form part of the income for the assessment year 1945-46. Nothing would have to be done in consequences or to give effect to this finding, and it is not urged by Mr. Joshi on behalf of the appellants that anything was required to be done in consequences of this particular finding. Then at a later state in the judgment the Appellate Assistant Commissioner states : "They could be assessed, if at all, for the tax year 1944-45 for which the Income Tax Officer may take necessary steps if so advised." Now, it appears to us to be abundantly clear, reading this sentences itself, that this involves no finding or direction. Indeed, the Appellate Assistant Commissioner was not called upon to determine whether this was the income for 1944-45 and he could not have found to that effect; and, even if he found to that effect, he would not have used the words "if at all" nor would he have used the words "if so advised" in the context of the Income Tax Officer taking the necessary steps. Therefore, there obviously is no finding or direction in consequences of which or to give effect to which the notice was issued. Mr. Joshi attempted to argue that the grounds on which the order of the Income Tax Officer was challenged before the Appellate Assistant Commissioner contained a ground that if this was income at all, it was income for the year 1944-45, and in support of the ground reliance was placed on a decision

of the Patna High court in Commissioner of Income Tax v. P. Darolia & Sons. The Appellate Assistant Commissioner followed that decision and in that decision it had been held that the income was not for the year 1947-48, but for the previous year. Therefore, Mr. Joshi says, the Appellate Assistant Commissioner must be deemed to have held, not only that this was not the income for the year 1945-46, but so that it was the income for 1944-45. This argument, in our opinion, is not well-founded. The Appellate Assistant Commissioner was called upon to determine in this case only if it was the income for 1945-46 and not whether it was the income for 1944-45; and, in any event, as we have pointed out already he did not in fact determine that it was the income for 1944-45. He only stated that, if at all, it would be the income for 1944-45. It is pertinent also to note that the Appellate Assistant Commissioner, in his judgment, states that the Income Tax Officer was in possession of no facts to connect the sum of Rs. 53,500 with the speculation business which admittedly the assessee conducted. Therefore, the Appellate Assistant Commissioner was not concerning himself with whether this was income for the year 1944-45 at all, and, in our opinion, the notice cannot be said to have been in consequences of or to give effect to any finding or direction given by the Appellate Assistant Commissioner.

4. The learned trial Judge was, therefore, right in the conclusion that he arrived at. We confirm the order of the learned trial Judge and dismiss the appeal with costs.

5. Appeal dismissed.