

# **Esthuri Aswathiah vs The Income-Tax Officer, Mysore State on 5 December, 1960**

**Equivalent citations: 1961 AIR 1149, 1961 SCR (2) 911, AIR 1961 SUPREME COURT 1149**

**Author: J.C. Shah**

**Bench: J.C. Shah, J.L. Kapur, M. Hidayatullah**

PETITIONER:  
ESTHURI ASWATHIAH

Vs.

RESPONDENT:  
THE INCOME-TAX OFFICER, MYSORE STATE

DATE OF JUDGMENT:  
05/12/1960

BENCH:  
SHAH, J.C.  
BENCH:  
SHAH, J.C.  
KAPUR, J.L.  
HIDAYATULLAH, M.

CITATION:  
1961 AIR 1149                      1961 SCR (2) 911  
CITATOR INFO :  
RF                      1967 SC 916 (8)

ACT:  
Income Tax--Reassessment--Notice issued by Income--tax Offi-  
cer--if without jurisdiction--Indian Income-tax Act, 1922  
(11 of 1922), ss. 34(1)(a), 23(1), 22(3)--Finance Act, 1950  
(XXV of 1950), S. 13(1)--Part--B States (Taxation  
Concessions) Order, 1950, cl. 5(1).

HEADNOTE:  
The appellants, a Hindu undivided family, carrying on  
business in the former State of Mysore, were assessed under  
the Mysore Income-tax Act for the year of assessment 1949-50  
corresponding to the year of account July 1, 1948, to June  
30, 1949. The Indian Income-tax Act came into force in that

area in April 1, 1950, and on December 26, 1950, notice under s. 22(2) of that Act was served upon the appellants to submit their return for the assessment year 1950-51. On September 8, 1952, the appellants submitted their return stating that they had no assessable income for that year. The Income Tax Officer passed on that return an order, "no proceeding", and closed the assessment. When the appellants submitted their return for the next assessment year, their books of account disclosed an opening cash credit balance of Rs. 1,87,000 and odd on July 1. 1949. They failed to produce the books of account of the previous years, and the Income-tax Officer held that Rs. 1,37,000 out of the said opening balance represented income from an undisclosed source. The appellants submitted a fresh return for the assessment year 1950-51 purporting to do so under s. 22(3) of the Indian Incometax Act. Pursuant to the direction of the Appellate Assistant Commissioner, the Income Tax Officer on October 15, 1957, served on the appellants a notice under s. 34 of the Act and thereupon the appellants moved the High Court under Art. 226 for an order quashing the said notice and the proceeding as without jurisdiction. The High Court dismissed the petition.

Held, that it was not correct to say that the issue of the notice for reassessment was without jurisdiction as the assessment was yet pending.

Under S. 23(1) of the Indian Income-tax Act, it is open to the Income-tax Officer, if he is satisfied as to correctness of the return filed by the assessee, to assess the income and determine the sum payable on the basis of the return without requiring the assessee either to be present or to Produce evidence. The order 'no proceeding recorded on the. return must, therefore, mean that the Income Tax Officer had accepted the previous return and assessed the income as nil. A revised return under s. 22(3) filed by the assessee may be

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entertained only before the order of assessment and not thereafter. Lodging of such a return after the assessment is no bar to reassessment under s. 34(1) of the Act.

It could not be said, having regard to the provisions of s. 13(1) of the Finance Act (XXV of 1950) and cl. 5(1) of Part. B States (Taxation Concessions) Order 1950, issued by the Central Government under s. 60A of the Indian Income-tax Act, that for the assessment year 1950-51 the appellants were assessable under the Mysore Income-tax Act and not under the Indian Income-tax Act.

#### JUDGMENT:

**CIVIL APPELLATE JURISDICTION:** Civil Appeal No. 200 of 1960. Appeal from the Judgment and Order dated the 19th March, 1959, of the Mysore High Court, Bangalore, in Writ Petition No. 263 of

1957.

K.Srinivasan and R. Gopalakrishnan, for the appellant. A. N. Kirpal and D. Gupta, for the respondent. 1960. December 5. The Judgment of the Court was delivered by SHAH, J.-This appeal with certificate of fitness granted by the High Court of Judicature of Mysore is from an order rejecting the petition of the appellant for a writ to quash a notice of reassessment under s. 34 of the Indian Income Tax Act.

The appellants are a Hindu Undivided Family carrying on business in groundnuts and other commodities at Goribidnur, Kolar District, in the territory which formed part of the former State of Mysore. The Mysore Income Tax Act was repealed and the Indian' Income Tax Act was brought into force in the Part-B State of Mysore as from April 1, 1950. The appellants had adopted as their year of; account July 1 to June 30 of the succeeding year and they were assessed under the Mysore Income Tax Act on that footing for the year of assessment 1949-50 corresponding to the year of account July 1, 1948, to June 30, 1949. After the Indian Income Tax Act was applied to the State of Mysore on December 26, 1950, notice under s. 22(2) of the Indian Income Tax Act was served upon the appellants requiring them to submit their return of income for the assessment year 1950-51. On September 8, 1952, the appellants submitted their return stating that for the year ending June 30, 1949, corresponding to the assessment year 1949-50, they were assessed under the Mysore Income Tax Act, that their income for the year ending June 30, 1950, was assessable under the Indian Income Tax Act in the assessment year 1951-52 and that they had no assessable income for the assessment year 1950-51. The Income Tax Officer passed on that return an order "no proceeding" and closed the assessment. For the assessment year 1951-52, the appellants submitted their return of income. In the books of account produced by the appellants an opening cash credit balance of Rs. 1,87,000 odd on July 1, 1949, was disclosed. The Income Tax Officer called upon the appellants to produce their books of account of previous years, but the books were not produced on the plea that the same were lost. In assessing the income of the appellants for the year of account 1949-50, the Income Tax Officer held that Rs. 1,37,000 out of the opening balance in the books of account dated July 1, 1949, represented income from an undisclosed source. In appeal, the Appellate Assistant Commissioner observed that the appellants not having exercised their option under s. 2(ii) of the Indian Income Tax Act, and in the absence "of any system of accounting adopted" by them, the only course open to the Income Tax Officer was to take the financial year ending March 31, 1950, as the previous year for the income from an undisclosed source, and directed the Income Tax Officer to consider this credit in the assessment for the year 1950-51 after giving opportunity to the appellants to explain the nature and source thereof. Before the appeal was disposed of by the Appellate Assistant Commissioner, the appellants had submitted a fresh return for the assessment year 1950-51 purporting to do so under s. 22(3) of the Indian Income Tax Act. Pursuant to the direction of the Appellate Assistant Commissioner, the Income Tax Officer issued a notice of reassessment under s. 34 of the Income Tax Act and served it on October 15, 1957, calling upon the appellants to submit a fresh return. The appellants thereupon submitted a petition under Art. 226 of the Constitution to the High Court of Mysore praying for an order declaring that the notice under s. 34 was without jurisdiction and for quashing the notice and proceeding consequent thereon. This petition was dismissed by the High Court, but the High Court, on the application of the appellants, certified that the appeal was a fit one for appeal to this court.

Section 34(1) of the Indian Income Tax Act at the relevant time in so far as it is material provided:

"(1) If-

(a)..the Income Tax Officer has reason to believe that by reason of the omission or failure on the part of the assessee to make a return of his income under s. 22 for any year or to disclose fully and truly all material facts necessary for his assessment for that year, income, profits or gains chargeable to incometax have escaped assessment for that year, or

(b)..notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assessee, the Income Tax Officer has in consequence of information in his possession reason to believe that income, profits or gains chargeable to income-tax have escaped assessment for any year, he may in cases falling under el.

(a) at any time within eight years and in cases falling cl.

(b) within four years of the end of that year, serve on the assessee a notice containing all or any of the requirements which may be included in a notice under sub-s. (2) of s. 22 and may proceed to assess or reassess such income, profits or gains; and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section."

In the course of the assessment proceedings for 1951-52, the appellants produced their books of account containing an entry dated July 1, 1949, showing an opening cash balance of Rs. 1,87,000 odd which was not satisfactorily explained. Though called upon, they did not produce their books of account for the earlier year. The appellants had failed to disclose in their return for the assessment year 1950-51 any income. In the circumstances, the Income Tax Officer had reason to believe that by reason of failure on the part of the appellants to disclose fully and truly all' material facts necessary for assessment for that year, income chargeable to tax had escaped assessment. The Income Tax Officer had therefore jurisdiction to issue the notice for reassessment.

The submission that the previous return submitted on September 8, 1952, "had not been disposed of" and until the assessment pursuant to that return was made, no notice under s. 34(1) for reassessment could be issued, has in our judgment no substance. The Income Tax Officer had disposed of the assessment proceeding accepting the submission made by the appellants that they had no income for the assessment year 1950-51. Under s. 23(1) of the Indian Income Tax Act, it is open to the Income Tax Officer, if he is satisfied that the return made by an assessee under s. 22 is correct, to assess the income and to determine the sum payable by the assessee on the basis of the return without requiring the presence of the assessee or production by him of any evidence. The appellants had in their return dated September 8, 1952, submitted that they had no assessable income for the year in question and on this return, the Income Tax Officer had passed the order "no, proceeding". Such an order in the circumstances of the case meant that the Income Tax Officer

accepted the return and assessed the income as "nil". If thereafter, the Income Tax Officer had reason to believe that the appellants had failed to disclose fully and truly all material facts necessary for assessment for that year, it was open to him to issue a notice for reassessment.

Under s. 22, sub-s. (3), an assessee may submit a revised return if after he has furnished the return under sub-s. (2) he discovers any omission or wrong statement therein. But such a revised return can only be filed "at any time before the assessment is made" and not thereafter. The return dated February 26, 1957, was submitted after the assessment was made pursuant to the earlier return and it could not be entertained. Nor could the lodging of such a return debar the Income Tax Officer from commencing a proceeding for reassessment of the appellant under s. 34(1) of the Indian Income Tax Act.

There is also no substance in the contention that for the assessment year 1950-51 the assessee could be assessed under the Mysore Income Tax Act and not under the Indian Income Tax Act. By the Finance Act XXV of 1950 s. 13, cl. (1), it was provided in so far as it is material that:

"If immediately before the 1st day of April, 1950, there is in force in any Part-B State..... any law relating to income-tax or super-tax or tax on profits of business, that law shall cease to have effect except for the purposes of the levy, assessment and collection of income-tax and super-tax in respect of any period not included in the previous year for the purposes of assessment under the Indian Income Tax Act, 1922 (XI of 1922), for the year ending on the 31st day of March, 1951, or for any subsequent year."

By virtue of s. 13(1), the Mysore Income Tax Act ceased to be in operation as from April 1, 1950, except for the purposes of levy, assessment and collection of income-tax and super tax in respect of any period which was not included in the previous year for the purposes of assessment under the Indian Income Tax Act for the assessment year 1950-51. The appellants had been assessed for the period July 1, 1948, to June 30, 1949, under the Mysore Income Tax Act. It is manifest that for any account year which was the previous year in relation to the assessment year 1950-51, the appellants were liable to be assessed under the Indian Income Tax Act and not under the repealed Act. The year of account July 1, 1949, to June 30, 1950, was not a period prior to such previous year and therefore liability to pay tax in respect of that period could be assessed not under the Mysore Income Tax Act, but under the Indian Income Tax Act. It was urged that this interpretation of s. 13 may, when the account year of an assessee does not coincide with the financial year lead to double taxation of the income for the account year ending between April 1, 1949, and March 31, 1950. But in order to avoid the contingency envisaged by the appellants, the Central Government has, in exercise of its power under s. 60A of the Indian Income Tax Act, issued the Part-B States (Taxation Concessions) Order, 1950, which by cl. 5(1) provides amongst other things, that the income, profits and gains of any previous year ending after the 31st day of March, 1949, which is a previous year for the State assessment year 1949-50 shall be assessed under the Act (Indian Income Tax Act, 1922) for the year ending on the 31st March, 1951, if and only if such income, profits and gains have not, before the appointed day, been assessed under the State law. If, in respect of the previous year for the purposes of the assessment year ending 31st March, 1951, the appellants had been assessed by

any State Government under a law relating to income-tax in force in the State, the Indian Income Tax authorities would be in- competent to assess income for that year; but in default of such assessment income of the appellants for that year was assessable under the Indian Income Tax Act. The notice under s. 34 was also not issued after the expiry of the period prescribed in that behalf. The notice was issued by the Income Tax Officer because he had reason to believe that by reason of failure on the part of the appellants to disclose fully and truly all material facts necessary for the assessment for the the year 1950-51, income had escaped assessment. Such a notice fell manifestly within s. 34(1)(a) and could be issued within eight years, from the end of the year of assessment. The impugned notice under s. 34 for reassessment of the income of the appellants for the year 1950-51 was, in our judgment, properly issued and the High Court was right in dismissing the petition for a writ to quash the notice.

The appeal fails and is dismissed with costs.