Supreme Court of India
Bhimraj Pannalal vs Commissioner Of Income-Tax, ... on 18 October, 1960
Equivalent citations: 1961 41 ITR 221 SC
Author: S Das
Bench: J Shah, M Hidayatullah, S Dass
JUDGMENT S.K. Das, J.

1. These three appeals have been brought to this court on certificates of fitness granted by the High Court of Patna under the provisions of section 66A (2) of the Indian Income-tax Act, 1922. The assessee, appellant before us, is a Hindu undivided family carrying on business in cloth and grains at Ranchi in the State of Bihar. It was assessed to income-tax in the assessments made for those years 1944- 45, 1945-46 and 1946-47. Subsequent to the original assessment made for those years, the Income-tax Officer received definite information that the appellant was carrying on business with Messrs. Mangalchand Basantlal of Khurja in the district of Aligarh in the State of Uttar Pradesh under different names; that it had remitted certain amounts from Ranchi to Messrs. Mangalchand Basantlal; that Messrs. Mangalchand Basantlal had sent a draft of Rs. 2,500 to Amritsar on behalf of and under the instruction of the appellant; and that the appellant had also earned profits by business dealings in peas, etc. "Whether in the facts and circumstances of these cases the proceedings started on December 10, 1947, under section 34 of the Income-tax Act, as amended by Act XLVIII of 1948, for reopening the assessments of the years 1944-45, 1945-46 and 1946-47 were valid ?"

2. But this references was not pressed. The appellant then moved the High Court under section 66 (2) of the Indian Income-tax Act, 1922, and the High Court framed the question in each of the three cases and called for a statement. We need read only one of the questions, viz., that relating to the assessment year 1944-45. That question read :

"Whether in the circumstances of the case the assessment of a sum of Rs. 28,000 to income-tax in the hands of the assessee is legally valid under section 34 of the Income-tax Act ?"

3. An identical question was framed in the other two cases, except for the difference in the amount of escaped income for the years 1945-46 and 1946-47.

4. The High Court answered the question against the assessee in its judgment and order dated April 24, 1957. The answer was the same in all the three cases relating to the three assessment years. The three appeals have been preferred from the said judgment and order of the High Court of Patna.

5. Learned counsel for the appellant has frankly stated that he is not in position to contend that the proceedings under section 34 were ab initio void. Indeed, as the High Court has rightly pointed out, there were enough materials on which the Income-tax Officer could initiate proceedings under section 34 for the three assessment years in question. Learned counsel for the appellant has, however, sought to argue that the amount of escaped income found for each of the three assessment years was based on no materials and was pure guess-work; he has contended that there was no scope in cases of this nature for making an assessment under section 23 (4) of the Act.

6. We consider that this contention is not now open to the appellant. The question as framed by the High Court was indeed wide enough to entitle the appellant to raise the point that the quantum of the assessment for each assessment year was not legally sustainable as there were no materials in support thereof. But the appellant did not raise any such point in the High Court. On the contrary, the judgment of the High Court records that "Mr. S. N. Dutt, who appeared for the assessee in each case, has not disputed the quantum of assessment." The two-fold argument advanced in the High Court was - first, that the assessed income could not be said to be "escaped income" within the meaning of section 34, and, secondly, that there was no material to support the assessment under section 34. Both these arguments were fully dealt with by the High Court and learned counsel for the appellant has not been able to show that there is any error in the reasoning of the High Court with regard to them. The quantum of assessment was not questioned in the High Court, and the appellant cannot now be allowed to raise a contention which counsel for the appellant had specifically given up in the High Court.

7. Learned counsel for the appellant has made a futile attempt to show that the appellant contested the quantum of assessment also and in the High Court the validity of assessment even with regard to its quantum was challenged. The record of the High Court settles the question conclusively; and neither in the application for leave to appeal to this court, nor in the statement of the case filed here on behalf of the appellant, was it stated that learned counsel did not make the concession as recorded in the judgment of the High Court or that he disputed the quantum of assessment for any of the three years in question.

8. For these reasons, we hold that there is no merit in these appeals, which are accordingly dismissed with costs. One hearing fee.

9. Appeals dismissed.