

Commissioner of Wealth Tax, West Bengal

Vs

Imperial Tobacco Co. of India Ltd.

Civil Appeals Nos. 1062 and 1063 of 1966

(K.N. Wanchoo, J. C. Shah, S. M. Sikri JJ)

15.04.1966

JUDGMENT

WANCHOO J. -

These two appeals by special leave arise out of two applications by the appellant to the Income-tax Appellate Tribunal for reference to the High Court of a question of law, which was formulated as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the reassessment proceedings under section 17(b) of the Wealth-tax Act were not validly initiated and in setting aside the same ?"

The facts which led to the applications for reference are briefly these. the respondent submitted wealth-tax returns for the years 1957- 58 and 1958-59. For the year 1957-58 the respondent claimed that an amount of Rs. 51 lakhs and odd, being provision for taxation, and another amount of Rs. 37 lakhs and odd, being provision for contingencies, being ascertained liability, should be allowed as deduction from the total wealth. For the year 1958-59, the respondent claimed Rs. 31 lakhs and odd being provision for contingencies as ascertained liability as deduction from the total wealth.

Assessment for the year 1957-58 was completed on December 30, 1957, and the Wealth-tax Officer accepted the Contention of the respondent and allowed the claim for deduction. Subsequently, the Commissioner of Wealth-tax by his order dated December 29, 1958, passed under section 25(2) of the Wealth-tax Act, 1957 (37 of 1957) (hereinafter referred to as the Act). disallowed the deduction of Rs, 51 lakhs and odd being the provision for taxation for the assessment year 1957-58. The order of the Wealth-tax Officer allowing deduction for contingencies for the assessment year 1957-58 however stood. The assessment for the year 1958-59 was completed on December 9, 1958, and deduction was allowed for contingencies only. It may be added that we are not concerned in the present appeals so far as deduction for provision for taxation is concerned. On March 22, 1960, the Wealth-tax Officer completed the assessment of the respondent for the year 1959-60 and disallowed the claim for deduction of the provision for contingencie

The respondent then went in appeal to the Appellate Tribunal and his contention there was that the issue of notices under section 17(b) of the Act was invalid as it was based on a mere change of opinion on the port of the Wealth-tax Officer, as at that time there was no information in the possession of the Wealth-tax Officer which could lead him to believe that the net wealth chargeable to tax had escaped assessment. It was contended that such information must be information which came into the possession of the Wealth-tax Officer subsequent to the making of the original

assessment and that the information must lead him to believe that income chargeable to tax had escaped assessment. The Tribunal accepted this contention of the respondent. It may be pointed out that the assessment made by the Wealth-tax Officer for the year 1959-60 was taken in appeal to the Appellate Assistant Commissioner by the respondent and the respondent's appeal was dismissed in November, 1960. The Tribunal held that if the Wealth-tax

The main contention that has been urged on behalf of the appellant before us is that there is divergence of opinion among the High Courts on the question as to what constitutes "information" for the purpose of section 34(1)(b) of the Indian Income-tax Act, 1922 (XI of 1922) (hereinafter referred to as the Income-tax Act). That section is pari materia with section 17(b) of the Act and therefore a question of law did arise which should have been referred to the High Court for its decision on the question raised by the appellant. Reliance in this connection is placed on the decision of this court in *Maharajkumar Kamal Singh v. Commissioner of Income-tax*, where this court held that "the word 'information' in section 34(1)(b) included information as to the true and correct state of the law, and so would cover information as to relevant judicial decisions". A further question as raised in that case, namely, "whether it would be open to the Income-tax Officer to take action under section 34(1) on the ground that h

In *Commissioner of Income-tax v. Sir Mahomed Yusuf Ismail* it was held by the Bombay High Court as far back as 1943 that under section 34 a mere change of opinion on the same facts or on a question of law or the mere discovery of a mistake of law is not sufficient information within the meaning of section 34 and that in order to take action under section 34 there must be some information as a fact which leads the Income-tax officer to discover that income has escaped or has been under-assessed.

The same view was taken in a later case by the Nagpur High Court in *Income-tax Appellate Tribunal v. B. P. Byramji and Co.* Where it was again emphasised that a mere change of opinion by the Income-tax Officer is no ground for taking action under section 34.

Further in *Bhimraj Pannalal v. Commissioner of Income-tax* it was held by the Patna High Court that "an order of assessment made after investigation by a particular officer should not at his sweet will and pleasure be allowed to be revised merely because he changed his opinion and that there must exist something either suppressed by the assessee or a fact or a point of law which was inadvertently or otherwise omitted to be considered by the Income-tax Officer, before he can proceed to act under section 34; and a mere change of opinion on the same facts and law is not covered by that section."

The Appellant on the other hand relies on some recent decisions which show that there is some divergence of opinion in the High Courts on this question. In *Salem Provident Fund Society Ltd. v. Commissioner of Income-tax*, the Madras High Court held that "information for the purpose of section 34 need not be wholly extraneous to the record of the original assessment. A mistake apparent to the record of the assessment would itself constitute 'information'; whether someone else gave that information to the Income-tax Officer or whether he informed himself was immaterial".

In *Commissioner of Income-tax v. Rathinasabapathy Mudaliar* the Madras High Court again held that "the discovery of the Income-tax Officer after he had made the assessment that he had committed an error in not including the minor's income in the father's assessment was 'information' obtained after the assessment, and even though all the facts were in the original records, the case was covered by section 34(1)(b) of the income-tax Act and the reassessment was not invalid, and

this was not a case of mere changed of opinion on the same facts but a case of getting information that income had escaped assessment."

In *Canara Industrial and Banking Syndicate Ltd. v. Commissioner of Income-tax*, the Mysore High Court held that "if income had escaped assessment owing to the failure of the Income-tax Officer to understand the true implication of a notification, and the Income-tax Officer to understand the true implication of a notification of the notification the income was liable to be assessed, he can take proceedings under section 34 for assessment of such income; the word 'information' in section 34 is wide enough to apply to such a case."

The last case to which reference is made is *Asghar Ali Mahomed Ali v. Commissioner of Income-tax*, wherein the Allahabad High Court held that "the word 'information' used in the provision covers all kinds of information received from any person whatsoever or in any manner whatsoever; all that is required is that the Income-tax Officer should learn something. i.e., he should know something which he did not know previously." It was further held that "if there information leading to the belief that income has escaped assessment, the mere fact that this information has result in a change of opinion will not make section 34 inapplicable. A change of opinion is not sufficient for initiating proceedings under section 34, only when such change of opinion is the result of a different method of reasoning, and not based on 'information'."

It does appear that some High Courts at any rate are taking the view that a change of opinion by the Income-tax Officer in certain circumstances will be sufficient for the purpose of section 34(1)(b) and will justify the issue of a notice thereunder. It may be added that after the decision of this court in *Maharajkumar Kamal Singh's* case it is now settled that "information in section 34(1)(b) included information as to the true and correct state of the law, and so would cover information as to relevant judicial decisions" and that such information for the purpose of section 34(1)(b) of the Income-tax Act need not be confined only to cases where the Income-tax Officer discovers as a fact that income has escaped assessment. To that extent the decision of the Bombay High Court in *Sir Mahomed Yusuf Ismail* has been overruled. This is why the Appellate in its decision that if the notice in the present case had been issued after the decision of the Appellate Assistant Commissioner in the appeal from the assessment

We therefore allow the appeals, set aside the order of the High Court and direct the Tribunal to state a case referring the question of law arising in these cases in the form suggested by the appellant. The Tribunal will be free to decide whether to refer the matter to the High Court under section 27(1) or to this court under section 27(3A) of the Act. Cost of this court will abide the result of the reference.

Appeals allowed.

</html