

Commissioner Of Income-Tax, Gujarat li vs Kurban Hussain Ibrahimji Mithiborwala on 2 September, 1971

Equivalent citations: [1971]82ITR821(SC), (1972)4SCC394, 1972(4)UJ65(SC)

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

JUDGMENT

1. Civil Appeal No. 1172 of 1971 is by special leave and Civil Appeal No. 1990 of 1968 is by certificate. These two appeals raise the same question for decision. In a reference under Section 66(2) the Tribunal referred to the High Court of Gujarat the following question :

Whether on the facts and in the circumstances of the case, there was a material irregularity in the notice issued to the assessee under Section 34 and dated 28th February, 1968 and if so, whether such irregularity vitiated the proceedings taken under the said notice.

The High Court answered that question in the affirmative and in favour of the assessee. Aggrieved by that decision, the Commissioner of Income Tax, Gujrat has brought this appeal.

2. The facts of the case as set out in the Statement of case at these :

The concerned assessment year is 1949 50, the relevant previous year being S.Y. 2004 ending on November 1, 1948. For that assessment year the assessee was assessed. At the time of that assessment, the assessee pleaded this, his accounts books had been destroyed during the communal riots in Marc 1948. He also denied having any bank account. Some after he made the assessment. The Income-tax Officer came to know that the assessee had been accounts during the relevant accounting year. Hence he sought to comment proceedings under Section 34 of the Indian Income tax Act, 1922. On February 28, 1958 he issued notices both under Section 22(2) as well as under Section 34 of the Act. In his notice under Section 22(2) he mentioned that he w; going to reassess the assessee for the assessment year 1949-50. But in his notification under Section 34 he stated:

Whereas I have reason to believe that your income assessable the income-tax for the year ending 31st of March, 1949 has escape assessment....

The notice under Section 34 referred to the assessment of the assessee for the accounting year ending 1947 whereas the notice under Section 22(2) referred to the assessment of the assessee for the accounting year ending November, 1948 After the receipt of those notices the assessee addressed a letter to the Income tax Officer on

Nov. 19, 1958 pointing out the discrepancy about the assessment years mentioned in the two notices and further requested the Income-tax Office to clarify the position, whether the notice was Under Section 31(1)(a) or 34(1)(b). The Income tax Officer did not choose to reply that letter but proceeded to reopen and reassess the assessee. Aggrieved by that order the assessee went up in appeal to the Appellate Asstt. Commissioner. The Appellate Asstt. Commissioner allowed his appeal on the ground that the Section 34 notice was invalid. But on a further appeal taken by the Commissioner, the Tribunal reversed the decision of the Appellant Asstt. Commissioner. It held that the irregularity in the notice did not in any manner prejudice the assessee. Thereafter as directed by the High Court, the Tribunal submitted to the High Court the question set out earlier. We have earlier referred to the opinion given by the High Court.

3. It is well settled that the Income-tax Officer's jurisdiction to reopen an assessment under Section 34 depends upon the issuance of a valid notice. If the notice issued by him is invalid for any reason the entire proceedings taken by him would become void for want of jurisdiction. In the notice issued Under Section 34 the Income-tax Officer sought to reopen the assessment of the assessee for the assessment year 1947-48 but in fact he reopened the assessment of the year 1948-49. Hence, in our opinion, the High Court was right in holding that the notice in question was invalid and as such the Income-tax officer had no jurisdiction to revise the assessment of the assessee for the year 1948-49.

4. In the result Civil Appeal No. 1172 of 1971 fails and the same is dismissed with costs.

5. Now coming to Civil Appeal No. 1990 of 1968 the High Court did not give any reason in support of the certificate granted by it. That being so, that appeal was not maintainable. We have not remitted the appeal back to the High Court for considering whether a certificate should be given or not we have gone into the merits of the case in Civil Appeal No. 1172 of 71. Hence Civil Appeal No. 1990 of 68 is dismissed as not maintainable, No costs.