

Supreme Court of India

Commissioner Of Income-Tax, ... vs Banwari Lal Agarwal on 18 January, 1971

Equivalent citations: 1971 80 ITR 326 SC, (1972) 4 SCC 80

Author: J Shah

Bench: J Shah, A Grover, K Hegde

JUDGMENT J.C. Shah, C.J.

1. In proceedings for assessment of income-tax for the years 1947-48 and 1948-49, the Income-tax Officer, Ranchi, held that Banwari Lal Agarwal, hereinafter called "the assessee", had invested Rs. 17,425 in the year of account relating to the assessment year 1947-48, and Rs. 35,500 in the year of account relevant to the assessment year 1948-49, in Indian Woollen and Silk Stores, Ranchi, of which the assessee was a partner. The Income-tax Officer included those sums as the income from undisclosed sources in the assessment of the Hindu undivided family styled M/s. Narmal Ramkumar of which the assessee was a member in the two respective assessment years. The Hindu undivided family appealed against that order. The Appellate Tribunal held in respect of the appeal for the assessment year 1947-48 that a sum of Rs. 17,425 represented the income from from undisclosed sources but it could not be assessed in the hands of the Hindu undivided family. But in respect of the appeal for the year 1948-49, following the decision of the Tribunal in the appeal relating to the assessment year 1947-48, the Appellate Assistant Commissioner directed that the sum of Rs. 35,500 be removed from the assessment of the Hindu undivided family and that it be assessed in the hands of the assessee.

2. The Income-tax Officer then commenced a proceeding for assessment of the income of the assessee for the year 1948-49, under Section 34(1)(a) after obtaining the sanction of the Commissioner of Income-tax. The Commissioner's sanction was specifically given on the direction given by the Appellate Assistant Commissioner. In proceedings for assessment before the Income-tax Officer it was contended by the assessee that the proceeding under Section 34(1)(a) was barred by limitation, as it was initiated more than eight years after the expiry of the assessment year. The Income-tax Officer rejected the contention and assessed the sum of Rs. 35,500 as the income of the assessee from undisclosed sources. The appeal filed by the assessee to the Appellate Assistant Commissioner did not succeed. The Appellate Tribunal, following the judgment of the Bombay High Court in Hiralal Amritlal Shah v. K.C. Thomas 1st. Income-tax Officer, M-Ward, Bombay., held that the proceeding under Section 34(1)(a) had become barred and was therefore invalid. At the instance of the Commissioner of Income-tax, the Tribunal referred the following question to the High Court of Patna:

Whether, on the facts and circumstances of the case, the Appellant Tribunal was right in holding that proceedings under Section 34(1)(a) of the Income-tax Act for the assessment year 1948-49 in the case of the assessee was invalid ?

3. The High Court answered the question in the affirmative. Against that order the Commissioner of Income-tax has appealed to this Court.

4. The principal argument advanced in the appeal is that the judgment of the Bombay High, Court in Hiralal Amritlal Shah's case . on which reliance was placed by the Tribunal was overruled by this Court ill K. C. Thomas, 1st Income-tax Officer, Market Ward, Bombay v. Vasant Hiralal Shah . and on that account the answer to the question referred be recorded in the negative. This Court held in K.C. Thomas's case . that the second proviso to Section 34(3) in the form in which it stood on the date of the issue of the notice of assessment would govern the whole of Section 34(1) and would, consequently, apply even to an assessment of escaped incomes with respect to which limitation is provided in clause (ii) of the first provision to Section 34(1). In that case, bar of limitation was held not to apply when an. order to reassess the income of the appellant was made.

5. Before an assessment can be said to be validly made under Section 34 two distinct conditions relating to limitation must be satisfied: under Sub-section (1) a notice for initiating proceedings for assessment or reassessment must be served within the period prescribed by Clauses (a) and (b) ; and assessment and reassessment must be completed within the period of limitation prescribed in Sub-section (3).

6. Notice to the assessee of assessment under Section 34(1)(a) was issued on July 24, 1957, i.e. , after the expiry of eight years prescribed by sec-Ron 34(1)(a). Sub-section (3) of Section 34 as it stood in 1957 when the notice of assessment was served provided (in so far as it is relevant) that: "No order of assessment or reassessment, other than an order of assess-KgDt under Section 23 to which clause (c) of Sub-section (1) of Section 28 applies or an order of assessment or reassessment in cases falling . within Clause (a) of Sub-section (1) ... of this section shall be made after the expiry of four years from the end of the year in which the income, profits or gains were first assessable ....

7. Provided further that nothing contained in this section... shall apply to... an assessment or reassessment made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under Section 31, Section 33, Section 33A, Section 33B, Section 66 Section 66A."

8. It was held by this Court in K.C. Thomas's case ; ., that proviso (ii) to section (3) was an exception to the entire section. Therefore, to an order of assessment or reassessment of the income of the assessee or any person in consequence of or to give effect to any finding or direction contained, inter alia, in an order of the Appellate Assistant Commissioner or the Tribunal, the periods of limitation contained in Sub-section (1) and Sub-section (3) shall not apply, i.e. , the requirements as to service of notice within the period of limitation prescribed under Sub-section (1) shall not apply nor shall the assessment be required to be completed within the period prescribed in the substantive part of Sub-section (3).

9. In the present case the Appellate Assistant Commissioner gave direction for assessment of the income of the assessee which had escaped assessment. Sanction of the Commissioner was also obtained in that behalf. But the assessee was not a party to the assessment proceeding. He was a person other than the assessee. Whereas, in K.C. Thomas's case . an order or reassessment of income was made against the original assessee, in the case in hand assessment is directed against a person other than the assessee in appeal in which the direction was made. If under Sub-section (3)

of Section 34 the assessment has to be completed within the period prescribed thereby and the time is not extended, competence to issue the notice under Section 34(1)(a) will not save the order of assessment; Before the Tribunal and the High Court this question was not raised. The Tribunal and the High Court followed the judgment in Hiralal Amritlal Shah's case . and held that a notice of assessment or reassessment under Section 34(1)(a) cannot be served against the assessee beyond the period of eight years from the last day of the year of assessment This Court took a different view holding that the second proviso to Section 34(3) applied to notices under Section 34(1)(a) as well.

10. This Court in S.C. Prashar v. Vasantsen Dwarkadas that the second proviso to Section 34(3) of the Income-tax Act, 1922, in so far as authorises the assessment or reassessment of any person other than the assessee after the expiry of the periods of limitation specified in Section 34 consequence of or to give effect to a finding or direction given in an appeal revision or reference arising out of proceedings in relation to the assessee violates Article 14 of the Constitution of India and is invalid to that extent In Income-tax Officer, A-Ward, Sitapur v. Murlidhar Bhagwan Das . this Court observed that the expressions "finding" and "direction" in the second proviso to Section 34(3) mean, respectively, a finding necessary for giving relief in respect of the assessment for the year in question, and at direction which the appellate or revisional authority, as the case may be is empowered to give under the sections mentioned in that proviso. The court observed that the expression "any person" in the second proviso to Section 34(3) referred to one who would be liable to be assessed for the whole or a part of the income that went into the assessment of the year under appeal or revision. In Murlidhar Bhagwan Das's case . no reference was made by the majority of the judges to the judgment in S.C. Prashar case . In the Estate of Late Rangalal Jajodia v. Commissioner of Income-tax this Court held that the expression "any person" in Section 34(3), proviso is a person intimately connected with "the assessment. The court in that case cited with approval the observations in Murlidhar Bhagwan Das case C. As. Nos. 2332-2335 of 1966, decided, on Nov. 19, 1970-.

11. The real dispute between the assessee and the department in this case is not whether the notice under Section 34(1)(a) was valid, but whether it is open to the Income-tax Officer to commence a proceeding for assessment pursuant to a direction given by the Appellate Assistant Commissioner after expiry of the period of limitation prescribed by Sub-section (3). On that part of the case, no question is raised. Counsel for the Commissioner has fairly conceded that the question referred does not bring out the only plea on a favourable decision on which the department may bring to tax the income which had escaped assessment. Counsel conceded that the question whether by virtue of the second proviso to Sub-section (3) of Section 34 the assessment could, in the circumstances of the case, be completed outside the bar of that Sub-section was not argued and not even raised before the Tribunal or before the High Court. We do not, therefore, deem it necessary to record our answer to the question raised.

12. The appeal fails and is dismissed. There will be no order as to costs