

Calcutta High Court

Income-Tax Officer And Ors. vs Azizul Haque And Ors. on 20 July, 1979

Equivalent citations: 84 CWN 83, 1980 121 ITR 241 Cal

Author: S P Mitra

Bench: S P Mitra, S Datta

JUDGMENT Sankar Prasad Mitra, C.J.

1. This is an appeal from a judgment which Mr. Justice B. C. Mitra had delivered on the 14th March, 1966, on an application under Article 226 of the Constitution seeking appropriate writs for cancelling, rescinding, withdrawing and commanding the revenue authorities concerned to forbear from giving effect to certain notices dated February 20, 1960, issued under Section 34(1)(a) of the Indian I. T. Act, 1922.

2. The respondents are the legal representatives of one Md. Safiulla who died on March 23, 1953. The deceased owned several houses and other properties at Tinsukia in Assam and was assessed under the Indian I.T. Act, 1922, at Dibrugarh.

3. On December 24, 1954, the ITO, Dibrugarh, issued several notices under Section 34(1A) of the Act on some of the heirs and legal representatives of the deceased on the ground that there was reason to believe that incomes for the years 1940-41 to 1947-48 had escaped assessment. The persons who were served with these notices made an application under Article 226 of the Constitution on February 18, 1957, challenging the legality of the proceedings proposed to be initiated under Section 34(1A) of the Act on the ground that these notices had not been served upon all the legal representatives of the deceased. They obtained a rule nisi from this court in Civil Rule No. 609 of 1957. The rule was disposed of by Mr. Justice Bachawat by his Lordship's judgment delivered on the 9th June, 1959. The rule was made absolute to the extent that the ITO was directed to forbear from proceeding to assess or reassess the deceased's income for the relevant years without serving notices on the other legal representatives of the deceased in accordance with law. Mr. Justice Bachawat made it clear that it would be open to the ITO to proceed to assess 'or reassess the income, profits or gains in accordance with Section 34(1 A) of the Act, after two of the deceased's representatives, namely, Hakima Khatoon and Gulabi Bibi, had been served in accordance with law. The two notices on Hakima Khatoon and Gulabi Bibi were not served. But the ITO, Central Circle XV, the appellant No. 2 herein, issued several notices under Section 34 of the Act for the years 1940-41 to 1947-48.

4. Upon receipt of these notices, the advocate for some of the legal representatives wrote to the ITO enquiring as to the particular clause of Section 34 of the Act under which these notices were issued.

5. The allegation in the petition before Mr. Justice B. C- Mitra was that the said ITO without replying to the said advocate's letter completed the assessment under Section 23(4) of the Act and assessed the total income for the several years. The assessment order was followed by an application under Section 27 of the Act for cancellation of the ex parte assessment. The ground shown for cancellation was that the petitioners were prevented by sufficient cause from not complying with the said notices.

6. On January 30, 1962, the ITO, Central Circle VI, the appellant No. 1 herein, rejected the application under Section 27 of the Act.

7. An appeal was preferred to the AAC. By his order dated October 26, 1962, the AAC confirmed the ITO's order under Section 27 of the Act.

8. There was a further appeal to the Income-tax Appellate Tribunal. The Tribunal allowed the appeal on August 12, 1963. The Tribunal directed the ITO to reopen the assessment and to proceed from the stage after the service of the notice under Section 34 of the Act.

9. On January 30, 1964, the ITO, Central Circle VI, issued several notices under Section 22(4) of the Act calling upon the said legal representatives of the deceased to produce various documents specified in the said notices. These notices were preceded by a letter dated December 11, 1963, from the appellant No. 1 informing the said legal representatives that the proceedings had been initiated under Section 34(1)(a) of the Act.

10. Before Mr. Justice B. C. Mitra two grounds were advanced by learned counsel appearing for the said legal representatives. These grounds were :

(1) Two notices, one under Section 34(1A) and the other under Section 34(1)(a), could not exist side by side. A return had been filed pursuant to the notice under Section 34(1A) of the Act, and without completing the assessment on the basis of that return, another notice for the same period under Section 34(1)(a) of the Act could not be issued.

(2) No income could be assessed as income which had escaped assessment under Section 34(1) of the Act so long as a valid return under Section 34(1A) was on the record. And without proceeding to assess the income on the basis of the return under Section 34(1A) of the Act, it was not open to the respondents to assess the income on the basis that such income had escaped assessment. Therefore, unless the assessment was made on the basis of the return filed under Section 34(1A), the question of any income having escaped assessment, could not arise.

11. Mr. Justice B. C. Mitra has held that the appellants cannot ignore the return filed under Section 34(1A) of the Act and then proceed to issue a notice under Section 34(1)(a) of the Act on the ground that income had escaped assessment. Merely because it has become impossible to serve a notice under Section 34(1A) the appellants cannot claim the right to proceed against the assessee under Section 34(1)(a) and initiate a fresh proceeding at a time when there is already a return filed on behalf of the deceased under Section 34(1A). The learned trial judge was of the view that the earlier proceedings under Section 34(1A) had neither been terminated by an order of assessment nor cancelled on the ground that it had become abortive and infructuous. The revenue authorities were not justified in those circumstances in keeping the earlier proceeding on record as a subsisting proceeding and commence a parallel proceeding under Section 34(1)(a). According to the learned trial judge, the notice under Section 34(1)(a) was invalid and was issued without jurisdiction. Such notice could not be issued ignoring the return already filed under Section 34(1A). The learned trial judge issued writs in the nature of certiorari, mandamus and prohibition to stop the proceedings

launched under Section 34(1)(a).

12. This appeal is directed, as we have said, against the judgment of B. C. Mitra J.

13. Mr. Sanjay Bhattacharjee, appearing for the respondents, has argued before us that the return filed under Section 34(1A) is a return in respect of the deceased's income and even if it was filed by only one legal representative of the deceased, it was a valid return. In view of the fact that for the years in question there is a valid return, according to the learned counsel, no further notice under Section 34(1)(a) calling upon the assessee to file a return is permissible under the law so long as the proceeding or assessment on the basis of the return already on record is not terminated.

14. Mr. Bhattacharjee also drew our attention to the provisions of Section 24B(1) and (2) of the 1922 Act to contend that the tax of the deceased person is payable by his legal representatives. He has said that the return can be filed by only one representative. The ITO cannot ignore the return but should take steps for bringing in the other legal representatives on record.

15. Quite a few decisions of the Supreme Court and also of our court were cited before us on behalf of the respondents. These decisions show that when there is a return filed under Section 22, it has to be followed by the proceedings envisaged by the Act and until those proceedings are terminated by an order of assessment steps under Section 34(1)(a) of the Act cannot be taken. These principles will apply even when the assessee has filed a return showing no taxable income at all or a return which is imperfect or incomplete. Since we are not disputing these propositions, we think it unnecessary to refer to the decisions placed before us in this judgment. It seems to us that this appeal requires careful consideration of the language used in Sections 22, 34(1)(a) and 34(1A) so far as the provisions of these sections are relevant for our purposes. Let us take Section 22 of the Act first. It is in these terms :

"22. (1) The Income-tax Officer shall, on or before the 1st day of May in each year, give notice, by publication in the press and by publication in the prescribed manner, requiring every person whose total income during the previous year exceeded the maximum amount which is not chargeable to income-tax to furnish, within such period not being less than sixty days as may be specified in the notice, a return, in the prescribed form and verified in the prescribed manner, setting forth (along with such other particulars as may be required by the notice) his total income and total world income during that year :

Provided that the Income-tax Officer may in his discretion extend the date for the delivery of the return in the case of any person or class of persons.

(2) In the case of any person whose total income is, in the Income-tax Officer's opinion, of such an amount as to render such person liable to income-tax, the Income-tax Officer may serve a notice upon him requiring him to furnish, within such period, not being less than thirty days, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as may be provided for in the notice) his total income and total world income during the previous year :

Provided that the Income-tax Officer may in his discretion extend the date for the delivery of the return.

(2A) If any person, who has not been served with a notice under Sub-section (2) has sustained a loss of profits or gains in any year under the head 'Profits and gains of business, profession or vocation', and such loss or any part thereof would ordinarily have been carried forward under Sub-section (2) of Section 24, he shall, if he is to be entitled to the benefit of the carry forward of loss in any subsequent assessment, furnish within the time specified in the general notice given under subsection (1) or within such further time as the Income-tax Officer in any case may allow, all the particulars required under the prescribed form of return of total income and total world income in the same manner as he would have furnished a return under Sub-section (1) had his income exceeded the maximum amount not liable to income-tax in his case, and all the provisions of this Act shall apply as if it were a return under subsection (1).

(3) If any person has not furnished a return within the time allowed by or under Sub-section (1) or Sub-section (2), or having furnished a return under either of those Sub-sections, discovers any omission or wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made.

(4) The Income-tax Officer may serve on any person who has made a return under Sub-section (1) or upon whom a notice has been served under Sub-section (2) a notice requiring him, on a date to be therein specified, to produce, or cause to be produced, such accounts or documents as the Income-tax Officer may require, or to furnish in writing and verified in the prescribed manner information in such form and on such points or matters (including, with the previous approval of the Commissioner, a statement of all assets and liabilities not included in the accounts) as the Income-tax Officer may require for the purposes of this section :

Provided that the Income-tax Officer shall not require the production of any accounts relating to a period more than three years prior to the previous year.

(5) The prescribed form of the returns referred to in Sub-sections (1) and (2) shall, in the case of an assessee engaged in any business, profession or vocation, require him to furnish particulars of the location and style of the principal place wherein he carries on the business, profession or vocation and of any branches thereof, the names and addresses of his partners, if any, in such business, profession or vocation and the extent of the share of the assessee and the shares of all such partners in the profits of the business, profession or vocation and any branches thereof."

16. We see, therefore, that under Section 22 of the Act, the ITO calls for returns from the assesseees. And when returns are filed under any of the Sub-sections of Section 22 of the Act, the ITO may require him to produce or cause to be produced various accounts or documents as he may require for the purpose of assessment of income. Section 22, therefore, contains elaborate provisions for calling for the returns, submission of returns and production of documents and accounts in support of the returns.

17. We then come to the relevant portions of Section 34(1)(a). These are as follows:

"34. (1) If-

(a) the Income-tax Officer has reason to believe that by reason of the omission or failure on the part of an assessee to make a return of his income under Section 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 income-tax have escaped assessment for that year, or have been under-assessed or assessed at too low a rate, or have been made the subject of excessive relief under the Act, or excessive loss or depreciation allowance has been computed, or.....

he may in cases falling under Clause (a) at any time.....serve on the assessee, or, if the assessee is a Company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under Sub-section (2) of Section 22 and may proceed to assess or reassess such income, profits or gains or recompute the loss or depreciation allowance; 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 :....."

18. The words "at any time" were introduced by the Finance Act of 1956. The previous provision was "within eight years" instead of "at any time".

19. It is to be noted further that under Section 34(1)(a) of the Act (which is directly linked with Section 22), when the ITO proceeds to assess or reassess, the provisions of the 1922 Act apply to the proceedings as if the notice under Section 34(1)(a) were a notice issued under Sub-section (2) of Section 22. This is a very significant provision which, in our opinion, requires special attention in deciding this appeal.

20. Let us now come to the relevant provisions of Section 34(1A), particularly to observe the difference between Section 34(1)(a) and Section 34(1A). It lays down :

"(1A) If, in the case of any assessee, the Income-tax Officer has reason to believe-

(i) that income, profits or gains chargeable to income-tax have escaped assessment for any year in respect of which the relevant previous year falls wholly or partly within the period beginning on the 1st day of September, 1939, and ending on the 31st day of March, 1946 ; and

(ii) that the income, profits or gains which have so escaped assessment for any such year or years amount, or are likely to amount, to one lakh of rupees or more;

he may, notwithstanding that the period of eight years or, as the case may be, four years specified in Sub-section (1) has expired in respect thereof, serve on the assessee, or if the assessee is a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under Sub-section (2) of Section 22, and may proceed to assess or reassess the income, profits or gains of the assessee for all or any of the years referred to in Clause (i), and

thereupon the provisions of this Act (excepting those contained in Clauses (i) and (iii) of the proviso to Sub-section (1) and in Sub-sections (2) and (3) of this section) shall, so far as may be, apply accordingly:.....

Provided further that no such notice shall be issued after the 31st day of March, 1956."

21. Section 34(1A) was originally inserted by Ordinance No. VIII of 1954, which took effect from 1-4-54. These two sub-sections were later substituted by the same Ordinance.

22. It is apparent that Sub-section (1A) of Section 34 was enacted to rope in the income, profits or gains of the war years when action under Section 34(1)(a) was barred by limitation. Later on, the legislature amended Section 34(1)(a) and changed "within eight years" into "at any time".

23. Secondly, in enacting Section 34(1A), the legislature has excluded the words "and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice under that sub-section". This omission is again significant, in our point of view, in disposing of this appeal.

24. Upon close scrutiny of the provisions of Section 22, Section 34(1)(a) and Section 34(1A), it seems to us that a return filed under Section 34(1A) is a return which stands on its own footing. The proceedings under Section 34(1A) are the special proceedings different from the proceedings under Section 34(1)(a) of the Act.

25. Proceedings under Section 34(1)(a) can be commenced only when there is an omission or a failure on the part of the assessee to make a return under Section 22 or when that return does not disclose fully and truly all material facts. A return filed under Section 34(1A) is not a return under Section 22 and, therefore, even if a valid return has been filed under Section 34(1A) such a return is not a bar to the issue of a notice\* under Section 34(1)(a) of the Act. The Supreme Court also has noticed some of these special features of Section 34(1)(a) in CIT v. S. Raman Chettiar [1965] 55 ITR 630. The Supreme Court has said that there is no warrant in the I.T. Act for treating returns as "voluntary returns" and "non-voluntary returns". Section 22(3) does not use the expression "voluntary return" and, whatever the impelling cause or motive, if a return otherwise valid is filed by an assessee before the receipt of a valid notice under Section 34, it is to be treated as a return within Section 22(3) for it falls within the language of that sub-section. A return under Section 22(3), says the Supreme Court, must be filed before the time mentioned in Section 34(3).

26. On our reading of the three sections involved in this appeal, it would not be proper to strike down the notices under Section 34(1)(a) of the Indian I.T. Act, 1922, in the instant appeal.

27. It has been argued before us that in the present case even a valid return under Section 34(1A) was not filed under the Mohamedan law as all the heirs of the deceased simultaneously succeeded to

the estate of the deceased in definite shares. Therefore, assessment in respect of the estate of the deceased can only be made after notices have been duly served on all the heirs and thereafter assessment is made of the taxable income. Reliance was placed on the Madras High Court's judgment in CIT v. Smt. Rahima Bi [1977] 107 ITR 810.

28. In view of our conclusion that a return under Section 34(1 A) is not a return under Section 22 and does not create a bar to the issue of a notice under Section 34(1)(a), it is unnecessary for us to go into this question. Mr. Bhattacharjee submitted that the other legal representatives could be brought on record. But then the tax authorities would have been laced with satisfying the court that the other representatives accepted the return already filed either expressly or impliedly and the assessment was binding on each and every one of them. As we are not expressing any opinion on this question in this appeal, we do not propose to enter into these complications.

29. In the result, this appeal is allowed. The judgment and order under appeal are set aside. The rule is discharged. Interim orders, if any, are vacated. We make no order as to costs.

30. There will be a stay of operation of the order for two weeks but the oral application of Mr. Sanjay Bhattacharjee for leave to appeal to the Supreme Court is refused on the ground that there is no substantial question of law of general importance in this case as no notice can be issued under Section 34(1A) of the Indian I.T. Act, 1922, after the 31st day of March, 1956.

S.K. Datta, J.

31. I agree.