

Commissioner Of Income Tax Punjab, ... vs S. Raghubir Singh Trust Through ... on 16 August, 1979

Equivalent citations: AIR1980SC98, [1980]123ITR438(SC), (1980)2SCC212, 1979(11)UJ767(SC), AIR 1980 SUPREME COURT 98, 1980 (2) SCC 212, 1980 TAX. L. R. 21, (1980) 3 TAXMAN 14, 1980 SCC(TAX) 236, (1979) CURLJ(CCR) 202, (1979) 14 CURTAXREP 346, (1979) 54 TAXATION 114, 1979 UJ(SC) 767, (1980) 2 SCJ 208

Bench: P.N. Bhagwati, R.S. Pathak, V.D. Tulzapurkar

ORDER

1. The short question which arises for determination in this appeal by certificate is whether the reassessment sought to be made by the Income Tax Officer on the assessee trust under Section 34(1)(b) of the Indian Income Tax Act, 1922, was time barred.

2. The assessee trust was created by one Shri S. Raghubir Singh and for the assessment year 1954-55 for which the relevant account year was the financial year ending on 31st March, 1954, the assessee trust filed a return of income on 31st March, 1951. The Income Tax Officer took the view that the assessee trust was sham and bogus and was created merely as a device for evasion of tax and he, therefore, refused to recognise the assessee trust as valid and made an order stating that the income according to the assessee trust should be assessed in the hands of S. Raghubir Singh. The income of the assessee trust was accordingly included in the individual assessment of S. Raghubir Singh and assessment was made on him on that basis. S. Raghubir Singh carried the matter higher in appeal and ultimately the Punjab High Court on a reference made by the Tribunal held that the assessee trust was a valid trust and that the income which was sought to be included in the individual assessment of S. Raghubir Singh was the income of the assessee trust and not that of S. Raghubir Singh. In view of this finding given by the Punjab High Court, the Income Tax Officer issued a notice under Section 34(1)(b) to the assessee trust on 19th September, 1961 seeking to reopen the assessment of the assessee trust. The assessee trust contended that the notice seeking to reopen the assessment was barred by limitation and the Income Tax Officer was not entitled to reassess the income of the assessee trust. This contention was negatived by the Income Tax Officer who proceeded to make an order of reassessment bringing the entire income of the assessee trust to tax after allowing the usual deductions. The assessee trust preferred an appeal to the Appellate Assistant Commissioner but the appeal was unsuccessful and the matter was carried in further appeal to the Tribunal. The Tribunal proceeded to decide the appeal after obtaining a remand report and held that the assessee trust was a stranger to the proceeding for assessment of S. Raghubir Singh and the second proviso to Section 34(3) did not cave the reassessment proceeding against the assessee trust from the bar of limitation. The Revenue being aggrieved by this decision of the Tribunal made an application for a reference and on the application, the following question of law namely:-

Whether on the facts and in the circumstances of the case the assessment made under Section 34(1)(b) for the assessment year 1954-55 was barred by time and was not laved by the second proviso to Section 34(3) of the Income Tax Act, 1922?

was referred by the Tribunal to the High Court. The High Court agreed with the view taken by the Tribunal and held that the second proviso to Section 34(3) was not attracted because the assessee trust and S. Raghubir Singh were two different persons and the assessee trust was not intimately connected with the assessment of S Raghubir Singh. The Revenue thereupon preferred the present appeal after obtaining certificate of fitness from the High Court.

3. It is now well settled as a result of the decision of this Court in *Income Tax Officer A: Ward, Sitapur v. Murlidhar Bhagwan Das* 42 ITR 335 that two conditions are necessary for the applicability of the second proviso to Section 34(3) The first is that the reassessment which is sought to be made must be "in consequence of or to give effect to any finding or direction" contained in an order made under Section 33, 33A, 33B, 66 or 66A and the other is that the reassessment must be sought to be made on the assessee or "any person". The expression "finding" in this provision means a finding necessary for given relief in respect of the assessment for the year in question and, therefore, no decision can be said to be a finding within the meaning of this provision unless it can be said of it that it was necessary for the disposal of the appeal or proceeding. How, here there is no doubt that in order to decide that the income did not belong to S. Raghubir Singh it was necessary to decide whether the income belonged to the assessee trust. The income was claimed by the Revenue to belong to S. Raghubir Singh on the ground that the assessee trust was invalid and, therefore, it followed as a necessary collary that if the assessee trust was not invalid, the income would belong to the assessee trust and not to S. Raghubir Singh. The finding given by the Punjab High Court that the income belonged to the assessee trust and not the S. Raghubir Singh was, therefore, a finding necessary for disposing of the reference in favour of S. Raghubir Singh and it was clearly a "finding" within the meaning of the second proviso to Section 34(3).

4. But the question still remains whether the second condition was satisfied and the assessee trust could be said to be "any persons" within the meaning of the second proviso to Section 34(3). This Court observed in *Murlidhar Bhagwandas's* case that the expression "any person" in the context in which it occurs must be confined to a person intimately connected with the assessment in which the finding is given in the sense that such person would directly be liable to be assessed for the whole or a part of the income that went into the former assessment. The person sought to be reassessed must not be a stranger to the proceeding for assessment in which the finding was given. Here it is difficult to say how the assessee trust could be said to be intimately connected with the assessment of S Raghubir Singh The assessee trust was dearly a stranger to the assessment proceedings of S. Raghubir Singh and it was not "any person" within the meaning of the second proviso to Section 34(3) The High Court was, therefore, right in taking the view that the second proviso to Section 34(3) was not attracted and the reassessment proceedings against the assessee trust were barred by time.

5. We accordingly dismiss the appeal with costs.