Debi Prasad Malviya vs Commr. Of Income-Tax, United ... on 29 October, 1952

Equivalent citations: AIR1953ALL227, [1952]22ITR539(ALL), AIR 1953 ALLAHABAD 227

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Bench: V. Bhargava

ORDER

1. In this reference under Section 66(1), Income-tax Act the point submitted by the Tribunal for opinion is as follows : "Whether, in the circumstances of the case, the notice under Section 34, Income-tax Act could be legally issued?"

> The assessee has filed an application under Section 66(4), Income-tax Act and has urged that another question should have been referred to this Court for opinion. This question he has formulated is as follows :
>
> "Whether in the circumstances of the case when the applicant was not a party to the partnership deeds in Kanpur Iron Supply Co., and U.P. Iron Steel Co., and no share of profits from those firms were received by him he could in law be held to be a 'partner' of the said firm?"

2. The facts as they appear from the order of the Income-tax Appellate Tribunal and the statement of the case are that the assessee was being assessed as a Hindu undivided family. On 2nd December 1938, a partnership firm known as Kanpur Iron Steel Co., was started of which one Brij Bhoosan Lal, a nephew of the assessee, was a partner. The share of the capital invested in the firm by Brij Bhoosan Lal was advanced by the assessee. The sum of Rs. 17,000 advanced by the assessee was entered in his books as follows :

> "Brij Bhoosan ke nam Kanpur Iron Supply Co., ke dia."

No interest was charged on this amount for a period of four years. In the assessment year 1940-41 the assessee showed the profits of this business as part of the income of the Hindu undivided family and claimed that the Hindu undivided family had a one-third share in the partnership firm. In the assessment for the next year, 1941-42, the assessee had not included in his return the income of this partnership firm but the Income-tax Officer added the profits to the total income of the assessee and made assessment on that basis. The assessee accepted the assessment and filed no appeal against the said decision. In the years in question, i.e., assessment years 1942-43 and 1943-44, the assessee did not again include the profits of this partnership business in the return filed by him. On 25th March 1944, the Income-tax Officer made the assessment for the year 1942-43. The assessment,

however, was set aside by the Appellate Assistant Commissioner on 30th September 1944, and fresh assessments for the two years in question were made on 25th February 1946. Notices under Section 34 were issued thereafter and assessment for the year 1942-43 was then made on 28th February 1947, and for the year 1943-44 on 30th October 1947.

3. We have given the facts for the assessment year 1942-43. The facts for the assessment year 1943-44 are also similar.

4. Learned counsel for the assessee has urged that as Brij Bhooshan Lal was the registered partner of the firm and the firm had been registered under the Indian Income-tax Act, it was not open to the department to treat the assessee as the partner in the Kanpur Iron Supply Company. According to the assessee this raises a very important question of law, i.e., whether a person other than a person registered as a partner of a firm can be treated as a partner. In the view that we have taken on the point that has been referred to us, it is not necessary to go into this question and we do not, therefore, think that it is necessary to grant the application under Section 66 (4), Income-tax Act. It is, therefore, dismissed.

5. As regards the question referred to us under Section 06(1) we find that the facts on the basis of which notice under Section 34 was issued were all known to the Income-tax Officers concerned except, of course, the actual amount of profits that had been made by the Kanpur Iron Supply Co., in the two years in question. From the assessment order of 25th February 1946, it is dear, as also from the previous assessment order of 25th March 1944, which had been set aside by the Appellate Assistant Commissioner, that the Income-tax Officer knew that the assessee had a one-third share in the partnership firm, Kanpur Iron Supply Co., and that the profits of that concern had to be added to the total income of the assessee. In the assessment order of 25th February 1946, the Income-tax Officer said : "It appears from the file of the firm Arya Steel Company that it had no business during the previous year for the assessment year 1943-44, while the assessments for that year of the firms Kanpur Iron Supply Co.. and U.P. Iron and Steel Company have not yet been completed. Necessary action for revising the present assessment by inclusion of assessee's share of profits in the latter firms will be taken later on receipt of the necessary reports from the Income-tax Officer, Kanpur."

The portion quoted above clearly indicates that the Income-tax Officer knew that the Kanpur Iron Supply Company and the U.P. Iron Steel Company had made profits. He also knew that, a portion of this profit which had come to the share of the assessee will have to be included in the total income. He was, however, anxious to finish the assessment on the basis of the materials before him. Section 23, Income-tax Act contemplates that the Income-tax Officer should make a complete 'assessment on the basis of the total income of an assessee. It is not open to him to make assessments piecemeal and in a case where the Income-tax Officer has proceeded to assess one part of the income and has decided to assess the rest of the income on a later date he cannot rely on the provisions of Section 34 for the purpose of reopening the assessment. This is not a case where the Income-tax Officer had believed that there was no other income and the total income was as declared by the assessee on which he proceeded to assess the Income-tax. From the order of assessment mentioned above, as also from several other orders it appears that it was well known that the assessee was being under-assessed. It cannot, therefore, be said that the fact was discovered later that the assessee had

been under-assessed. In this view of the matter notice under Section 34 was clearly wrong and the Income-tax Officer had no authority to reopen the assessment already made by him.

6. Learned counsel for the assessee has referred us to -- 'Chuni Lal v. Commr. of Income-tax', 1951-20 ITR 568 (Punj), a decision of the Punjab High Court and -- 'Fazal Dhala v. Commr. of Income-tax, Behar and Orissa', 1944-12 ITR 341 (Pat), a decision of the Patna High Court. The decisions do, to some extent, support the contention of the assesses. The case before us is clearly a case where the Income-tax Officer wanted to make the assessment piecemeal which, in our view, he was not entitled to do under the Indian Income-tax Act.

7. The question, therefore, is answered in the negative. The assessee is entitled to his costs which we assess at Rs. 300.