

The First Additional Income-Tax Officer, Mysore

Vs

H. N. S. Iyengar

Civil Appeal No. 60 of 1961

(S. K. Das, J. L. Kapur, M. Hidayatullah JJ)

05.10.1961

JUDGMENT

KAPUR, J. –

This is an appeal on a certificate of the High Court under Art. 133(1)(c) of the Constitution against the judgment and order of the High Court of Mysore passed in a petition under Art. 226 of the Constitution of India. The appellant before us is the 1st Additional Income-tax Officer and the respondent is the assessee, and the matter relates to the assessment year 1948-49 the accounting year being 1947-48.

The facts of this appeal are as follows : On November 27, 1956, a notice was issued to the respondent under s. 34(1)(a) of the Indian Income-tax Act calling upon him to make a return on the ground that his income had escaped assessment for the assessment year ending 31st March, 1949. This notice was served on the respondent on November 29, 1956. The respondent objected that no notice under s. 34 of the Income-tax Act could be issued to him because of the lapse of eight years from the end of the accounting year. This objection was overruled and the respondent filed on June 12, 1957, in the High Court of Mysore, a petition under Art. 226 of the Constitution for a writ of certiorari quashing the order made by the Income-tax Officer.

The High Court held on a construction of s. 34 of the Indian Income-tax Act, that the words "any year" as used in s. 34(1)(a) mean not the assessment year but the accounting year. It is that question which is required to be decided in this appeal. Section 34(1)(a) reads :-

s. 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

(b)..... he may in cases falling under clause (a) at any time within eight years 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

re-assess 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;".

The argument is that the words "any year" in cl. (a) refer to the assessment year because under the Income-tax Act the income of the previous year is assessed for the assessment year. For this purpose reference was made to some of the other provisions of the Income-tax Act. In s. 3 of that Act, which is the charging section, it is provided :-

S. 3 "Where any (Central Act) enacts that income-tax shall be charged for any year at any rate or rates tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of (the total income) of the previous year of every (individual, Hindu undivided family, (company and other local authority, and of every firm and other association of persons or the partners of the firm or the members of the association individually)".

This shows that income-tax is charged for "any year" at the rate or rates set out in a Central Act and the reference is to the Indian Finance Act - in this case to that of 1948, (Act XX of 1948).

Section 9 of that Act reads as follows :-

S. 9(1) "Subject to the provisions of sub-sections (3), (4), (5) and (6), for the year beginning on the 1st day of April, 1948, -

(a) income-tax shall be charged at the rates specified in Part I of the Second Schedule to this Act, and

#(b).....##

(2) In making any assessment for the year ending on the 31st day of March, 1949,

(3) In making any assessment for the year ending on the 31st day of March, 1949, -

#(a).....(b).....##

It is quite clear from this section that according to the Finance Act 1948, the income tax was to be charged at the rates specified in the Schedule attached thereto for the year beginning on the 1st day of April, 1948, and the assessment was for the year ending on March 31, 1949 under sub-ss. (2) and (3). Thus according to the Indian Finance Act assessment was to be made for the year ending March 31, 1949 at rates specified for the year beginning April 1, 1948.

Coming now to s. 22(1) it is there provided that s. 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 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 :"

It shows, therefore, that a return has to be made for the year of assessment in regard to the total income during the previous year which is the accounting year; in other words income-tax is assessed for the assessment year on total income of the previous year.

When under s. 34(1)(a) a return is required the return has to be made under s. 22 for any year, and when the reference is to omission to make a return of the income under s. 22 for any year, the year is the assessment year, although the income which is declared relates to the previous year. The reference in cl. (a) of sub-s. (1) to s. 22 of the Act therefore makes the meaning of the phrase "for any year" referable to an assessment year. The clause makes it clear that an assessee can be called upon to make a full and true disclosure of all materials necessary for his assessment of that year which necessarily must mean an assessment year and it is, in our opinion, erroneous to say that a return under s. 22 of the assesses income for any year would have a different meaning in the first part from that dealing with the full and true disclosure of all material facts necessary for the assessment for that year.

With due respect to the learned Judges of the High Court who gave the decision the view taken by them as to the meaning of "any year" was erroneous, and the correct way of interpreting s. 34(1)(a) is that the words "for any year" mean for any assessment year and not for any accounting year because, as we have said above, the assessment is for the assessment year although of the income which accrued in the previous year. It may be added that the previous year for different heads of income falling under different sections of the Indian Income-tax Act may vary and it could not have been the intention of the Legislature to give different starting points of limitation for different sources of income. Reading the various sections of the Indian Income Tax Act, which are set out above and the provisions of Indian Finance Act 1948, it is clear that the words "that year" in s. 34(1)(a) have reference to the assessment year and not the accounting year.

Our attention was drawn to a judgment of this court in Pannalal Nandlal Bhandari v. Commissioner of Income-tax, Bombay City [[1961] 2 S.C.R. 35]. In that case it was held that once a notice is given in the prescribed manner under s. 22(1) of the Income-tax Act every person whose income exceeds the maximum amount, exempt from tax, is obliged to submit a return, and, if he does not do so it will be deemed that there was an omission on his part within s. 34(1)(a). The question now debated was not raised there but it was observed that the notices had been issued within eight years from the end of the years of assessment and if cl. (1)(a) of s. 34 was applied the assessment was not barred by the law of Limitation. It was also observed at page 79 that "the appellant not having submitted a return in pursuance of the notice issued under s. 22(1) the Income-tax Office was competent under s. 34(1)(a) to issue notice at any time within eight years of the end of the year of assessment for assessing him to tax".

The appellant also relied upon C.W. Spencer v. Income-tax Officer, Madras [[1957] 31 I.T.R. 107]. It was there observed :

"The period of limitation, whether it is eight years for cases falling under section 34(1)(a) or four years falling under section 34(1)(b), has to be computed from the end of that year. Though the expression "year" has not been further defined by section 34 itself, it should be clear from the context to the section itself that the year referred to is the assessment year and has no reference to the accounting year, which is elsewhere specified by the Act itself as the previous year."

In our opinion therefore, the view taken by the Madras High Court in C.W. Spencer's [[1957] 31 I.T.R. 107] case is the correct view and the view taken by the learned judges of the Mysore High Court is erroneous. We therefore allow this appeal, set aside the judgment and order of the High Court by which the proceedings taken against the respondent were quashed. The respondent will pay the costs of the appeal in this court and in the High Court.

Appeal allowed.

</html