

Sowdagar Ahmed Khan (Deceased) (By His ... vs Income-Tax Officer, Nellore on 21 November, 1967

Equivalent citations: [1968]70ITR79(SC), AIRONLINE 1967 SC 17

Bench: J.C. Shah, V. Bhargava

JUDGMENT

Ramaswami, J.

1. These appeals are brought, by certificate, from the judgment of the Andhra Pradesh High Court dated November 18, 1963, in Writ Petitions Nos. 757, 758, 761, 762, 763, 775 and 776 of 1961.

2. The appellant (hereinafter called "the assessee") is an individual carrying on business in distribution and exhibition of cinema films. The assessee owns a cinema theatre called the New Talkies at Nellore. The original assessment of the assessee's income for the year 1943-44 to 1949-50 were completed during 1944 to 1950. In the course of assessment proceedings for the assessment year 1957-58 the Income-tax Officer found that the assessee had current account in the Imperial Bank of India in the name of his father-in law till the latter's death. This fact came to the notice of the Income-tax Officer when the assessee was asked to explain a cash credit of Rs. 40,000 found in the assessment year 1950-51. Similarly, a sum of Rs. 70,000 was advanced by the assessee to Jagamani Pictures on January 9, 1946, which the assessee failed to disclose in the course of the assessment proceedings for the relevant assessment year. When later on Jagamani Pictures could not meet this debt the assessee got their distribution right in lieu of the amount advanced and exploited the films. It was also detected by the Income-tax Officer that in the relevant returns the assessee had not shown income from property in the names of his sons, wife and daughter, though many of the properties were purchased by him in their names. The Income-tax Officer had therefore reason to believe that, by reason of the omission or failure on the part of the assessee to disclose fully and truly all the basic and material facts necessary for the assessment for those years, income chargeable to tax had escaped assessment or was under-assessed. After obtaining the requisite permission from the Central Board of Revenue, the Income-tax Officer issued notices dated September 5, 1959, under section 34 (1) (a) of the Income-tax Act, 1922 (hereinafter called "the Act") to reopen the assessment for the assessment years 1943-44 to 1949-50. The assessee raised an objection to the issue of the notices on the ground that the proceedings were barred by limitation and the Income-tax Officer was seeking to revise assessments merely on a change of opinion. Thereafter, the Income-tax Officer wrote a letter to the assessee dated November 16, 1959, wherein he gave details of the cash credits for which he required explanation as well as the properties whose incomes should be assessed in his hands. After exchange of some correspondence, the assessee moved the High Court of Andhra Pradesh for grant of a writ under article 226 of the Constitution directing the Income-tax Officer to forbear from proceeding further in pursuance of

the notices issued under section 34(1) (a) of the Act. By its judgment dated November 18, 1963, the High Court dismissed the writ petitions holding that the notices issued after March 31, 1956, were not barred by time and there was material before the Income-tax Officer which justified his belief that the income chargeable to tax had escaped assessment.

3. It is convenient to set out at this stage the material provisions of section 34 of the Act as amended by the Finance Act, 1956 :

"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 under section 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..... he may in case falling under clause (a) at any time..... serve on the assessee..... 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...

(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 or, as the case may be, four years specified in sub-section (1) has expired in respect thereof, serve on the assessee..... 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-section (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 this 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."

4. The first question raised in these appeals is whether the proceedings for reassessment for the assessment years 1943-44 to 1946-47 are barred by limitation under section 34(1A) of the Act since the notices were issued after March 31, 1956. It was conceded by Mr. S. T. Desai on behalf of the appellant that this question is concluded by the decision of this court in *Commissioner of Income-tax v. Shahzada Nana and Sons*, in which it was held that notice can be issued under section 34(1) (a) of the Indian Income-tax Act, 1922, as amended by the Finance Act, 1956, after March 31, 1956, in respect of any assessment year whose relevant previous year falls wholly or partly within the period September 1, 1939, to March 31, 1946. It was pointed out in that case that by July 17, 1954, when sub-section (1A) was introduced in section 34, no proceedings under section 34(1)(a) could be limited except for the assessment year 1946-47, in respect of the previous years that fell within the period beginning on September 1, 1939, and ending on March 31, 1946, for they were barred under the unamended section. Sub-section (1A) of section 34 practically governed a situation that was not governed by the provisions of sub-section (1) (a) and it was not, therefore, appropriate to describe sub-section (1A) as one carved out of sub-section (1) (a) or to call it a species of which sub-section (1) (a) is the genus. The extended period given under sub-section (1A), however, expired on March 31, 1956. Thereafter, the sub-section ceased to be operative in the sense that no notice could thereafter be given thereunder. The sub-section worked itself out. The wide phraseology of sub-section (1) (a) as amended by the Finance Act, 1956, however, takes in all escaped and concealed incomes during all the years commencing from 1941 and confers a power on the Income-tax Officer to give notice thereunder in respect of the said incomes without any bar of limitation. There was, therefore, no conflict after April 1, 1956, between sub-section (1) (a) and sub-section (1A) as the latter ceased to be

operative.

5. The next question raised on behalf of the appellant is that, in any event, it was not permissible in law for the Income-tax Officer to issue notices under section 34(1) (a) because all the accounts were produced before the Income-tax Officer in the original assessment proceedings and the accounts containing the cash credits had been accepted in the original assessments. To put it differently, it was contended by the appellant that there was no material before the Income-tax Officer on which he could form the belief that, by reason of the omission or failure on the part of the assessee to make a return of his income or to disclose fully and truly all material facts, there was escape of income from assessment or there was under-assessment or assessment at too low a rate. The argument was stressed that the condition requisite for the issue of a notice under section 34(1) (a) were not satisfied and the Income-tax Officer had no jurisdiction to issue such notices for any of the assessment years. We are unable to accept the argument put forward on behalf of the appellant. In his letter No. G. I. R. 18-A/40-41 dated September 3, 1958, the Income-tax Officer informed the assessee that there was a suspicion of cash credits in the names of the relations of the assessee to the extent of over Rs. 5,00,000 and he was not satisfied, in the light of material newly gathered, about the genuineness of those cash credits. The Income-tax Officer further said that the assessee was in the habit of introducing moneys in benami names and properties were held in benami names. In another letter, G. I. R. No. 18-A dated November 16, 1959, the Income-tax Officer gave details of bogus cash credits appearing in the account and required the assessee to furnish explanation why they should not be treated as concealed business income for the respective assessment years. In paragraph 7 of the counter-affidavit in the High Court, the Income-tax Officer controverted the allegation of the assessee that all material facts were fully and truly disclosed at the original assessment stage it as asserted by the Income-tax Officer that the assessee had failed to disclose the existence of the bank account in the name of his father-in-law, benami for the benefit of the assessee and to disclose fully and truly the basic facts in respect of the sources of the alleged cash credits. In the context of these facts we are of opinion that there was some material before the Income-tax Officer on which he formed the prima facie belief that the assessee had omitted to disclose fully and truly all material facts and that in consequence of such non-disclosure income had escaped assessment. It follows that the Income-tax Officer had jurisdiction to issue notice under section 34(1) (a) of the Act and Mr. S. T. Desai, on behalf of the appellant, is unable to make good his argument on this aspect of the case.

6. There is also no substance in the contention of the assessee that the Income-tax Officer had no jurisdiction to issue notices under section 34(1) (a) of the Act because the original assessment orders showed that the cash credits in question were duly considered and accepted. In *Kantamani Venkata Narayana & Sons v. First Additional Income-tax Officer, Rajahmundry* it was pointed out by this court that the assessee does not discharge his duty to disclose fully and truly material facts necessary for the assessment of the relevant year by merely producing the books of account or other evidence. He was to bring to the notice of the Income-tax Officer particular items in the books of account or portions of documents which are relevant. Even if it may be assumed that, from the books produced, the Income-tax Officer, if he had been circumspect, could have found out the truth, he is not on that account precluded from exercising the power to assess income which had escaped assessment. At page 643 of the report Shah J., speaking for the court, observed as follows :

"The Income-tax Officer had, therefore, prima facie, reason to believe that information material to the assessment had been withheld, and that on account of withholding of that information income liable to tax had escaped assessment. From the mere production of the books of account it cannot be inferred that there had been full disclosure of the material facts necessary for the purpose of assessment. The terms of the explanation are too plain to permit an argument being reasonably advanced, that the duty when he produces the books of account or other evidence which has a material bearing on the assessment. It is clearly implicit in the terms of sections 23 and 34 of the Income-tax Act that the assessee is under a duty to disclose fully and truly material facts necessary for the assessment of the year, and that the duty is not discharge merely by the production of the books of account or other evidence. It is the duty of the assessee to bring to the notice of the Income-tax Officer particular items in the books of account or portions of documents which are relevant. Even if it be assumed that from the books produced, the Income-tax Officer, if he had been circumspect, could have found out the truth, the Income-tax Officer may not on that account be precluded from exercising the power to assess income which had escaped assessment."

7. For the reasons expressed we hold that there is no merit in these appeals which are accordingly dismissed with costs.

8. Appeals dismissed.