

Balchand

Vs

Income-Tax Officer, Sagar

Civil Appeal No. 640 of 1966

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

19.08.1968

JUDGMENT

SHAH J. –

The Income-tax Officer, Sagar, assessed and appellant to pay under section 23(3) of the Income-tax Act, 1922, tax on his income computed for the assessment years 1945-46 and 1946-47. On June 24, 1959, the Income-tax Officer issued a notice of reassessment under section 34 of the Income-tax Act, 1922, reciting that the income of the appellant had escaped assessment and requiring the appellant to submit a return of his total world income assessable for the year ending March 31, 1946. On August 17, 1959, the appellant filed a return for the assessment of his income for the year 1946-47. The appellant was informed by the Income-tax Officer that he was called upon to submit a return of his income for the assessment year 1945-46 and not for the assessment year 1946-47. The appellant on March 22, 1960, filed a fresh return for the assessment year 1945-46, admitting that he had "misunderstood the notice" served upon him. In his return he admitted that he had a third share in a firm styled "Sheoprasad Shobh

The appellant contended that by the notice dated June 24, 1959, he was called upon to file a return for the assessment year 1946-47 and initiation of proceedings on that notice for reassessment of income for the assessment year 1945-46 was incompetent. In the preamble of the notice it is recited : "Whereas I have reason to believe that your income assessable to income-tax for the assessment years 1946-47, 1945-46 has - (a) escaped assessment.... I therefore propose to assess the said income", but in the body of the notice it is clearly recited that the appellant was called upon to deliver a return of his total world income assessable for the year ending March 31, 1946. A demand for return of income assessable for the year ending March 31, 1946, could obviously be for the assessment year 1945-46 and not for 1946- 47. By his letter dated March 22, 1960, the appellant admitted that he was called upon to file a return for the assessment year 1945-46 and he had "misunderstood" the notice and had filed a return for

The appellant then contended that, in any event, on August 17, 1959, the appellant had submitted a return for the assessment year 1946-47 and even if no notice for the assessment year 1946-47 calling upon him to submit a return for that year was issued, a notice under section 34 of the Income-tax Act, 1922, or under section 148 of the Income-tax Act, 1961, was incompetent so long as the return submitted by the appellant in August, 1959, for the assessment year 1946-47 was not considered and disposed of. Reliance in support of this contention was placed upon two decisions of this court : Commissioner of Income-tax v. Ranchhoddas Karsondas and Commissioner of Income-tax v. S. Raman Chettiar.

Under section 22(1) of the Income-tax Act, 1922, the Income-tax Officer was required before the 1st day of May in each year to give notice, by publication in the press and by publication in the prescribed manner, calling upon every person whose total income during the previous year exceeded the maximum amount not chargeable to income-tax to furnish, within such period not being less than sixty days as maybe specified in the notice, a return in the prescribed form. Sub-section (2) authorised the Income-tax Officer to serve a notice upon any person whose total income was in the opinion of the Income-tax Officer of such an amount as to render such person liable to income-tax, requiring him to furnish within such period, not being less than thirty days, as may be specified in the notice, return of his total income during the previous year. Sub-section (3) provided :

"If any person has not furnished a return within the time allowed by or under sub-section (1) or sub-section (2), or having furnished a return under either of those sub-sections, discovers any omission or wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made."

Section 34 of the Act authorised the Income-tax Officer to serve a notice on the assessee for assessment or reassessment if - (a) the Income-tax Officer had reason to believe that by reason of the omission 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 if (b) in cases not mentioned in clause (a) the Income-tax Officer had in consequence of information in his possession reason to believe that income, profits or gains chargeable to income-tax had escaped assessment for any year, or had been under-assessed, or assessed at too low a rate, or had been made the subject of excessive relief under th

The appellant was already assessed to income-tax for the years 1945-46 and 1946-47 under the Act of 1922. Counsel for the appellant concedes that the appellant did not comply with the notice dated June 24, 1959, and filed first a return for the assessment year 1946-47 and thereafter a return for the assessment year 1945-46. He, however, submits that even if the return was not demanded, since the return for 1946-47 was filed by the appellant the Income-tax Officer was bound to consider that return according to law and to pass appropriate orders of assessment thereon and so long as he did not do so, he was incompetent to issue a notice of reassessment either under section 34 of the Income-tax Act, 1922, or section 148 of the Income-tax Act, 1961. We are unable to accept that contention. The Act does not provide for any machinery for dealing with voluntary returns filed by an assessee after assessment of income for the year of assessment is completed. Such a voluntary return does not operate as a bar to the Inc

This court has held in Ranchhoddas's case that where no return has been filed by the assessee within the period prescribed by section 22(1) of the Income-tax Act, 1922, the assessee is entitled in law to submit a voluntary return in answer to the general notice under section 22(1) before assessment is completed, for a return in answer to the general notice can under section 22(3) be filed at any time and when such a voluntary return is filed, the Income-tax Officer cannot ignore that return voluntarily filed and issue a notice of reassessment under section 34 of the Income-tax Act, 1922. A notice of reassessment before the voluntary return is disposed of is therefore invalid. But the principle of Ranchhoddas's case only applies to cases where no assessment of the income of the assessee has been made. Where the income of the assessee has been assessed to tax, it is not open to the assessee on coming to learn or apprehending that proceedings under section 34 of the Act will

be taken against him to file a volun

The return filed on August 17, 1959, therefore, did not deprive the Income-tax Officer of his jurisdiction to start proceedings under section 34 of the Indian Income-tax Act, 1922, against the assessee. There is no dispute that after the repeal of the Act of 1922, it was competent to the Income-tax Officer to issue a notice under section 148 of the Income-tax Act, 1961, for the assessment of income of the assessee if no proceeding for assessment had been commenced prior to April 1, 1962.

The appeal fails and is dismissed with costs.

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