K. S. Rashid & Sons and Another

Vs

Commissioner of Income-Tax, U. P. and others

Civil Appeals Nos. 37 - 40 of 1963

(CJI P. B. Gajendragodkar, K. N. Wanchoo, K. C. Das Gupta, J. C. Shah, N. Rajagopala Ayyangar JJ)

19.02.1964

JUDGMENT

GAJENDRAGADKAR, C.J.–

These civil appeals and writ petitions have been placed before us for hearing in a group, because all of them raise a common question of law about the validity of section 34(1A) of the Income-tax Act (No. XI of 1922) (hereinafter called 'the Act'). M/s. K. S. Rashid & Son, and its partner, Rashid Ahmed, are the appellants in Civil Appeals Nos. 37 to 40/1963, and petitioners in W.Ps. Nos. 335 - 345/1960. The appeals arise out of the four writ petitions (Nos. 870 - 873 of 1956) filed by the firm and its partner in the High Court of Allahabad challenging the validity of the notices served upon them under s. 34(IA) of the Act in respect of their income for the years 1941-42 to 1946-47. These writ petitions have been dismissed by the said High Court and it is with the certificate issued by it that the firm and its partner have come to this court in appeal. The Writ Petitions Nos. 335 - 345/1960 have been filed by the same parties in this Court under Art. 32 of the Constitution in respect of the notices served on them on the 19th March, 1956 and the order of excess profits tax levied on them. In those petitions, the same point is urged by the parties; and that is that the notices are invalid, because s. 34(IA) is itself ultra vires. The respondents to the appeals are : the Commissioner of Income-tax, U.P., Lucknow, and the Income-tax Officer, Central Circle IV, Delhi. The respondents to the writ petitions are : the Income-tax Officer, Central Circle IV, New Delhi, the Income-tax Officer, 'A' Ward, Meerut, the Commissioner of Income-tax, U.P., Lucknow, and the Central Board of Revenue, New Delhi.

Civil Appeal No. 589 of 1963 has been brought to this Court in similar circumstances by the appellant, M/s. Bhawani Prasad Girdharlal. The appellant had challenged the validity of the notices issued against to it on the 16th August, 1955 under s. 34(IA) of the Act. The writ petition filed by the appellant had been dismissed by the Allahabad High Court and it is with the certificate issued by the said High Court that the present appeal has been brought to this Court. That is how the only question which arises for our decision in this group of matters relates to the validity of s. 34(IA) of the Act.

The argument urged in support of the challenge to the validity of the impugned section is that it suffers from the vice of contravening Art. 14 of the Constitution. It is urged that whereas under s. 34(1) which deals with similar cases of assessees, the remedy by way of appeals and revisions under the relevant provisions of the Act is available to the assessees, that remedy is denied to the assessees against whom proceedings are taken under the impugned section. Section 34(1) thus gives a preferential treatment to the assessees who are similarly placed with the assessees dealt with under s.

34(IA); and that amounts to unconstitutional discrimination. It is also urged that in regard to cases falling under s. 34(I)(a) as it stood at the relevant time, a period of limitation of 8 years had been prescribed beyond which the assessing authority could not act, and this protection of the prescribed period of limitation is not available to the assessee against whom action is taken under the impugned section. It is on these two grounds that the validity of s. 34(IA) is challenged before us.

Section 34 deals with income which has escaped assessment. Section 34(1)(a) deals with cases where income has, inter alia, escaped assessment, owing to the omission or failure on the part of the assessee to make a return of his income under s. 22 for any year, or to disclose fully and truly all material facts necessary for his assessment for that year, whereas s. 34(1)(b) refers to cases where income has escaped assessment notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assessee. In respect of the first category of cases, s. 34(1) had provided at the relevant time that the Income-tax Officer may, in cases falling under cl. (a) at any time within eight years, and in cases falling under cl. (b) at any time within four years of the end of that year, serve on the assessee "a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of s. 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".

Let us now read the relevant portion of s. 34(1A). This provision lays down, inter alia, that if, in the case of any assessee, the Income-tax Officer has reason to believe :

> (i) that income has escaped assessment for any year in respect of which the relevant previous year falls wholly or partly within the period beginning on the 1st day of September, 1939, and ending on the 31st day of March, 1946; and
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> (ii) that the said income amounts, or is likely to amount, to Rs. 1 lakh or more, he may, notwithstanding that the period of eight years or, as the case may be, four years specified in sub-section (1) has expired in respect thereof, 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 reassess the income, profits or gains of the assessee for all or any of the years referred to in clause (i), and thereupon the provisions of this Act (excepting those contained in clauses (i) and (iii) of the proviso to sub-section (1) and in sub-sections (2) and (3) of this section) shall, so far as may be, apply accordingly :

Provided that the Income-tax Officer shall not issue a notice under this sub-section unless he has recorded his reasons for doing so, and the Central Board of Revenue is satisfied on such reasons recorded that it is a fit case for the issue of such notice :

Provided further that no such notice shall be issued after the 31st day of March, 1956.

It is urged that whereas in cases falling under s. 34(1), the Income-tax Officer has to deal with the matter on the footing that the notice issued against the assessee is a notice under s. 22(2), that obligation is not imposed on the Income-tax Officer while he deals with cases falling under s. 34(IA), because the words "as if the notice were a notice issued under that sub-section" which are found in s. 34(1) are omitted in s. 34(IA). It is not seriously disputed that if the notice issued under

s. 34(IA) is not deemed to be notice under s. 22(2), the remedies by way of appeals and revisions which are prescribed by sections 30, 31, 32, 33, 33A and 33B of the Act would not be available to the assessee, and so, the main basis for the attack against the validity of s. 34(IA) rests on the hypothesis that the omission of the relevant words in s. 34(IA) in substance deprives the assessee of the said remedies prescribed by the relevant provisions of the Act. If the assumption on which this challenge proceeds is well-founded, s. 34(IA) may suffer from the infirmity that it contravenes Art. 14. Though, as we will later point out, there is a rational classification between the assessee falling under s. 34(1), and those falling under s. 34(IA), that rational classification would not justify the denial of the right of appeal to the persons included in s. 34(IA). The question thus presented is one of construction.

Before dealing with the construction of s. 34(IA), it would be necessary to refer very briefly to the background of the enactment of the said section. This section was introduced by an amendment in the Act on the 17th July, 1954, and that was because s. 5(4) of the Taxation on Income (Investigation Commission) Act (No. 30 of 1947) was struck down by this Court as unconstitutional on May 28, 1954, in Suraj Mall Mohta and Another v. A. V. Viswanatha Sastri and Another ((1955) 1 S.C.R. 448). In that case, while examining the validity of s. 5(4) of the Investigation Commission Act, this Court held that the persons brought within the mischief of the said section belong to the same class of persons who fall within the ambit of s. 34 of the Act and are dealt with by s. 34(1), and in view of the fact that the procedure prescribed by s. 5(4) of the Investigation Commission Act was very much less favourable to the assessees than the one avail able to them if action was taken against them under s. 34(1), the conclusion reached was that the impugned s. 5(4) was unconstitutional. It is unnecessary to refer to the several grounds mentioned by Mahajan C.J. who spoke for the Court in striking down the impugned section.

After this judgment was pronounced, the legislature intervened and enacted s. 34(IA). That, however, was not the end of the matter. When s. 34(IA) was introduced in the Act, there remained two statutory provisions dealing with substantially the same subject-matter, section 5(1) of the Investigation Commission Act and s. 34(1) of the Act. In Shree Meenakshi Mills Ltd., Madurai v. Sri A. V. Viswanatha Sastri and Another ((1955) 1 S.C.R. 787), a point was raised before this Court as to whether it was open to the Income-tax Department to invoke s. 5(1) of the Investigation Commission Act after s. 34(IA) of the Act was enacted, and this Court held that it was not, because on comparing the two relevant provisions, s. 5(1), according to the decision of his Court, contravened Art. 14 of the Constitution. That is how, s. 5(1) became a dead letter and the Investigation Commission, in consequence, ceased to function. The cases which had been referred to that Commission and which had not been completed had, therefore, to be taken up under s. 34(IA) of the Act. Thus, it would be noticed that the present controversy has had a somewhat chequered career. The first challenge was to s. 5(4) of the Investigation Commission Act; when the challenge succeeded and the said section was struck down in the case of Suraj Mall Mohta ((1955) 1 S.C.R. 448) the legislature intervened and s. 34(IA) was added in the Act. Nevertheless, the cases pending before the Investigation Commission were sought to be continued before the said Commission under s. 5(1) and this section was struck down in the case of Shree Meenakshi Mills Ltd. ((1955) 1 S.C.R. 787); and, now, that proceedings against the same class of assessees are sought to be continued under s. 34(IA), it is urged that s. 34(IA) of the Act itself is invalid. It is in the light of this background that the controversy between the parties in the parties in the present proceedings has to be judged.

Reverting then to the question of construction, the narrow point which needs to be examined is, what is the effect of the omission to included in s. 34(IA) the clause "as if the notice were a notice

issued under that sub-section" which is to be found in s. 34(1) ? In dealing with this question, we think it would not be unreasonable to bear in mind that when the legislature enacted s. 34(IA), it must have desired to remove the infirmities which had rendered s. 5(4) of the Investigation Commission Act invalid. In other words, the legislature must have presumably wanted to afford to the assessees in respect of whom s. 34(IA) was intended to be invoked, the same remedies that were available to the assessees covered by s. 34(1). Though the importance or significance of this consideration cannot be unduly emphasised, it cannot be said that this consideration is altogether irrelevant.

We have already read the relevant portion of section 34(IA) and we have seen that it requires that a notice containing all or any of the requirements which may be included in the notice under s. 22, sub-section (2) has to be issued. In other words, the notice which is required to be issued is, in terms, in a sense referable to s. 22(2), because the legislature has provided that it must contain all or any of the requirements which would be included in such a notice. Then, s. 34(IA) provides that after issuing the notice on the assessee in the manner prescribed by it, the Income-tax Officer may proceed to assess or reassess the income, profits or gains of the assessee for the relevant years. In the context, it would, we think, be reasonable to hold that the assessment or reassessment which has to follow the issue of the notice, must be assessment or reassessment in accordance with the relevant provisions of the Act, and this is made very clear by the clause that follows, because the said clause begins with the word "thereupon" which indicates that when the process of assessment or reassessment commences, the clause beginning with the word "thereupon" comes into operation and this clause requires that the provision of the Act shall, so far as may be, apply accordingly. The word "accordingly" like the word "thereupon" seems to emphasise the applicability of the relevant provisions of the Act to the proceedings taken under s. 34(IA); otherwise there is no particular reason which would have justified the further provision in the section excepting certain provisions of the Act which are held to be inapplicable to the proceedings under s. 34(IA).

It is true that s. 34(1) uses the clause "as if the notice were a notice issued under that sub-section" and s. 34(IA) does not; but the two provisions were not inserted in the Act at the same time; s. 34(1) in the present form was enacted in 1948, whereas s. 34(IA) was enacted in 1954. It is quite likely that the draftsman who drafted s. 34(IA) took the view that the last clause in question which occurred in s. 34(1) was really superfluous and that may account for its omission in s. 34(IA). In our opinion, therefore, construing the relevant words in s. 34(IA), it would be difficult to accede to the argument that the said omission was deliberate and significant, and its consequence is that the provisions of s. 22 and all other provisions consequent upon the application of s. 22 become irrelevant in dealing with cases under s. 34(IA).

If s. 22 is held to be inapplicable to proceedings under s. 34(IA), the consequence would be entirely irrational and fantastic. The powers conferred on the Income-tax Officer under s. 23(2) to take evidence would then not be available to him, and, indeed, all the powers prescribed and the procedure laid down by s. 23 would become irrelevant. Likewise, the provisions in regard to appeals and revisions contained in sections 30, 31, 33, 33A and 33B would also be inapplicable. As we have already seen, the inapplicability of these provisions is the main foundation of the attack against the validity of s. 34(IA). It is, however, urged that though the specific powers conferred by s. 23 may not be available to the Income-tax Officer, he may, nevertheless, exercise similar powers, because the authority to assessee must itself include such powers as incidental to assessment. The best judgment assessment which is authorised by s. 23(4) may, it is suggested, be made even in cases falling under s. 34(IA) under the inherent authority of the Income-tax Officer. In our opinion, this approach is wholly misconceived. We are satisfied that it could not have been the intention of the

legislature when it enacted s. 34(IA) that the procedure prescribed by the relevant provisions of the Act beginning with s. 22 should not be applicable to proceedings taken under s. 34(IA), and that the procedure to be followed in the said proceedings and the powers to be exercised by the Income-tax Officers dealing with them should be what is vaguely described as 'the inherent or incidental powers' of such officers. Therefore, we have no hesitation in holding that the challenge made to the validity of s. 34(IA) on the ground that the remedy by way of appeals or revisions which is available to the assessee against whom proceedings are taken under s. 34(1) is not available to the assessees who are covered by s. 34(IA), cannot be sustained.

The other contention raised against the validity of s. 34(IA) is based on the fact that at the relevant time, s. 34(1)(a) dealt with cases similar to those falling under s. 34(IA), and yet, whereas in the former category of cases a period of limitation was prescribed as eight years there is no such limitation in regard to the latter, and that, it is urged, means unconstitutional discrimination. We are not impressed by this argument. It is true that in a broad sense both s. 34(1)(a) and s. 34(IA) deal with cases of income which has escaped assessment, and in that sense, the assessees against whom steps are taken in respect of their income which has escaped assessees can be said to form a similar class; but the similarity between the two categories disappears when we remember that s. 34(IA) is intended to deal with assessees whose income has escaped assessment during a specified period between 1st of September, 1939 and 31st of March, 1946. It is well-known that that is the period in which as a result of the War, huge profits were made in business and industry.

The second point which is very important is that in regard to the cases falling under s. 34(IA), action can be taken only where the income which has escaped assessment is likely to amount to Rs. 1 lakh or more. In other words, it is only in regard to cases where the escaped income is of a high magnitude that the restriction of the period of limitation has been removed. It is difficult to accept the argument that the legislature was not justified in treating this smaller class of assessees differently on the ground that the profits made by this class were higher and the income which had escaped assessment was correspondingly of a much larger magnitude. The object of the legislature being to catch income which had escaped assessment, it would be legitimate for the legislature to deal with the class of assessees in whose cases the income which had escaped assessment was much larger, because that would be a basis for rational classification which has an intelligible connection with the object inteded to be achieved by the statute.

It was suggested that as a result of the provisions contained in s. 34(1)(a) and s. 34(1A) one year would overlap; and that may be true. But the argument of overlapping has no significance because it makes no difference whether action is taken under s. 34(1), or s. 34(1A) in respect of that year. Once the notice is served under s. 34(1) or s. 34(1A), the rest of the procedure is just the same and all the remedies available to the assessees are also just the same. Therefore, we see no substance in the argument that the absence of the restriction as to period of limitation under s. 34(1A) introduces any infirmity in the said provision. In the result, we must hold that s. 34(1A) is valid and has not contravened Art. 14 of the Constitution. That is the effect of the majority view taken by the Allahabad High Court in Jai Kishan Srivastava v. Income-tax Officer, Kanpur and Another (I.L.R. (1959) II All. 451).

There is one minor additional point which has been argued before us by Mr. Setalvad in Civil Appeal No. 589 of 1963, and that point is based upon the requirement prescribed by the proviso to s. 34(1A) that the Income-tax Officer shall not issue a notice unless he has recorded his reasons for doing so, and the Central Board of Revenue is satisfied on such reasons recorded that it is a fit case for the issue of such notice. The argument is that the requirement prescribed by the proviso

constitutes a condition precedent for the exercise of the authority conferred on the Income-tax Officer by s. 34(1A) and since that requirement is not shown to have been satisfied in his case, the appellant in C.A. No. 589 of 1963 must succeed even if s. 34(1A) is held to be valid. We are not impressed by this argument. What was urged before the High Court by the appellant was not that no reasons had been recorded by the Income-tax Officer as required by the proviso; the argument was that the appellant had not been given a copy of the said reasons and it appears to have been urged that the appellant was entitled to have such a copy. This latter part of the case has not been pressed before us by Mr. Setalvad, and rightly. Now, when we look at the pleadings of the parties, it is clear that it was assumed by the appellant that reasons had been recorded and in fact, it was positively affirmed by the respondent that they had been so recorded; the controversy being, if the reasons are recorded, is the assessee entitled to have a copy of those reasons ? Therefore, we do not see how Mr. Setalvad can suggest that no reasons had in fact been recorded, and so, the condition precedent prescribed by the proviso had not been complied with.

The result is, all the Civil Appeals and Writ Petitions in this group fail and are dismissed. There would be no order as to costs.

Appeals and Writ Petitions dismissed.

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