L. Subhkaran Seksaria vs Commissioner Of Income-Tax on 2 May, 1950

Equivalent citations: AIR1950ALL587, [1950]18ITR773(ALL), AIR 1950 ALLAHABAD 587

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Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. This is a reference under Section 66 (1), Income-tax Act. The question referred is:

> "Whether in the circumstances of the case the Income tax Officer, E. P. T. Circle, Cawnpore, was entitled to re-open the assessment under Section 34 of the Act?"

2. The facts are very simple and are not disputed. The assessee Subhkaran Seksaria entered into an agreement with Kedarnath, who carried on extensive business under the name and style of Kedarnath Subhkaran, on 27th April 1940. Under this agreement the assessee undertook to secure contracts from the Government for Kedarnath Subhkaran and he was to be paid a remuneration of 5 per cent. on the value of the goods, which were supplied to the Government, besides the travelling expenses. The assessee received a sum of Rs. 36,586-2-6 during the previous year and in the assessment year 1941-42 he showed the said amount as his total income from business. The Income-tax Officer, however, on 29th July 1942, passed the following order:

> "The total commission received and as entered in the accounts is Rs. 36,586 at 5 per cent, of the total value of the orders received. In view of my findings in the preceding paragraph, the assessee's income is taken to be Rs. 7,317. There being no other source of income, the assessment is made accordingly as per Income-tax Form 30."

In the previous paragraph the Income-tax Officer had mentioned the fact that when Kedarnath Subhkaran were being assessed to excess profits tax, the Excess Profits Tax Officer had held on 20th July 1942, under Schedule I. Rule 12, Excess Profits Tax Act, that the payment of 5 per cent. to Subhkaran was excessive and that the reasonable and necessary amount payable to Subhkaran, regard being had to the requirements of the business, was only 1 per cent, and had allowed Kedarnath Subhkaran a deduction of only l/5th of the amount spent.

3. Rule 12 (1) of Schedule I, Excess Profits Tax Act is as follows :

> "In computing the profits of any chargeable accounting period no deduction shall be allowed in respect of expenses in excess of the amount which the Excess Profits Tax Officer considers reasonable and necessary having regard to the requirements of the business and, in the case of directors' fees or other payments for services, to the actual services rendered by the person concerned."

The Income-tax Officer, in Ma assessment order, paraphrased what had been said by the Excess Profits Tax Officer and agreed with him that it was not reasonable or necessary to pay com-mission at a rate higher than 1 per cent, though that was not a matter at all relevant to the assessment of Subhkaran. Kedarnath Subhkaran, however, appealed against the order of the Excess Profits Tax Officer dated 20th July 1942 and the matter ultimately came up before the Appellate Tribunal, who held that 5 per cent. was not an unreasonable amount and added it back to the expenses incurred by Kedarnath Subhkaran. After that decision of 31st July 1943, the Income-tax Officer issued a notice under Section 34 to Subhkaran that as a result of definite information received by him he had reason to believe that a sum of Rs. 29,269 had escaped assessment. He held against the assessee and ultimately this matter came up before the Tribunal, who, on 28th February 1944 came to the conclusion that the Income-tax Officer was entitled, under Section 34, Income-tax Act, to re-open the assessment. On an application made by the assessee the Tribunal referred to us the question mentioned above for answer.

4. There can be no doubt that the Income, tax Officer knew from the very beginning that the assessee had received the sum of Rs. 36,586-2-6 as commission from Kedarnath Subhkaran. The assessee had mentioned the amount in his return. Under the Excess Profits Tax Act, Rule 12, Schedule I, the Excess Profits Tax Officer had the right to consider whether a particular expenditure was or was not reasonable and necessary. The fact that allowable deduction for expenses incurred by Kedarnath Subhkaran for purposes of computation of excess profits tax was held to be one-fifth of what Kedarnath Subhkaran had paid to Subhkaran Seksaria was not at all relevant for the purposes of assessment of income-tax of Subhkaran Seksaria, who, having received the money, was liable to pay income, tax on it. The Income-tax Officer had, therefore, clearly made a mistake.

5. It 13 urged that the decision of the Appellate Tribunal that the whole of 5 per cent. paid to Subhkaran by Kedarnath Subhkaran was a reasonable expenditure did not in any way affect the liability of Subhkaran, the assessee. Section 34. Income tax Act, requires that the Income tax Officer should have received definite information and that definite information should have led to the discovery that income, profits and gains chargeable to income tax had escaped assessment or had been under-assessed or had been assessed at too low a rate or had been the subject of excessive relief. The Tribunal has said that it was not known to the Income-tax Officer that Subhkaran, the assessee, was "a qualified gentleman" payment of commission to whom at the rate of 5 per cent. was not unreasonable.

6. If it had been the case that the Income-tax Officer had been told that Subhkaran, the assessee had been paid only Rs. 7317 and he had later discovered, as a result of the decision of the Appellate

Tribunal, that the amount paid was Rs. 36,886, the case would clearly come under Section 34, but here the facts are different. Nobody disputed it and nobody doubted that Subhkaran had received Rs. 36,586. The question was whether Kedarnath Subhkaran was entitled to get an allowance of the whole of this amount or one-fifth of that amount towards the expenses incurred by the firm in computation of the profits for purposes of payment of excess profits tax. The question of the payment being reasonable and necessary or not reasonable and necessary was wholly irrelevant for the purposes of assessment of Subhkaran, and if that is the only definite information that the Income tax Officer received as a result of the Appellate Tribunal's order, there was no connection between the definite information and the discovery that income had escaped assessment. There must be a causal connection between the definite information and the discovery, and where there is no such causal connection Section 34 is not applicable. It was pointed out by a Bench of this Court in In re Badar Shoe Stores, (1946) 14 I. T. R. 481 at p. 436 : (A. I. R. (36) 1949 ALL. 154) that the Legislature in amending. Section 34 in the year 1939 intended that the Income-tax Officer could take action only if the conditions of Section 34 were strictly fulfilled, and that Section 34 as amended was, "not merely a section designed to afford the Income-tax Department a ready means of re-opening past accounts, but as also a section which was designed to protect the subject against anything in the nature of inquisition at the instance of the department founded on mere suspicion rather than on positive material." In Kedar Nath v. Commissioner of Income-tax, U. P. and C. P., (1947) 15 I. T. R. 224 : (A. I. R. (34) 1947 ALL. 153), it was again pointed out that a mere change of opinion based on the same facts and figures does not amount to discovery.

7. Our answer to the question referred to us, therefore, is in the negative, i. e., the Income-tax Officer was not entitled to re-open the assessment under Section 34 of the Act. The assessee is entitled to his costs which we assess at a sum of Rs. 350.