

R.B. Bansilal Abirchand Firm vs Commissioner Of Income-Tax, Madhya ... on 22 November, 1967

Equivalent citations: [1968]70ITR74(SC)

Bench: J.C. Shah, V. Bhargava

JUDGMENT

Bhargava J.

1. This is an appeal by certificate against a judgment of the High Court of Bombay returning an answer against the assessee, R. B. Bansilal Abirchand Firm, Kamptee, to the following question :

"Whether, under the facts and circumstances of the case, there was any information before the Income-tax Officer seeking to reopen the assessment so as to invest him with jurisdiction to issue notice under section 34(1) (b) of the Income-tax Act ?"

2. The assessee firm consisted of four partners, who were all brothers belonging to the Daga family, and three minor sons of one late Narsingdas Daga were also admitted to the benefits of the partnership. This firm was financing another firm known as Bisesar House in which an 8-anna share belonged to one late Shri Manekji Dadabhoy, an outsider, while the remaining 8-anna share belonged to the four Daga brothers. Bisesar House used to pay interest on advances made to it by the assessee-firm, and the assessee-firm was assessed in the relevant assessment year a 1947-48, on the amount of interest received from Bisesar House, treating it as income accruing to the assessee-firm in the capacity of a partner in Bisesar House. There were then proceedings for the assessment of Bisesar House and, in those proceedings, the Income-tax Officer first disallowed the interest paid to the assessee-firm as an expenditure on ground that it was interest paid to the partner. The proceedings of assessment of Bisesar House came up before the Tribunal which, by its order dated 23rd February, 1950, allowed the claim for interest as an expenditure to the extent of Rs. 5,10,788, holding that this payment of interest was a payment to a banker as the assessee-firm had financed Bisesar House and its various business and that the assessee-firm was not a partner in the Bisesar House firm. This decision of the Tribunal was upheld by the High Court in the reference made to it in those proceedings.

3. The assessee-firm, in its original return of total income for this assessment year, had declared a business loss of Rs. 1,09,311. In calculation of this business loss, the interest received from Bisesar House was not taken into account, as it was not treated a business income of the assessee-firm and was shown as receipt of income by the assessee-firm in the capacity of a partner in Bisesar House. When the Tribunal and the High Court held that the assessee-firm was not a partner in Bisesar House and had been receiving interest in the capacity of a banker, the Income-tax Officer decided to take action under section 34(1) (b) of the Income-tax Act in order to include this amount of interest in calculating the taxable profits and losses of the assessee-firm. The assessees objected on the

ground that all the facts, on the basis of which the Income-tax Officer was reopening the assessment under section 34(1) (b), were already in the possession of the Income-tax Officer when he first made the assessment and, consequently, it could not be held that there was any information in his possession at the time of issuing the notice under section 34(1) (b) in consequence of which he could have reason to believe that income, profits and gains chargeable to income-tax had escaped assessment or were under-assessed or had been made the subject of excessive relief. The Tribunal and the High court both held that the Income-tax Officer was justified in resorting to section 34(1) (b), because of the information which came into his possession as a result of the decision of the Tribunal and the High Court in the proceedings for assessment to tax of Bisesar House which showed that the interest, which was being received by the assessee-firm, was not in the capacity of a partner, but as business income. It is against this decision that the assessee has come up to this court in this appeal.

4. It appears that, on the facts enumerated above, there was no scope at all, for accepting the contention raised on behalf of the assessee. When the first assessment of the assessee's income was made by the Income-tax Officer, the income-tax Officer's information was that the assessee was a partner in Bisesar House and that the interest had been received in the capacity of a partner. It was only after the Tribunal and the High Court gave their decision in the proceedings for assessment to tax of Bisesar House that the Income-tax Officer came to know that the interest was not being received by the assessee-firm in the capacity of a partner, but in its capacity of a financier advancing moneys to Bisesar House as a banker. It is true that, if the facts had been properly considered at the time of the first assessment, the Income-tax Officer might have discovered the correct position and might have come to the conclusion that the assessee-firm was not receiving interest as a partner, but this circumstance that such a decision could have been arrived at does not mean that, at the time when the Income-tax Officer started proceedings under section 34(1) (b), he was not acting on information received from the decisions of the Tribunal and the High Court in the assessment proceedings of Bisesar House. It was not a case where the Income-tax Officer on his own initiative and on the material which was before him at the time of the first assessment changed his opinion and came to a different conclusion. The correct conclusion was brought to his notice by the decision of the Tribunal High Court and that must be held to be information, as a consequence of which he came to believe that the provisions of section 34(1) (b) were attracted. In a recent decision of this court in Commissioner of Income-tax v. A. Raman & Co., dealing with the corresponding provision contained in section 147(1) (b) of the Income-tax Act, 1961, the court held :

"The expression 'information' in the context in which it occurs must. In our judgment, mean instruction or knowledge derived from an external source concerning facts or particulars, or as to law relating on a matter bearing on the assessment". It was further held :

"That information must, it is true, have come into the possession of the Income-tax Officer after the previous assessment, but even if the information be such that it could have been obtained during the previous assessment from an investigation on the materials on the record, or the facts disclosed thereby or from other enquiry or research into facts or law, but was not in fact obtained, the jurisdiction of the

Income-tax Officer is not affected."

5. These principles clearly support our view that in this case the Income-tax Officer had jurisdiction to proceed under section 34(1) (b), because he had reason to believe that income chargeable to tax had escaped assessment or had been under-assessed or excessive relief had been granted as a consequence of the information which came to him from the external source of the decision of the Tribunal and the House Court in the assessment Proceedings of Bisesar house.

6. Mr. S. T. Desai, counsel for the assessee, relying on the decision of the Allahabad High Court in *New Victoria Mills Co. Ltd. v. Commissioner of Income-tax*, urged that the Income-tax Officer cannot have jurisdiction to proceed under section 34, unless it can be said that new facts came to his knowledge which were not in his possession at the time when he made the assessment. If the Income-tax Officer had made a mistake with full knowledge of the facts, the mistake could not be rectified by him by issuing a notice under section 34 of the Income-tax Act. The case, however, was concerned with the provisions of section 34 as they stood before the amendment of that section by the Income-tax Amendment Act, 1948 (48 of 1948), which gave the right to an Income-tax Officer to reopen an assessment only if, as a result of definite information, he discovered that income chargeable to tax had escaped assessment or had been under-assessed. All that was held by the Allahabad High Court was that section 34 could not be applied because in that case it was not possible to hold that, as result of information received in the assessment proceedings of another company, the Income-tax Officer had discovered that the income of the assessee concerned had escaped assessment. The emphasis was on the fact that, though some information came into the possession of the Income-tax Officer as a result of assessment proceedings of another company, the discovery that the income of the assessee had escaped assessment was not the result of that information. Reference was also made to a decision of the Patna High Court in *Bhimraj Panna Lal v. Commissioner of Income-tax* where it was held :

"In my judgment, in order to hold that income may have 'escaped assessment', there must have been either some fresh facts brought to the notice of the income-tax authorities, or some change in law which were in existence during the chargeable accounting period, but which were not brought to the notice of, or taken notice of, by the income-tax authorities during the chargeable accounting period, but which arose subsequent to it having relation to the facts on which the original assessment had been made."

7. It was urged that, in the present case, no fresh facts were brought to the notice of the Income-tax Officer to justify his proceeding under section 34(1) (b). In that case also, reliance was placed on the language which existed in section 34 (1) before its amendment in 1948, when the words contained required that "in consequence of definite information which has come into his possession, the Income-tax Officer discovers". It may also be mentioned that that case came up before this court in *Bhimraj Pannalal v. Commissioner of Income-tax*. In this court, the counsel for the assessee frankly stated that he was not in a position to contend that proceedings under section 34 were ab initio void. The Court further noticed the fact that the High Court had rightly pointed out that there were enough materials on which the Income-tax Officer could initiate proceedings under section 34 for

the three assessment years in question. In that case, therefore, the information which came into the possession of the Income-tax Officer was held to justify resort to section 34.

8. The case of K. T. Kubal & Co. Pvt. Ltd. v. Commissioner of Income-tax is also, in our opinion, of no assistance to the assessee. In that case, after considering the facts, the Bombay High Court held that it could "hardly be stated that any additional information has come in the possession of the Income-tax Officer which was not in his possession when the assessment orders were made." It was in view of this finding of fact that it was held that section 34(1) (b) was not applicable. In the present case, we have already indicated that the judgments of the Tribunal and the High Court in the assessment proceedings of Bisesar House did result in the Income-tax Officer coming into possession of information on the basis of which he could initiate proceeding under section 34(1) (b).

9. We, consequently, hold that the decision given by the High Court was correct. The appeal is dismissed with costs.

10. Appeal dismissed.