Commissioner Of Income-Tax, West ... vs Dinesh Chandra H. Shah And Ors. on 27 August, 1971

Equivalent citations: AIR1972SC29, [1971]82ITR367(SC), (1972)3SCC231, AIR 1972 SUPREME COURT 29, 1972 TAX. L. R. 20

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Bench: A.N. Grover, K.S. Hegde

JUDGMENT

A.N. Grover, J.

1. This is an appeal from a judgment of the Calcutta High Court in an Income-tax Reference. Originally it has been brought by certificate but the same had to be revoked (i.e. in C. A. 1685 of 1968) as no reasons had been given in the order granting the certificate. The Commissioner of Income-tax, West Bengal moved this Court under Article 136 of the Constitution for special leave and the same has been granted. This appeal (C. A. 1080 of 1971) will be disposed of by his judgment and for doing so we shall refer to the printed record in C. A. 1685 of 1968.

2. The assessee was H. K. Shah who is now dead and is represented by the present respondents. The assessment year with which, we are concerned is 1955-56 the previous year being that ending on March 31, 1955. H. K. Shah deceased, hereinafter referred to as the "assessee". had a share of profit from the Mysore Premier Metal Factory Madras of which he was 9 partner. He was also carrying on other business and was being assessed at Calcutta. In his return which he filed before the Income-tax Officer at Calcutta he specifically disclosed his share in the income of the Madras firm. The profit allocation report of the share of profit from the Madras firm had been received in the office of the Income-tax Officer In September 1955 and an order was recorded on the order sheet of the proceedings to that effect. The assessment for the year in question was completed some time in November 1958. The Income-tax Officer failed to include in the total income the share of profit from the Madras firm. On March 22, 1960 the Income-tax Officer issued a notice under Section 34(1)(b) of the Income-tax Act, 1922, hereinafter called the "Act", calling upon the assessee to show cause why the profits from the Madras Arm which had escaped assessment should not be included in the income. The assessee wrote a letter saying that he had fully disclosed the details of his income from all sources in his original return and nothing had escaped assessment. In fact he had indicated that he had a share in the profits of the Madras firm and was also entitled to interest on the capital invested therein. The Income-tax Officer, however, completed the assessment for the aforesaid year as also the subsequent assessment year in which also the share of the income from the Madras firm had not been included. The assessee went up in appeal to the Appellate Assistant Commissioner

which was allowed on the ground that the Income-tax Officer had no additional information either externally or internally which came Into his possession subsequent to the making of the assessment to justify the action taken under Section 34(1)(b). The Revenue appealed to the Appellate Tribunal which reversed the decision of the Appellate Assistant Commissioner in respect of the assessment year 1955-56. The view of the Tribunal was that the information on the record in respect of the share of profit assessable to tax had escaped the notice of the Income-tax Officer and therefore he was justified in taking action under Section 34(1)(b). Two questions were referred for the opinion of the High Court but we are only concerned with the first question which is as follows:

> Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the action under Section 34(1)(b) of the Income-tax Act, 1922 was legal and valid?
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> The High Court was of the opinion that there may be information existing on the record or brought to the notice which does, not become informative at the first sight and requires further investigation or consideration. In such cases the realisation of the effect of the information subsequently may give to the Income-tax Officer the jurisdiction to start proceedings under Section 34(1)(b) but the mere fact that the Income-tax Officer changes his opinion subsequently or the fact that he fails to notice a palpable or glaring matter earlier should not be treated as additional information coming to his notice subsequent to the assessment order. The question was, therefore, answered against the Revenue.

3. It may be mentioned that the decisions relating to Section 34(1)(b) are a legion and it may seem that divergent views have been expressed in some of the cases in the light of their peculiar facts. The Revenue has contended for the proposition which was accepted by the Madras High Court in Family of V.A.M. Sankaralinga Nadar v. Commissioner of Income-tax, Madras (1963) 48 ITR 314 (Mad) that although a mere change of opinion regarding the chargeability of income on the part of the reassessing Officer different from his own previous opinion or that of his predecessor in Office might not justify action under Section 34(1)(b) but Income which escapes assessment as a result of the lack of vigilance of the Income-tax Officer or due to inadvertence or negligence or due to perfunctory performance of his duties without due care and caution could well be within the ambit of Section 34(1)(b) provided the requirements of that section are satisfied. In other words even if the assessee has placed the entire facts which would enable the Income-tax Officer to make a proper assessment of his income but he fails to do so for the various reasons stated earlier he can, as soon as he realizes his mistake, issue a notice under Section 34(1)(b) after completing the assessment.

4. We may refer at this stage to wane of the decisions of this Court in which the principles applicable to the case of the present kind have been enunciated. In Kamal Singh v. Commr. of Income-tax, Bihar and Orissa it was laid down that two conditions must be satisfied before the Income-tax Officer could act under Section 34(1)(b). He must have information in his possession which in the context meant that, that relevant information must have come into possession subsequent to the making of the assessment order in question and that information must lead to his belief that income chargeable to income-tax had escaped assessment for any year. According to the decision in Commr.

of Income-tax, Gujarat v. A. Raman and Company jurisdiction of the Income-tax Officer to reassess income arises if he has, in consequence of information in his possession, reason to believe that income chargeable to tax has escaped assessment. That information must have come into possession after the previous assessment but even if the information be such that it could have been obtained during the previous assessment from an investigation of the materials on the record or the facts disclosed thereby or from other inquiry or research into facts or law but was not in fact obtained, the jurisdiction of the Income-tax Officer was not affected.

5. It is not disputed that the facts in the above case were altogether different from those of the present case. But on behalf of the Revenue assistance has been sought to support the contention that even if there has been an omission to include a particular item of income in an assessment by inadvertence it is open to the Income-tax Officer to invoke the provisions of Section 34(1)(b) when he discovers subsequently that, that particular Item of Income has escaped assessment. In our judgment it is wholly unnecessary to go into the question whether an inadvertent omission can justify the reopening of the assessment on its subsequent discovery by the Income-tax Officer, No such position was adopted by the Income-tax Officer when he was called upon by the Appellate Assistant Commissioner to state the reason for not including the income of the Madras firm about the factum and existence of which full disclosure had been made in the return filed by the assessee and with regard to the income of which a note had been made on the file when the share allocation report was received from the Income-tax Officer, Madras on September 21, 1955. It appears that the Income-tax Officer clearly sought to justify the reopening of the assessment under Section 34(1)(b) merely on the ground of change of opinion. It is well settled by now and Mr. Desai quite rightly does not dispute the proposition that mere change of opinion could not be a valid ground for reopening the assessment under Section 34(1)(b) of the Act. We would accordingly uphold the answer returned by the High Court on the short ground that the reassessment for the year in question was sought to be reopened for the reason that the successor of the Income-tax Officer who had made the original assessment had changed his opinion which did not furnish a justifiable reason for taking action under Section 34(1)(b).

6. In the result the appeal fails and it is dismissed but in the circumstances we leave the parties to bear their own costs.