Bhanji Bagawandas

Vs

Commissioner of Income-Tax, Madras

Civil Appeal No. 1984 of 1966

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

18.07.1967

JUDGMENT

RAMASWAMI, J. -

This appeal is brought from the judgment of the Madras High Court dated January 2, 1964 in Tax Case No. 153 of 1962.

The assessment year involved in this appeal is 1948-49, the corresponding previous year being the financial year 1947-48. For the accounting period from November 13, 1947 to November 1, 1948 which was the corresponding previous year for the assessment year 1949-50 there was shown a credit of Rs. 25,000 in the capital account of the appellant. On November 13, 1947, this amount was credited in the books of the appellant. On October 30, 1948 this amount was transferred to the account of one Amrithlal. Ranchoodas, the father-in-law of the appellant. The Income-tax Officer included the said amount as income of the appellant from undisclosed sources in the assessment for the assessment year 1949-50. On appeal to the Appellate Assistant Commissioner the appellant contended that the amount could not be included in the assessment year 1949-50 because the credit appeared prior to March 31, 1948. The Appellate Assistant commissioner allowed the appeal holding that the credit came into the books of the appellant on November 13, 1947, i.e., in the financial year 1947-48 which is the previous year for the assessment year 1948-49. On this finding, the Appellate Assistant Commissioner deleted the addition of Rs. 25,000 from the assessment of the appellant for the year 1949-50. In doing so, the Appellate Assistant Commissioner followed the decision in C.I.T. v. P. Darolia & Sons (27 I.T.R. 515.) Consequently, on November 3, 1958 the Income-tax Officer issued a notice under s. 34(1)(a) of the Income-tax Act, 1922, (hereinafter refereed to as the. 'Act') to the appellant for assessment year 1948-49. By his order dated April 20, 1959 he rejected the contention of the appellant that the assessment was barred by limitation and assessed the sum of Rs. 25,000 as income from other sources. The appellant took the matter in appeal to the Appellate Assistant Commissioner who, by his order dated February 23, 1960 allowed the appeal. He took the view that there was no finding in the order of the Appellate Assistant Commissioner that the credit represented the income of the appellant or that the same credit should be assessed in the assessment year 1948-49. He further held that the notice under s. 34 issued on November 3, 1958 was bad in law and was not saved by second proviso to s. 34(3) of the Act. The Commissioner of Income-tax a preferred an appeal against the order of the Appellate Assistant Commissioner to the Income-tax Appellate Tribunal which allowed the appeal, holding that "the order of the Appellate Assistant Commissioner in the appeal against the assessment for 1949-50 should be taken to contain a finding that the sum of Rs. 25,000 represented income of the assessee to be considered in the assessment year 1948-49". At the instance of the appellant the Appellate Tribunal referred the following questions of law for the opinion of the High Court under s. 66(1) of

the Act :

> "(1) Whether on the facts and in the circumstances of the case, the proceedings initiated against the assessee for the assessment year 1948-49 under section 34 and the assessment for the said year are barred by limitation and hence not lawful ?
>
> (2) Whether the proceedings initiated against the assessee for the assessment year 1948-49 under section 34 and the assessment made under section 34 for the assessment year 1948-49 could be justified in law as for the purpose of giving effect to a finding or directions in the order of the Appellate Assistant Commissioner in I.T.A. No. 134 of 1958-59 ?
>
> (3) Whether on the facts and in the circumstances of the case, the assessment made is saved from the bar of limitation under the second proviso to section 34(3) ?"

By its judgment dated January 2, 1964, the High Court answered the questions in favour of the respondent and against the appellant. The High Court followed an earlier decision in A. S. Khader Ismail v. Income-tax Officer (47 I.T.R. 16), in which it had held that the word "finding" in the proviso to s. 34(3) of the Act must be given a wide significance so as to include not only finding necessary for the disposal of the appeal but it would apply to case where it is held that the income in question was in respect of an earlier year which was not the subject-matter of the appeal before the appellate authority.

On behalf of the appellant Mr. Swaminathan put forward the argument that the decision of the High Court is contrary to the view taken by this Court in Income-tax Officer, A-Ward, Sitapur v. Murlidhar Bhagwan Das (52 I.T.R. 335.) in which it was held that the expressions "finding" and "direction", in the second proviso to s. 34(3), meant respectively, a finding necessary for giving relief in respect of the assessment for the year in question, and a direction which the appellate for revisional authority, as the case may be, was empowered to give under the sections mentioned in that proviso. A "finding", therefore, could 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 might hold, on the evidence, that the income shown by the assess 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 was that the income did not belong to the relevant year. He might incidentally find that the income belonged to another year, but that was not a finding necessary for the disposal of an appeal in respect of the year of assessment in question. It was further held that the second proviso to s. 34(3) did not save the time-limit prescribed under s. 34(1) in respect of an escaped assessment of a year other than that which was the subject-matter of the appeal or revision, as the case may be, and accordingly the notice issued under s. 34(1)(a) in that case was barred by limitation and was not saved by the second proviso to s. 34(3). In the course of its judgment this Court overruled the judgment of the Madras High Court in A. S. Khader Ismail v. Income-tax Officer. It follows therefore that the view taken by the High Court in the present case is not correct in law and must be overruled.

On behalf of the respondent, however, Mr. Veda Vyasa contended that in answering the reference the effect of s. 2 of the Income-tax (Amendment) Act (Act I of 1959) must be taken into consideration and in view of the amendment made by the section of the amending Act the questions referred to the High Court must be answered necessarily against the appellant. Section 2 of the Amendment Act, 1959 inserted in s. 34 of the Act a new sub-section (4) which provide :

> "A notice under clause (a) of sub-section (1) may be issued at any time notwithstanding that at the time of the issue of the notice the period of eight years specified in that sub-section before its amendment by clause (a) of section 18 of the Finance Act, 1956 (18 of 1956), had expired in respect of the year to which the notice relates.

Section 4 of the Amending Act. 1959 read as follow :

> "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, re-assessment 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 re-assessment was made the time within which such notice should have been issued or the assessment or re-assessment 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."

Mr. Veda Vyasa referred to the decision of the Bombay High Court in Onkarmal Meghraj v. C.I.T. Bombay-1. (38 I.T.R. 369) in which it was held that there was nothing in s. 2 or 4 of the Amendment Act of 1959 to restrict the terms of the words "at any time after April 1, 1956", viz., the date on which the amendments made by the Finance Act, 1956, came into force and there was nothing in the provisions of the Amendment Act of 1959 which limited the retrospective operation of s. 4. It was also held that since the enactment of the Amendment Act of 1959 a notice issued after April 1, 1956, for reopening an assessment, by virtue of s. 4, could not be permitted to be called in question on the ground that the notice was not issued within the period prescribed by the unamended s. 34(1)(a). On behalf of the respondent reference was also made to the decision of this Court in S. C. Prashar v. Vasantsen Dwarkadas, (49 I.T.R. 1) in which it was held that s. 4 of the Amendment Act, 1959 operated on and validated notices issued under s. 34(1) as amended in 1948 even earlier than April 1, 1956 in other words, in respect of assessment years prior to March 31, 1956, and therefore notices issued under s. 34(1)(a) of the Income-tax Act before April 1, 1956, could not be challenged on the ground that they were issued beyond the time limit of eight years from the respective assessment years prescribed by the 1948 amendment. On behalf of the appellant Mr. Swaminathan raised the objection that the point was not taken up by the respondent in the High Court, nor was there any reference to it in the statement of the case filed by the respondent. It was also contended that the point raised was outside the scope of the questions of law referred by the Appellate Tribunal to the High Court. We do not think there is any substance in the objection raised on behalf of the appellant. One of the questions referred to the High Court is "whether on the facts and in the circumstances of the case, the assessment made is saved from the bar of limitation under the second proviso to section 34(3) ?" It is true that the impact of the Amending Act, 1959 (Act 1 of 1959) was not raised before the Appellate Tribunal or before the High Court, but it is not a separate question by itself and is only an aspect of the question of limitation which has already been referred by the Appellate Tribunal to the High Court. As pointed out in C.I.T. Bombay v. Scindia Steam Navigation Co. Ltd., (421 I.T.R. 589.) the question of law referred to the High Court under s. 66 may be a simple one having its impact on one point, or it might be a complex one, involving more than one aspect and requiring to be tackled from different standpoints. All that section 66(1) requires is that the question of law which is referred to the High Court and which the High Court is to decide must be the question which was in issued before the Tribunal. Where the question itself was under issue, there is no further limitation imposed by the section that the reference should be

limited to those aspects of the question which had been argued before the Tribunal, and it will be an over-refinement of the position to hold that each aspect of a question is itself a distinct question for the purpose of s. 66(1) of the Act. In our opinion, the argument of the respondent with regard to the legal effect of the Amending Act of 1959 (Act 1 of 1959) is within the frame-work of the question already referred to the High Court and it is therefore competent to this Court, in a case of this description, to allow a new contention to be advanced.

It is, however, necessary that the case should be remanded to the High Court for examining the question of law referred to it after considering the impact of the Amending Act of 1959 (Act 1 of 1959).

For these reasons we allow this appeal, set aside the judgment of the High Court dated January 2, 1964 and remand the case to it for further hearing and answering the reference in the light of the Income-tax Amending Act 1 of 1959. In the circumstances of the case we direct that the respondent should pay the cost of this appeal in this Court.

Appeal allowed.

</html