

Pannalal Nandlal Bhandari

Vs

Commissioner of Income-Tax, Bombay City

Civil Appeal No. 408 of 1957

(S.K. Das, M. Hidayatullah, J.C. Shah JJ)

18.10.1960

JUDGMENT

SHAH, J. -

To the appellant who was a non-resident for the purposes of the Indian Income-tax Act, 1922, had accrued in the assessment years 1943-44, 1944-45, 1946-47 and 1947-48 certain dividend income within the taxable territory of British India, but the appellant did not submit returns of his income for those assessment years. In exercise of his power under section 34 of the Indian Income-tax Act, 1922, the Income-tax Officer, Bombay City, served upon the appellant notices under action 34 read with section 22 (2) of the Act for assessment of tax in respect of those years. The notice for the year 1943-44 was served on the appellant on March 27, 1952, for the year 1944-45 on February 16, 1953, for the year 1946-47 on April 4, 1951, and for the year 1947-48 on April 2, 1952. The Income-tax Officer completed the assessments in respect of the years 1943-44, 1944-45, and 1947-48 on May 6, 1953, and for the year 1946-47 on March 19, 1952. The orders of assessment were confirmed by the Appellant Assistance Commis

"(1) Whether the notices issued under section 22 (2) of the Act read with section 34 of the Act for the assessment years 1943-44, 1944-45, 1946-47 and 1947-48 were served after the period of limitation prescribed by section 34 of the Act ?

(2) If the answer to Question No. 1 is in the affirmative, whether the assessments for the years in question were invalid in law ?"

The High Court answered the first question in the negative and observed that on that answer, the second question "did not arise." With special leave under a article 136 of the Constitution, this appeal is preferred by the appellant against the order of the High Court.

The only question which falls to be determined in this appeal is whether the proceedings which falls to be determined in this appeal is whether the proceedings for assessment were commenced within the period of limitation prescribed for serving notice of assessment under section 34 (1) (a) of the Act. At the material time, by section 34 (1) (a), the Income-tax Officer was invested with power amongst others to serve at any time within eight years from the end of any year of assessment notice of assessment if he had reason to believe that income, profits or gains had escaped assessment by reason of omission or failure on the part of the assessee to make a return of his income under section 22 for that year, or to disclose fully and truly all material facts necessary for his assessment of that year. In those cases where the Income-tax Officer had in consequence of information in his possession reason to believe that income, profits or gains had escaped assessment even tough there

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The expression "every person whose total income during the previous year exceeded the maximum amount which is not chargeable to income- tax" in section 22 (1) includes all persons who are liable to pay tax and there is nothing in the section or in its context which exempts non-residents from liability to submit a return pursuant to a notice thereunder. The fact that a non-resident assessee may not come to know of the general notice issued under section 22 (1) is not a ground for not giving effect to the plain words used in the section. In terms, the clause read with rule 18 requires every person who has taxable income to submit his return, and if he fails to do so, under section 34 to the Act the Income-tax Officer may commence proceedings for assessment within the period prescribed by clauses (1) (a). Section 34 (1) (b) applies only to those cases where there is no omission or failure to make a return of the income or to make a full and true disclosure of facts material to the assessment. To the appellant th

The Income-tax Act extends by section 1 (2) to the taxable territory and not beyond; but within that territory, the Income-tax Officer has power to tax income which accrues, arises or is received, and that is not disputed by the appellant. If power to tax be granted, it is difficult to appreciate the ground on which the plea that the general provision imposing liability upon persons receiving taxable income is subject to an unexpressed limitation that it is to apply only to residents and not to non-residents. The submission that a person liable to pay tax but resident outside the taxable territory must be served with a special notice under section 22 (2) before his inaction in the matter of making a return may be deemed omission within the meaning of section 34 (1) is without force. There is no such express provision made by the statute and none can be implied from the context.

The High Court was therefore right in holding that the proceedings for assessment were properly commenced within the period of limitation prescribed by section 34 (1) (a) from the close of the year of assessment. The appeal fails and is dismissed with costs.

Appeal dismissed.

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