Banarsi Debi and Another

Vs

Income-Tax Officer, District Iv, Calcutta, and Others

Civil Appeals Nos. 142 and 143 of 1963

(K. Subha Rao, J. C. Shah, S. M. Sikri, N. Rajgopala ayyangar JJ)

31.03.1964

JUDGMENT

SUBBRA RAO J. -

These two appeals filed by special leave raise the question of the true construction of the provision of section 4 of the Indian Income-tax (Amendment) Act, 1959 (1 of 1959), hereinafter called the Amending Act. The material facts lie in a small compass and they are as follows. For the assessment year 1947-48 the appellant in Civil Appeal No. 142 of 1963 filed a return of her income before the Income-tax Officer, District IV, Calcutta, and the assessment was completed some time in 1948 as a result whereof it was found that no tax was payable by her. On April 2 1956, the Income-tax Officer served on her a notice dated March 19, 1956, under section 34(1) of the Indian Income-tax Act, 1922, hereinafter called the Act, on the ground of escaped assessment. The date of the notice fell within 8 years from the end of the relevant assessment year, i.e., March 31, 1948, but it was served beyond 8 years from the date and, therefore, was clearly out of time under the provisions of the said section.

In Civil Appeal No. 143 of 1963, for the assessment year 1947-48 the appellant was assessed on a total income of Rs. 28,993 on December 30, 1948, by the Income-tax Officer and the tax thereon amounting to Rs. 4,747-13-0 was deposited on behalf of the appellant in the Reserve Bank of India. On April 2, 1956, the appellant was served with a notice dated March 19, 1956, by the Income-tax Officer purporting to be under section 34 of the Act on the ground of escaped assessment. The date of the notice fell within 8 years from the end of the relevant assessment year, i.e., March 31, 1956; but it was served beyond 8 years from that date and was, therefore, clearly out of time under the provisions of the said section.

The appellants in the two appeal filed two petitions in the High Court of Calcutta under article 226 of the constitution for quashing the said notices and for other appropriate reliefs. On March 20, 1957, Sinha J. of that court issued rules nisi on the said two application to the Income-tax Officer, the Commissioner of Income-tax and the Union of India. On September 11, 1958, the said judge made rules absolute. The respondents to the application preferred appeals from the judgment of Sinha J. to a Division Bench of that court. Pending the appeals, on March 12, 1959, section 34 of the Act was amended by section 2 of the Amending Act. After the said amendment the appeal were heard by a Division Bench of the High Court, consisting of Bose C.J. and G. K. Mitter J. Relying upon the said amendment the learned judges held that the said notices, though served on the appellants after the prescribed time, were saved under section 4 of the Amending Act. In that view they set aside the orders of Sinha J. and dismissed t

Learned counsel for the appellants contends that the notices under section 34(1) of the Act were served on the appellants beyond 8 years from the end of the assessment year and, therefore, were barred an that on a true construction of the provision of section 4 of the Amending Act, the said notices were not saved thereunder. To appreciate the contention it is necessary to read the relevant provisions of the Act before and after the amendment.

Section 34(1) of the Indian Income-tax Act, 1922, before it was amended by the Finance Act, 1956 :

> "If-
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> (a) The Income-tax Officer has reason to believe that by reason of the commissioner 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. . .
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> (b) he may in cases falling under clause (a) at any time within eight years. . . . serve on the assessee. . . . . a notice containing all or any of the requirements which may be included in a notice sub - section (2) of section 22 and may proceed to assess or reassess such income, profits or gains or recompute the loss or depreciation allowance; and the provision of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub - section. . .
>
> Provided that where a notice under sub - section (1) has been issued within the time therein limited, the assessment or reassessment to be made in pursuance of such notice may be made before the expiry of one year from the date of the service of the notice even if such period exceeds the period of eight years or four years, as the case may be."

Section 4 of the Amending Act (1 of 1959) :

> "No notice issued under clause (a) of sub-section (1) of section 34 of the principal Act at any time before the commencement of this Act and no assessment, reassessment or settlement made or other proceeding taken in consequence of such notice shall be called in question in any court, tribunal or other authority merely on the ground that at the time the notice was issued or at the time the assessment or reassessment was made, the time within which such notice should have been issued or the assessment or reassessment should have been made under that section as in force before its amendment by clause (a) of section 18 of the Finance Act, 1956 (18 of 1956), had expired."

Section 34(1)(a) of the Act empowered the Income-tax Officer to assess concealed income which escaped assessment by serving a notice on the assessee at any time within 8 years of the end assessment year in respect whereof the said income has escaped assessment. Section 4 of the Amending Act debars the court from questioning the validity of a notice issued or the assessment or reassessment made under sub-section (1) (a) of section 34 of the Act on the ground that the time for the issue of such notice or the making of such assessment or reassessment had expired under the said

sub - section before it was amended by section 18 of the Finance Act of 1956.

Learned counsel for the appellants contends that section 4 of the Amending Act only saves a notice issued after the prescribed time but does not apply to a situation where notice is issued within but served out of time. Learned counsel for the respondents argues that the expression "issued" means "served" and that, in any view, it is comprehensive enough to take in the entire process of giving and serving of notice.

Before construing the section it will be useful to notice the relevant rules of construction of a fiscal statute. In Oriental Bank Corporation v. Wright the Judicial Committee held that if statute professed to impose a charge, the intention to impose a charge on the subject must be shown by clear and unambiguous language. In Canadian Eagle Oil Co. v. R Viscount Simon L.C. observed :

> "In the word or Rowlatt J. . . . . in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. The is no presumption as to a tax. nothing is to be read nothing is to be implied. One can only look fairly at the language used."

In other words, a taxing statute must be couched in express and unambiguous language. The same rule of construction has been accepted by this court in Gursahai Saigal v. Commissioner of Income-tax, wherein it was stated :

> ".. . . it is well recognised that the rule of construction that if a case is not covered within the four corners of the provisions of a taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter, applies only to a taxing provisions and has no application to all provisions in a taxing statute. It does not apply to a provision not creating a charge for the tax but laying down the machinery for its calculation or procedure for its collection. The provisions in a taxing statute dealing with machinery for assessment have to be construed by the ordinary rules of construction, that is to say, in accordance with the clear intention of the legislature, which is to make a charge levied effective."

In that case, the court was called upon to construe the provision of section 18A of the Income-tax Act, 1922, which laid down the machinery for assessing the amount of interest, and therefore, this court did not apply the stringent rule of construction. April from the emphasis on the letter of the law, the fundamental rule of construction of a taxing statute is not different from that of any other statute and that rule is stated by Lord Russell of Killowen C.J. in Attorney- General v. Carlton Bank thus :

> "The duty of the court is. . . . . to give effect to the intention of the legislature, as that intention is to be gathered from the language employed having regard to the context in connection with which it is employed."

To the present case the general rule of construction of fiscal Acts would apply, and not the exception engrafted on that rule : for section 4 of the Amending Act cannot be described as a provision laying down the machinery for the calculation of tax. In substance it enables the Income-tax Officer to reassess a person's income which has escaped assessment, though the time within which he could have so assessed had expired under the Act before the amendment of 1959. It resuscitates barred

claim. Therefore, the same stringent rules of construction appropriate to a charging section shall also apply to such a provision.

Before the Amending Act of 1959 was passed Income-tax Officers issued notices before April 1, 1956, and also after that date for reopening assessments made beyond 8 years from the issue of such notices. The validity of such notices was questioned. To save the validity of such notices the Amending Act was passed. This court in S. C. Prashar v. Vasantsen Dwarkadas held on a construction of section 4 of the Amending Act that it operated and validated the notices issued under section 34(1)(a) of the Act as amended in 1948, even earlier than April 1, 1956. In other words, notices issued under section 34(1)(a) of the Act before or after April 1, 1956, could not be challenged on the ground that they were issued beyond the time limit of 8 years from the respective assessment years prescribed by the 1948 Amendment Act. Section 4 of the Amending Act of 1959, therefore, was enacted for the sole purpose of saving the validity of such notices in respect of all escaped incomes relating to any year commencing from the year

This brings us to the question of construction of the provisions of section 4 of the Amending Act. The crucial word in the said section is "issued". The section says that though a notice was issued beyond the time within which such notice should have been issued, its validity could not be questioned. If the word "issued" means "sent", we find that there is no provision in the Act prescribing a time-limit for sending a notice, for, under section 34(1)(a) of the Act, a notice could be served only within 8 years from the relevant assessment year. It does not provide any period for sending of the notice. Obviously, therefore, the expression "issued" is not used in the narrow sense of "sent". Further, the said, expression has received, before the amendment, a clear judicial interpretation. Under section 34(1)(a) of the Act the Income-tax Officer may in cases falling under clause (a) at any time within 8 years serve on the assessment a notice. The proviso to that section says that where the notice under section 34

> "In other words, the attempt is to equate the expression 'served' used in section 34 with the expression 'issued' used in the proviso to sub- section (3). Now we must frankly confess that we find it difficult to understand why the legislature has used in the proviso the expression 'where a notice under sub-section (1) has been issued within the time therein limited'. In sub-section (1) no time is limited for the issue of the notice : time is only limited for the service of the notice; and therefore it is more appropriate that the expression 'issued' used in the proviso to sub-section (3) should be equated with the expression 'served' rather than that the expression 'served' used in sub-section (1) should be equated with the expression 'issued'used in the proviso to sub-section (3)."

This decision equated the expression "issued" with the expression "served". The Allahabad High Court in Sri Niwas v. Income-tax Officer has also interpreted the word "issued" to mean "served". The relevant rule of construction is clearly stated by Viscount Buckmaster in Barras v. Aberdeen Steam Trawling and Fishing Co. Ltd., thus :

> "It has long been a well-established principle to be applied in the consideration of Act of Parliament that where a word of doubtful meaning has received a clear judicial interpretation, the subsequent statute which incorporates the same word or the phrase is interpreted according to the meaning that has previously been assigned to it."

Section 4 of the Amending Act was enacted for saving the validity of notices issued under section 34(1) of the Act. When that section used a word interpreted by courts in the context of such notices it would be reasonable to assume that the expression was designedly used in the same sense. That apart, the expressions "issued" and "served" are used as interchangeable terms both in dictionaries and in other statutes. The dictionary meaning of the word "issue" is "the act of sending out, put into circulation, delivery with authority or delivery". Section 27 of the General Clauses Act, 1897(X of 1897), reads thus :

> "Where any Central Act or Regulation made after the commencement of this Act authorises or requires any document to be served by post, Whether the expression 'serve' or either of the expressions, 'give' or 'send' or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

It would be seen from this provision that Parliament used the words "serve", "give" and "send" as interchangeable words. So too, in sections 553, 554 and 555 of the Calcutta Municipal Act, 1951, the two expressions "issued to" or "served upon" are used as equivalent expressions. In the legislative practice of our country the said two expressions are sometimes used to convey the same idea. In other words, the expression "issued" is used in a limited as well as in a wider sense. We must, therefore, give the expression "issued" in section 4 of the Amending Act that meaning which carries out the intention of the legislature in preference to that which defeats it. By doing so we will not be departing from the accepted meaning of the expression, but only giving it one of its meanings accepted, which fits into the context or setting in which it appears.

With this background let us give a closer look to the provisions of section 4 of the Amending Act. The object of the section is to save the validity of a notice issued beyond the prescribed time. Though the time within which such notice should have been issued under section 34(1) of the Act, as it stood before its amendment by section 18 of the Finance Act of 1956, had expired, the said notice would be valid. Under section 34(1) of the Act, as we have already pointed out, the time prescribed was only for service of the notice. As the notice mentioned in section 4 of the Amending Act is linked with the time prescribed under the Act, the section becomes unworkable if the narrow meaning is give a wider meaning to the word, the section would be consistent with the provisions of section 34(1) of the Act. Moreover, the narrow meaning would introduce anomalies in the section : while the notice, assessment or reassessment were saved, the intermediate stage of service would be avoided. To put it in other words, if th

To summarize : The clear intention of the legislature is to save the validity of the notice as well as the assessment from an attack on the ground that the notice was given beyond the prescribed period. That intention would be effectuated if the wider meaning is given to the expression "issued". The dictionary meaning of the expression "issued" takes in the entire process of sending the notice as well as the service thereof. The said word used in section 34(1) of the Act itself was interpreted by courts to mean "served". The limited meaning, namely, "sent" will exclude from the operation of the provision a class of cases and introduce anomalies. In the circumstance, by interpretation, we accept the wider meaning the word "issued" bears. In this view, though the notices were served beyond the prescribed time, they were saved under section 4 of the Amending Act. No other point was raised before us.

In the result, the appeals fail and are dismissed with costs. There will be one hearing fee.

Appeals dismissed.

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