Supreme Court of India

The Commissioner Of Income-Tax, ... vs K.Adinarayana Murty on 3 April, 1967

PETITIONER:
THE COMMISSIONER OF INCOME-TAX, ANDHRAPRADESH, HYDERABAD

Vs.

RESPONDENT:
K.ADINARAYANA MURTY

DATE OF JUDGMENT:
03/04/1967

BENCH:

ACT:
Indian Income-tax Act, 1922, s.34-Notice of reassement issued to assessee in status of individual-Return filed in status of HUF-Appellate Authority holding that correct status was HUF-Another notice under v. 34 issued-Assessment on return filed in response to second notice-Validity of assessment.

HEADNOTE:
The respondent had two sons. Prior to the assessment year 1954-55 the Income-tax Authorities assessed him as had of a Hindu undivided family. In 1954-55 the Income-tax Officer held that he was an 'individual' and assessed him accordingly. Thereafter, having obtained sanction from the Commissioner he issued to the respondent a notice under s. 34 of the Income-tax Act 1922 in respect of the year 1949-50 in the status of an individual. A return was filed by the respondent in response to the notice. However in the appeal relating to 1954-55 the Appellate Assistant Commissioner held thatthe correct status of the assessee was that of a Hindu undivided family. The Income-tax Officer then issued another notice under s. 34 to therespondent in respect of 1949-50 in the status of a Hindu undivided family. On he return filed in response to this second notice the Incometax Officer made an assessment adding certain "escaped income" -to that originally assessed for 1949-50. In reference, the High Court held that the first of the notices under s. 34 was not invalid in law and consequently the issue of the second notice was illegal and the assessment made in pursuance of it was illegal. The Revenue appealed to this Court.
HELD : Under the scheme of the Income-tax Act the Individual' and the 'Hindu undivided family' are treated as separate units of assessment and if a notice under s. 34 of the Act is wrongly issued to the assessee in the status of

an 'individual' and not in the correct status of 'Hindu undivided family', the notice is illegal and ultra-vires and without jurisdiction. [391F-G]
The Income-tax Officer was therefore justified in ignoring the first notice under s. 34 of the Act and the return filed by the assessee in response to that notice and consequently the assessment made by the Income-tax Officer pursuant to the second notice was a valid assessment. [391H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 632 of 1966. Appeal by special leave from the judgment and Order dated April 14, 1964 of the Andhra Pradesh High Court in case referred No. 46 of 1962.

B.Sen, Gopal Singh, S. P. Nayyar and R. N. Sachthey, for the appellant.

S. T. Desai, B. Parthasarathy, and O. C. Mathur, for the respondent.

The Judgment of the Court was delivered by Ramaswami, J. This appeal is brought, by special leave, from the judgment of the High Court of Andhra Pradesh dated April 14, 1964 in Referred Case No. 46 of 1962.

The respondent, hereinafter called the "assessee" was a Hindu Undivided Family consisting of K. Ankineedu and his two sons. For the assessment year 1949-50 corresponding to the previous financial year ending March 31, 1949, the assessee submitted a return in response to a notice sent to him. The Income-tax Officer computed his total income as Rs. 2,429/- only which was below the taxable limit and so the assessee was declared not liable to pay income-tax. Subsequent to the assessment, the Income-tax Officer had information that the assessee had done some business as pro- curement agent for the Government and in this business he had earned large profits which had escaped assessment. Accordingly he issued a notice under s. 34 of the Income-tax Act, 1922 (hereinafter called the 'Act') on March 22, 1957. In response to the notice the assessee made a return on April 30, 1957. Prior to the issue of the above notice the Income-tax Officer had taken the view in the assessment made for the year 1954-55 that the correct status of the assessee was not 'Hindu Undivided Family' but his status was "individual". In accordance with this view the notice under s. 34 of the Act was issued to the assessee on March 22, 1957 in the status of an 'individual'. As the proceedings under this notice were continuing, but before the assessment could be made, the Appellate Assistant Commissioner in the appeal for the assessment year 1954-55 accepted the contention of the assessee and held that the. status of the assessee was that of 'Hindu Undivied Family'and not' individual'. Thereafter,the Income-tax Officer issued a fresh notice under s. 34 on February 12, 1958 which was served on the assessee on the same day. This notice was issued to assess the income of the assessee as a 'Hindu Undivided Family' from the procurement business which had escaped from the original assessment made on February 10, 1950. A return in pursuance of the second notice was duly filed on February 28, 1958 and the assessment was ultimately made

under s. 34 of the Act in the status of 'Hindu Undivided Family' on August 16, 1958. In this assessment, a sum of Rs. 60,000/- was included as the income escaping from the original assessment. The assessee preferred an appeal to the Appellate Assistant Commissioner and contended that the proceedings under- s. 34 of the Act were not valid because no notice could be issued after the expiry of 8 years from the close of the 'previous year' as distinct from the 'assessment year'. The Appellate Assistant Commissioner accepted the contention raised by the assessee and held that the proceeding was invalid. The Income-tax Officer took the matter in appeal before the Income-tax Appellate Tribunal and claimed that -the period of limitation for starting proceedings under S. 34 was to be counted from the end of the 'assessment year' and not from the end of the 'previous year'. The Tribunal accepted his contention and overruled the view of the Appellate Assistant Commissioner on this point. The assessee also contended that the assessment proceeding started by the second notice dated February 12, 1958 was bad in law as he had already made a return on April 30, 1957 which was in pursuance of the first notice under S. 34 issued on March 22, 1957. It appears from the statement of the case that the Income-tax Officer was required to disclose the particular notice on which he made the assessment. The Income-tax Officer said that the assessment was based oil the second notice. The Appellate Tribunal took the view that the return filed by the assessee on April 30, 1957 in response to the first notice was not a valid return and the Income-tax Officer was not bound to act upon it. Accordingly the Appellate Tribunal held that the assessment made under the second notice was legally valid. Since the Appellate Assistant Commissioner did not deal with the merits of the assessment the Appellate Tribunal remanded the appeal to the Appellate Assistant Commissioner for being dealt with on merits. At the instance of the assessee the Appellate Tribunal stated case to the High Court on the following question of law:

> "Whether, on the facts and in the circumstances of the case, the assessment in pursuance of the notice issued under s. 34 on 12-2-1958 is a valid assessment The High Court held that the first notice dated March 22, 1957 was not invalid in law and consequently the issue of the second notice on February 12, 1958 was illegal and the assessment made in pursuance of that notice was also illegal. The High Court accordingly answered the question of law in favour of the assessee.

The question presented for determination in this appeal is whether it was competent for the Income-tax Officer to issue the second notice dated February 12, 1958 and continue proceedings thereon ignoring the return already filed by the assessee in pursuance of the first notice under the same section. It was pointed out by Mr.S. T. Desai on behalf of the assessee that both the notices under s.34 of the Act were in identical terms and were addressed to the assessee in his name and the issue of the second notice made no difference in its contents to the knowledge of the assessee. It was also contended that the assessee filed his return in the status of 'Hindu Undivided Family' in response to the first notice and the Income-tax Officer ought not to have ignored that return. We are unable to accept the argument put forward on behalf of the assessee as correct. The Income-tax Officer could not have validly acted on. the return filed by the assessee in the status of 'Hindu Undivi-

ded Family and assessment made by the Income-tax Officer on such a return would have been invalid in law because the notice under s. 34 had been issued in the status of 'individual' 'and

sanction of the Commissioner for the issue of a notice under s. 34 was also obtained on that basis. We therefore consider that the Income-tax Officer was entitled to ignore the return filed by the assessee as non est in law. It is not disputed that the Income-tax Officer issued the first notice under s. 34 of the Act on March 22, 1957 to the assessee in the status of 'individual'. The Appellate Tribunal has stated in para 3 of the statement of the case that the lncome-tax Officer had taken the view that the correct status of the assessee was 'individual' and in accordance with that view "a notice under s. 34 was issued to the assessee as above for making an assessment in the status of 'individual' ". As there was some ambiguity in the statement of the case on this point, we referred to the original file of the income-tax proceedings and satisfied ourselves that the assertion of fact made in the statement of the case is correct. It appears that on February 13, 1957 the Income-tax Officer had applied for the sanction of the Commissioner for instituting proceedings under s. 34(1)(a) of the Act against the assessee to make an assessment in the status of an 'individual' with regard to the procurement agency business. Sanction of the Commissioner was given to the proposal of the Income-tax Officer and thereafter the first notice under s. 34 of the Act was issued on March 22, 1957. In this state of facts we are of opinion that the proceeding taken under the first notice under s. 34 of the Act was invalid and ultra vires. The correct status of the assessee was that of 'Hindu Undivided Family' as was held by the Appellate Assistant Commissioner in the assessment for the year 1954-55 and since the first notice under s. 34 was issued to the assessee as an 'individual' for making assessment in that status, it is manifest that the proceedings taken under that notice were illegal and without jurisdiction. Under the scheme of the Income-tax Act the 'Individual' and the 'Hindu Undivided Family' are treated as separate units of assess- ment and if a notice under s. 34 of the Act is wrongly issued to the assessee in the status of an 'individual' and not in the correct status of 'Hindu Undivided Family' the notice is illegal and all proceedings taken under that notice are ultra vires and without jurisdiction. It was contended by Mr. S. T. Desai on behalf of the assessee that the return was filed by the assessee in response to the first notice in the character of 'Hindu Undivided Family'. But the submission of the return by the assessee will not make any difference to the character of the proceedings in pursuance of the first notice which must be held to be illegal and ultra vires for the reasons already stated. We are therefore of the opinion that the Income-tax Officer was legally justified in ignoring the first notice issued under s. 34 of the Act and the return filed by the assessee in response to that notice and consequently the assessment made by the Income-

tax Officer in pursuance of the second notice issued on February 12, 1958 was a valid assessment.

We accordingly allow this appeal, set aside, the judgment of the High Court of Andhra Pradesh dated April 14, 1964 and hold that the question of law referred to the High Court should be answered in the affirmative and against the assessee. There will be no order as to costs in this appeal.

G.C.

Appeal allowed.