

Sixth Income-Tax Officer, City Circle II, Bangalore

Vs

K. Y. Pillaiah and Sons

Civil Appeal No. 2177 of 1966

(J. C. Shah, S. M. Sikri, V. Ramaswami- I JJ)

18.07.1967

JUDGMENT

SHAH J. –

The respondents, a Hindu undivided family, were assessed for the assessment year 1949-50 to tax under section 23 of the Mysore income-tax Act on a total income of Rs. 10,100. The Second Additional Income-tax Officer (Urban Circle), Bangalore, commenced a proceedings under section 34 of the Mysore Income-tax Act for reassessment of the income of the respondents for the assessment year 1949-50, and served a notice in that behalf on March 6, 1951. On May 21, 1954, the Income-tax Officer determined the respondents' total income at Rs. 75,957. In appeal against the order, the Appellate Assistant Commissioner of Income-tax, "A" Range, Bangalore, by order dated November 4, 1961, set aside the order and directed the Income-tax Officer to make a fresh assessment after making inquiries on certain matters specified in the order.

At the request of the respondents under section 66(2) of the Mysore Income-tax Act, the Commissioner of Income-tax, Mysore, referred the following questions to the High Court of Mysore :

"1. On the facts and in the circumstances of the assess's case whether within the meaning of section 34 of the Mysore Income-tax Act, if a notice under that section is issued within the prescribed period, whether the Income-tax Officer can proceed to assess or reassess such escaped income after four years from the close of the assessment year ?

2. On the facts and in the circumstances of the case, whether the Appellate Assistant Commissioner of Income-tax is competent to set aside and give directions to the Income-tax Officer to re-do the assessment in the manner the Appellate Assistant Commissioner of Income-tax has done ?" At the hearing of the reference, the respondents did not press the first question, and the High Court answered the second question in the affirmative.

The Income-tax Officer commenced the inquiry directed by the Appellate Assistant Commissioner. The respondents then applied to the High Court of Mysore for issue of a writ of prohibition restraining the Income-tax Officer from continuing the assessment proceeding for the year 1949-50 on the plea that the proceedings was, because of expiry of the period of limitation, barred. The High Court of Mysore upheld the contention of the respondents and allowed the petition. In the view of the High Court the provisions of the section 34 of the Mysore Income-tax Act were "more or less

similar to rule 34 of the Mysore Sales Tax Act, 1948. Hence, the present case clearly comes within the rule laid down by this court in *K. S. Subbrayappa and Sons v. State of Mysore*, which means that the present proceedings are barred." The Commissioner of Income-tax has appealed to this court with special leave.

The question arising in this appeal must, it is common ground, be determined in the light of the provisions of the Mysore Income-tax Act, 1923. Even after the merger of the State of Mysore with the Union of India, a proceedings for assessment of income-tax relating to the assessment year 1949-50 has to be heard and disposed of under the Mysore Act. Section 34 of the Mysore Income-tax Act reads as follows :

"If for any reason, profits or gains chargeable to income-tax have escaped assessment in any year, or have been assessed at too low a rate, the Income-tax Officer may, at any time within four year of the end of that year, serve on the person liable to pay tax on such income, profits or gains, or in the case of 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 such income, profits or gains and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were issued under that sub- section."

A proceeding for reassessment under section 34 of the Mysore Act may be commenced if two conditions co-exist :

(i) that the profits and gains chargeable to income-tax have escaped assessment or have been assessed at too low a rate, and (ii) the notice is served within four year of the end of the year of assessment. But if a proper notice is served within the period provided by the section, the proceeding may be completed even after the expiry of four years from the close of the assessment year, for the Act prescribes no period for completion of the proceedings.

A notice for reassessment was in fact served on the respondents on March 6, 1951, under section 34 of the Mysore Act. That notice was served within four year of the end of the year of assessment 1949-50, and the Income-tax Officer was of the view that the profits or gains chargeable to Income-tax had escaped assessment in the year 1949-50. It is true that the Appellate Assistant Commissioner vacated the order of assessment dated May 21, 1954, but he did not set aside the notice served upon the respondents. He merely remanded the case for further inquiry to be made in the light of the direction given by him. It is difficult to appreciate the grounds on which it could be held that the proceedings for reassessment to tax the income which had escaped assessment in the year 1949-50 commenced after due notice served on March, 1951, was barred. The High Court was, in our judgment, plainly in error in holding that the proceeding for reassessment was barred.

It must also be remembered that the respondents had under an order of the Commissioner obtained a reference on the first question set out hereinbefore. That question was not pressed before the High Court, and it must be deemed to have been answered against the respondents. That question could not thereafter be re-agitated by the respondents in a petition for the issue of a writ under article 226 of the Constitution.

The appeal is allowed. The order passed by the High Court is set aside. The respondents will pay the costs of the Commissioner in this court and in the High Court.

Appeal allowed.

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