SUREME COURT OF INDIA

N. Kt. Sivalingam Chettiar

Vs.

Commissioner of Income-Tax, Madras

(J Shah, S Sikri and V Ramaswami JJ.)

27.03.1967

JUDGMENT

SHAH J.

1. The High Court of Judicature at Madras recorded an answer in the affirmative on the following questions submitted by the Income-tax Appellate Tribunal :

"Whether the reassessment under section 34 of the Act is valid in law ?"

2. With certificate granted by the High Court, the assessee has appealed to this court.

3. In proceedings for assessment of income-tax against one Ramnanthan Chettiar, the appellant, who will be called "the assessee", claimed that he had deposited Rs. 10,000 with Ramnathan Chettiar out of Rs. 16,000 brought by him when he returned to India from Malaya on March 21, 1946. The Income-tax Officer started proceedings against the assessee for assessment of tax under section 34 of the Income-tax Act for the assessment year 1947-48, and brought to tax Rs. 16,000 as income from undisclosed sources. In appeal, the Appellate Assistant Commissioner modified the order and held that Rs. 10,000 deposited with Ramnathan Chettiar alone were taxable in the year of assessment 1947-48. In the course of his order dated November 25, 1957, he observed :

"If there was a sum of Rs. 6,000 it could only be treated as income arising in the 'previous year' for the assessment year 1946-47 or as income remitted in that assessment year."

4. In appeal, the Appellate Tribunal cancelled the order of assessment. The Tribunal accepted the version of the assessee that he had brought Rs. 16,000 with him when he landed in India on March 21, 1946, and the amount was not taxable in the assessment year 1947-48.

5. In the meanwhile, action was commenced by the Income-tax Officer on October 23, 1958, under section 34(1) (a) of the Income-tax Act for assessment of the income of the assessee for the year 1946-47, consequent upon the finding recorded by the Appellate Assistant Commissioner in proceedings for assessment for the assessee's income relating to the year 1947-48. The assessee pleaded that as eight years had elapsed since the end of the assessment year and the amount

involved was less than Rs. 1 lakh, no proceeding for assessment of income could be initiated under section 34(1) (a) of the Income-tax Act for the assessment year 1946-47. This plea was rejected by the departmental authorities and the Tribunal. They held that the proceedings for assessment pursuant to the finding of the Appellate Assistant Commissioner in the earlier proceedings was saved by the second proviso to section 34(3) of the Income-tax Act. The High Court, at the bearing of the reference, also accepted that view. The High Court observed :

"What the second proviso to section 34(3) contemplates is a different period of account of the same assessee or a different assessee.....

Proviso (2) to section 34(3) enacts an exception to that provision (sub-section (1) to section 34) and it enables a reassessment to be made in such cases, if it arises in consequence of, or to give effect to, any finding or direction contained in an order under section 31, section 33, section 33A, section 33B, section 66 or section 66A. A plain reading of the section would show that the Income-tax Officer can commence proceedings if there had been a finding by the authority concerned under any one of the sections mentioned above."

6. In our judgment, the High Court was in error in holding that a finding or direction by an appellate authority in an order relating to assessment of one year may warrant the avoidance of the bar of limitation under section 34(1) of the Act against initiation of proceedings for assessment for another assessment year against the same assessee or against another assessee. This court has decided in Income-tax officer, A-Ward, Sitapur v. Murlidhar Bhagwan Das that the jurisdiction of the Appellate Assistant Commissioner under section 31 is strictly confined to the assessment order of the particular year under appeal; that the assessment or reassessment made in consequence of or to give effect to any finding or direction contained in an order under section 31, section 33, section 33A, section 33B, section 66 or section 66A must necessarily relate to the assessment of the year under appeal, revision or reference as the case may be; that the sound proviso to section 34(3) only lifts the bar or limitation and does not enlarge the jurisdiction of the Income-tax Officer under the relevant sections; and that the expressions "finding" and "direction" in the second proviso to section 34(3) mean respectively a finding necessary for giving relief in respect of the assessment for the year in question, and a direction which the appellate or revisional authority, as the case may be, is empowered to give under the sections mentioned in that proviso. A "finding" therefore may only be that which was necessary for the disposal of an appeal in respect of an assessment of a particular year, The Appellate Assistant Commissioner may hold, on the evidence, that the income shown by the assessee was not the income for the relevant year and thereby exclude that income from the assessment of the year under appeal. The finding in that context is that the income did not belong to the relevant year. He may incidentally find that the income belonged to another year, but that is not a finding necessary for the disposal of an appeal in respect of the year of assessment in question.

7. Counsel for the commissioner contends that the principle of Murlidhar Bhagwan Das's case does not govern the present case, because in that case proceedings for assessment were commenced in consequence of or to give effect to an express direction of the Appellate Assistant Commissioner and it was held by this court that a direction not necessary for the disposal of the appeal in respect of the assessment of the year in question before him was inoperative to remove the bar of limitation. Counsel says that, where a mere finding in recorded by the appellate or revisional authority different considerations arise and the bar of limitation prescribed by section 34 would be removed if a proceeding be commenced for assessment in consequence of or to give effect to the finding. This argument has, in our judgment, no force. In interpreting the second proviso to section 34(3) Subba

Rao J. in delivering the judgment of the majority, observed in Murlidhar Bhagwan Das's case : "A 'finding'.... can be only that which is necessary for the disposal of an appeal in respect of an assessment of a particular year. The appellate Assistant Commissioner may hold, on the evidence, that the income shown by the assessee is not the income for the relevant year and thereby exclude that income from the assessment of the year under appeal. The finding in that context is that that income does not belong to the relevant year. He may incidentally find that the income belongs to another year, but that is not a finding necessary for the disposal of an appeal in respect of the year of assessment in question.... Therefore, the expression finding as well as the expression direction can be given full meaning, namely, that the finding is a finding necessary for giving relief in respect of the assessment of the year in question and the direction is a direction which the appellate or revisional authority, as the case may be, is empowered to give under the sections mentioned therein."

8. It is clear from the observation made by this court that a finding within the second proviso to section 34(3) must be necessary for giving relief in respect of the assessment of the year in question. The court in that case expressly lent approval to the observations of the Allahabad High Court in Pt. Hazari Lal v. Income-tax Officer, Kanpur that the word "finding" only covers "material questions which arise in a particular case for decision by the authority hearing the case or the appeal which, being necessary for passing the final order or giving the final decision in the appeal, has been the subject of controversy between the interested parties or on which the parties concerned have been given a hearing."

9. It must therefore be held that the answer recorded by the High Court on the question cannot be sustained.

10. The appeal is allowed and the question is answered in the negative. The appellant will get his costs in this court and the High Court.

11. Appeal allowed.