

Commissioner Of Income-Tax, Madras vs Janaba Mohammad Hussain Nachiar Ammal. on 12 December, 1961

Equivalent citations: [1963]49ITR80(SC)

JUDGMENT

[DAS, KAPUR AND SARKAR JJ. delivered separate judgments. HIDAYATULLAH and RAGHUBAR DAYAL JJ. dealt with this appeal in their judgment in S. C. Prashar v. Vasantsen Dwarkadas].

S. K. DAS J. - The facts of this appeal have been stated by my learned brother, Kapur J., and as I am in agreement with him, I need not restate the facts.

The relevant assessment year was 1942-43. The proceedings under section 34 of the Indian Income-tax Act, 1922, were initiated with the issue of a notice on July 25, 1949. The assessee's contention was that the initiation of proceedings on July 25, 1949, was invalid as the department's right to revive the assessment was governed by the old section 34 where the period of limitation prescribed was only four years in the case of failure to file a return and this period having expired on March 31, 1947, and the Amending Act of 1948 (XLVIII of 1948) having come into force on March 30, 1948, the eight years period provided therein could not be invoked. The High Court upheld this contention and said :

"In our opinion, the contention of the learned counsel for the assessee is well founded, that the new rule of limitation of eight years prescribed by the amended section 34 would not apply to the case of the assessee before us, whose was an instance of a failure to submit a return, when the period of limitation of four years had run out long before 30th March, 1948, when the amended section 34 came into force as part of the Income-tax Act with effect from that date, 30th March, 1948.

The learned counsel for the department next referred to section 31 of Act XXV of 1953 in support of his contention that the notice issued on 25th July, 1949, was valid. The learned counsel himself had to realise that section 34; nor did it purport to amend it. The validity of the notice, dated 25th July, 1949, will still have to be decided with reference to the provisions of the amended section 34. Section 31 of Act XXV of 1953 does not therefore affect the questions at issue, whether the extended period of limitation of eight years would apply to the assessee when the period of section 34 came into force on 30th March, 1948."

For the reasons given by me in S. C. Prashar, Income-tax Officer, Market Ward, Bombay v. Vasantsen Dawarkadas, in which judgment has been delivered today. I think that the High Court correctly answered the question referred to it.

I would therefore dismiss the appeal with costs.

KAPUR J. - This is an appeal against the judgment and order of the High Court of Madras. The appellant is the Commissioner of Income-tax and the respondent is the assessee and the year of assessment is 1942-43.

The respondent is the wife of one Sheikh Abdul Khader who was residing abroad in Bangkok from September, 1940, to July, 1947. During that period he remitted monies in the name of his agent for payment to the respondent. In the account year the aggregate amount so remitted was Rs. 9,180. The respondent submitted no return of her income as she was bound to do and the amount became taxable under section 4(2) of the Income-tax Act, hereinafter referred to as the "Act". In 1949 the Income-tax Officer on receipt of definite information that such income had escaped assessment issued a notice under section 34 of the Act as amended by the Amending Act of 1948 and an appeal was taken to the Appellate Assistant commissioner by the assessment was confirmed. A further appeal to the Income-tax Appellate Tribunal Madras, was also unsuccessful. The reference was thereupon made to the High Court and one of the questions referred was :

"Whether the proceedings under section 34 of the Indian Income-tax Act initiated on 25th July, 1949, to assess the amount of Rs. 9,180 which escaped assessment during the year 1942-43 by failure to submit a voluntary return are valid in la ?"

It was held that the limitation of eight years prescribed by section 34 as amended by the Amending Act of 1948 did not apply to the case of assessee which was a case of failure to submit the return and the period four years had expired before March 30, 1948, when the amendment in section 34 was made by the Amending Act of 1948. It was also held that section 31 of the Amending Act of 1953 was not applicable and the question was therefore answered in the negative. Against that judgment and order the Commissioner of Income-tax has come in appeal to this court.

This case is governed by the decision in C. A. No. 705/57 (S. C. Prashar v. Vasantsen Dwarkadas), the judgment in which has been delivered today. The appeal is therefore dismissed with costs. The appellant was granted the certificate by the High Court expressly on the condition that he would pay the costs of this appeal in any event to which he had agreed.

SARKAR J. - The respondent in this appeal is the assessee. She is the wife of one Sheikh Abdul Khader who lived in Siam. In the year 1941-42, she received from her husband from Siam a sum of Rs. 9,180. It is not disputed that this amount constituted "Income" in her hands within section 4(2) of the Income-tax Act, 1922. She did not however submit any return in respect of it. On July 25, 1949, a notice under section 34 of the Act was issued to her asking her to file a return. Thereafter, she was assessed on therefore income on October 24, 1949. She appealed from that order but was unsuccessful in having the assessment set aside. At her request, the Appellate Tribunal submitted the following question to the High Court at Madras for its decision :

"Whether the proceedings under section 34 of the Indian Income-tax Act initiated on 25th July, 1949, to assesses the amount of Rs. 9,180 which escaped assessment during the year 1942-43 by failure to submit the a voluntary return are valid in la ?"

The High Court answered the question in negative. The revenue authorities have, therefore, come up in appeal.

Section 34 contains provisions for assessment and reassessment in cases where income for any year has not in the relevant assessment year been fully assessed for the reasons mentioned in it. With these reasons it not necessary to trouble ourselves in this appeal. Sub-section (1) of section 34 deals with the period of time within which a notice calling for a return of the escaped income may be served and sub-section (3) deals with the time within which the assessment can be made. This section was amended by the Income-tax and Business Profits Tax (Amendment) Act, 1948. This Act was on September 8, 1948, but the section which amended Section 34 of the Income-tax Act was brought into force retrospectively from March 30, 1948. It is not in dispute that under section 34, as it stood before the amendment, the time to issue the notice calling for a return and to make the assessment in this case had expired on March 31, 1947, that is, on expiry of four years after the year in which the escaped income was first assessable, namely, 1942-43. It is not in dispute either that under section 34, as it stood after the amendment in 1948, the notice could be served and an assessment made within eight years from the end of that year, that is, in this case, within March 31, 1951. The notice and the assessment order impugned in this case have, therefore, to be held to be valid if section 34 after its amendment in 1948 was applicable. It is the contention of the appellant that it was so applicable. The High Court held that the time having already expired under the existing law the amended section 34 could not be given retrospective operation to validate the notice and the order of assessment.

Now, on May 24, 1953, was passed the Income-tax (Amendment) Act, 1953, (XXV of 1953), which was brought into force retrospectively from April 1, 1952. This Act contained a section, namely, section 31, which in my mind makes section 34 as amended by the 1948 Amending Act, applicable to the proceedings in this case. I am unable to accept the High Courts view to the contrary and regret my inability to comprehend the reasons on which that view is based. That section also amended sub-section (3) of section 34 so as to included in it provisions regarding the time of the issue of the notice but we will not be concerned with this amendment in this appeal now section 31 is in the these terms :

"31. For the removal of doubts it is hereby declared that the provisions of sub-sections (1), (2) and (3) of section 34 of the principal Act shall apply and shall be deemed always to have applied to any assessment or reassessment for any year ending before the 1st day of April, 1948, in any case where proceeding in respect of such assessment or reassessment were commenced under the said sub-sections after the 8th day of September, 1948, and any notice issued in accordance with sub-section (1) or any judgment or order of any assessment completed in pursuance of such notice within the time specified in sub-section (3), whether before or after the commencement of the Indian Income-tax (Amendment) Act, 1953, shall, notwithstanding any judgment or order of any court, Appellate Tribunal or income-tax authority to the contrary, be deemed to have been validly issued or completed, as the case may be, and no such notice, assessment or reassessment shall be called in question on the ground merely that the provisions of section 34 did not

apply or purport to apply in respect of an assessment or reassessment for any year prior to the 1st day of April, 1948.

No question as to sub-section (2) of section 34 mentioned in this section arises in this appeal and that sub-section may be left out of consideration.

It seems to me quite plain that section 31 of the 1953 Act applies sub-sections (1) and (3) of section 34 of the Income-tax Act, 1922 (hereafter called the principal Act), as it stood after the 1948 amendment, to assessment proceedings commenced after September 8, 1948, and makes the validity of the proceedings depend on that section as to amended. Indeed, the contrary has not been contended at the bar. It has to be remembered that the Amending Act of 1948 was passed on September 8, 1948, but it was given retrospective effect from March 30, 1948. It may be stated that the Amending Act repealed the existing section 34 of the principal Act and substituted for it a new section. I think it is quite clear that the pre-existing section 34 which was repealed by the 1948 amendment could not have applied to proceedings commenced after the repeal. There was no question of applying the pre-existing law to such proceedings. But where the proceedings related to period when the pre-existing law was in force, the proceedings related to a period when the pre-existing law was in force, there might be some doubt as to which law was to apply. Section 31 was enacted to remove that doubt and to make section 34 of the principal Act as it stood after the 1948 amendment applicable to these proceedings. That is why the words "shall always be deemed to have applied" are used; they emphasise that the amended section is deemed always to have applied to proceedings even in respect of a period when the amendment had not been made. The latter part of section 31 also makes this view equally clear. It says that no notice or order of assessment shall be called in question on the ground that section 34 did not apply in respect of assessment for a year prior to April 1, 1948. Section 34 here contemplated must be the section as amended in 1948, for it was not so, then it would be the pre-existing section which of course would have applied if not repealed, to an assessment for a year ending prior to April 1, 1948, and no question of its not so applying would have arisen.

We thus arrive at the conclusion that under section 31 of the 1953 Act, the provisions of sub-section (1) and (3) -we leave sub-section (2) out as irrelevant - of section 34 of the principle Act as amended in 1948 are to be applied and deemed always to have been applied to assessment proceedings in respect of a year ended before April 1, 1948, where the proceedings were commenced after September 8, 1948. A notice issued and on order of assessment made in such proceedings are to be held valid if the notice is issued "in accordance with sub-section (1)" of section 34 as it stood after the 1948 amendment and the assessment is "completed in pursuance of such notice within the time specified in sub-section (3)" of the same section 34. Now the notice and assessment in the present case satisfy all these conditions. To them, therefore, section 34 as amended in 1948 applies. Judged by that section, admittedly the notice and assessment order are unexceptionable.

It is true that in the present case when the notice was issued and the assessment made, the time to do either under the law as it stood before the 1948 amendment had expired. It may be that the law would have applied to it if the 1953 Act had not been passed. It may also be, as was said in the Calcutta Discount Co. case that, by itself the 1948 amendment of section 34 would not have permitted assessment proceedings in respect of 1942-43 to be commenced in 1949 when under the previous law the time to issue a notice and to make an assessment for that year had expired before the 1948 amendment had come into force. All this however is to no purpose. No such question arises here. The legislature had undoubtedly the power to make section 34 as amended in 1948 apply to an assessment issue a notice and to make section 34 as amended in 1948 apply to an assessment for 1942-43 by giving it a retrospective operation in spite of the time to issue a notice and to make an assessment fixed by the pre-existing law having expired before the amendment came into effect. The question really is one of interpretation, namely, whether the legislature had given such retrospective operation.

Now it seems to me that section 31 of the 1953 Act clearly gives section 34 of the principal Act as amended in 1948 such retrospective operation. It plainly makes section 34 as so amended applicable to assessments for years ended before the amendment came into force. It does not say that section 34 as amended is to apply to assessments for these years only when the time to issue the notice or make the assessment in respect of these years under the pre-existing law had not expired. It applies the amended section 34 "to any assessment.... for any year ending before the 1st day of April, 1948, in any case where proceedings..... were commenced..... after the 8th day of September, 1948". I find no justification in view of the language used to interpret section 31 as applying section 34 as amended in 1948 only to cases where the time to issue the notice and make the assessment had not expired while the pre-existing law was in force. The latter part of section 31 seems to lead independently to the same conclusion. It makes "any notice issued in accordance with sub-section (1) or any assessment completed in pursuance of such on notice within the time specified in sub-section (3)" valid. All that is necessary is to all notices and assessment orders in respect of years ending before April 1, 1948, in proceedings commenced after April 8, 1948, shall comply with the provisions of section 34 as amended in 1948. So a notice and an assessment order valid under section 34 as amended in 1948 would be valid even if the time prescribed in respect of them by section 34 as it stood before the 1948 amendment, had expired.

In my view, for these reasons, section 34 of the principal Act as amended in 1948 applies to the notice issued and the assessment order made in this case. Both of them are valid under section 34 as so amended. The High Court should have answered the question framed in the affirmative.

In the result, I would allow the appeal and set aside the order of the High Court. The appellant will however pay the respondents costs of this appeal as it had agreed to do

so as appears from the certificate on which this appeal has been admitted.

[HIDAYATULLAH and RAGHUBAR DAYAL JJ. dealt with this appeal in their judgment delivered in Prashar v. Vasantsen Dwarkadas.

BY THE COURT :- In accordance with the opinion of the majority, the appeal is allowed. The appellant will pay the costs of the respondent as was agreed to by the parties.

Appeal allowed.