

Gaya Ram Gabbu Lal vs Commissioner Of Income-Tax on 25 September, 1950

Equivalent citations: AIR1952ALL325, [1951]19ITR114(ALL), AIR 1952 ALLAHABAD 325

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Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. This is a reference under Section 66 (1), Income tax Act, relating to the assessment for three years, viz., 1940-41, 1941-42 and 1942-43. The three questions referred to us are as follows:

"1. Whether in the circumstances of the case, the issue of a notice under Section 84 for the assessment year 1940-41 was valid in law?

2. Whether in the circumstances of the case the action taken under Section 84 was based on discovery of any definite information within the terms of Section 34 of the Act.?

3. Whether, in the circumstances of this case, the IV Additional Income-tax Officer, E. P. T. Circle, Kanpur, had authority to make assessment without issuing fresh notices under Sections 22 (4) and 23 (2) of the Act?"

2. The first two questions refer to the assessment year 1940 41 only. The assessment in that year was made by Mr. H. L. Giddens, Income-tax Officer, Gorakhpur, on 12 8-1940.

3. In the assessment year 1839-40, the assessee had made a number of entries of fictitious deposits and had inflated the purchase price of raw material purchased by him. The Income-tax Officer had, therefore, rejected the assessee's accounts, had made enquiries to find out the actual profits made by the assessee and had made the assessment on the basis thereof. In the assessment year 1940-41, with which we are concerned, there were, however, no such fictitious deposits entered in the books and most of the purchases of raw materials were made in cash and were supported by cash memorandums. Though the Income-tax Officer found that the profits shown were very low, being only 7 1/2 per cent., he accepted the return and assessed the tax on the basis thereof.

4. In the assessment year 1941-42, the successor of Mr. Giddens found that in the relevant account year there were again fictitious deposits amounting to a large sum of Rs. 1,22,000. This created a suspicion in the mind of the Income-tax Officer who compared the rates at which purchases had been made and found that the purchase prices of raw material given in the account books of the assessee were higher than those shown in the account books of other dealers. The Income-tax Officer then by further comparison found that in the account year relevant to the assessment year 1940-41 the prices at which the assessee had claimed to have purchased the raw material much higher than the prices paid by other similar dealers. On discovery of the fact that the rates relating to the previous year to the assessment year 1940-41, though they were supported by cash memorandums, had been inflated and the further fact that a large sum of money, even though not entered in his books in the previous year to the assessment year 1940-41, was entered as fictitious deposits in the next year, the Income tax Officer believed that a part of the income in the assessment year 1940-41 had escaped assessment. Thereupon he issued notice to the assessee under Section 34, Income-tax Act.

5. The statement of the case does not clearly set out the facts mentioned by us above and we had, therefore, to spend considerable time over this case; but from the appellate order of the Tribunal read with the statement of the case it is clear that the definite information in possession of the Income tax Officer before he issued notice under Section 34 of the Act was as follows: (1) The rates of purchases shown in the books of account of the assessee and supported by cash memos for the assessment year 1940 41, were much higher than the rates shown in the books of other dealers; and (2) The assessee had a large sum of money totalling Es. 1,22,000 which he showed in the accounts of the next year as deposits in the names of certain Khatiks which entries were wrong.

6. The point for decision, therefore, is whether definite information had come into the possession of the Income-tax Officer from which he could reasonably believe that a part of the income had escaped assessment and he could, therefore, issue notice to the assessee under Section 34 of the Act. The facts set out above along with the fact that it had already been found by Mr. H. L. Giddens, who had made the assessment for the year 1940-41, that the income shown by the assessee, 7 1/2 percent., was very low, could reasonably lead to the belief that income had escaped assessment.

7. The Legislature for the protection of the assessee, so that they may not be harassed and to give a certain amount of finality to the assessment already made, has provided certain safeguards and under Section 34 an Income-tax Officer cannot issue notice on mere suspicion but only when definite information has come into his possession which has led him to the conclusion, which conclusion may be tentative, that income has escaped assessment.

8. Income-tax Officer has no right to make a preliminary enquiry before issuing notice under Section 84 and the assessee is not bound at that stage either to produce his books or to give any information or explanation. But if in the course of the performance of his usual duties, while assessing the income of other assessee, or for other years of the assessee himself, definite facts come to the knowledge of the Income-tax Officer, which relate to a year about which the assessment has already been concluded, the Income tax Officer is not bound to shut his eyes to them nor is it necessary that when the Income tax Officer gets some information he should not verify the

correctness thereof or trace it out further so long as he can do it without calling upon the assessee either to supply him with facts or explanations or produce his books. Within these limits he may inform himself. Before notice can be issued the Income-tax Officer must be satisfied, and the satisfaction must be that of a reasonable man, (i. e. the definite information in his possession should lead to the conclusion) that income has escaped assessment: See Badar Sheo Stores, In re (1946) 14 I. T. R. 431 (ALL.); Kedar Nath v. Commr. of Income-tax, U. P. and C. P., (1947) 15 I. T. R. 224 (ALL.); Mahabir Prasad v. Commissioner of Income-tax, (1917) 15 I. T. R. 393 (ALL.); Mithoo Missar v. Commissioner of Income-tax, U. P. and C. P., 1950-18 I. T. R. 530 (ALL.) and Commercial Structures Ltd. v. E. A. Briggs, 1949-17 I. T. R. (Supp.) 30.

9. We cannot, in these circumstances, say that he could not have issued notice under Section 34, Income-tax Act. Our answer to the first two questions is, therefore, in the affirmative.

10. As regards the third question, the facts are that the Commissioner of Income-tax had transferred the cases towards their closing stages to the Fourth Additional Income-tax Officer, E. P. T. Circle, Kanpur, who passed the assessment orders without issuing fresh notices under Sections 22 (4) and 23 (2), Income-tax Act. In view of the provisions of Section 5 (7A), Income tax Act, fresh notices were not necessary. That sub-section is as follows:

"5(7A) The Commissioner of Income-tax may transfer any case from one Income-tax Officer subordinate to him to another, and the Central Board of Revenue may transfer any case from any one Income-tax Officer to another. Such transfer may be made at any stage of the proceedings and shall not render necessary the re-issue of any notice already issued by the Income tax Officer from whom the case is transferred."

11. Learned counsel for the assessee has urged that the Officer to whom the cases were transferred was not an Income-tax Officer but had authority to make assessment orders under the Excess Profits Tax Act only. No such question was raised either in the application or in the statement of the case and so far as we know, the Income-tax Officers are authorised to exercise jurisdiction, in addition to their own duties, under the Excess Profits Tax Act.

12. In view of the provisions of Section 5 (7A), Income-tax Act, quoted above, our answer to this question can only be that no fresh notices were necessary.

13. The Department is entitled to its costs which we assess at Rs. 400.