

Baladin Ram

Vs

Commissioner of Income-Tax, U.P.

Civil Appeals Nos. 663 and 664 of 1966

(A. N. Grover, J. C. Shah, V. Ramaswami – I JJ)

21.08.1968

JUDGMENT

GROVER J. -

In these appeals by special leave the facts may be stated : The assessee at the material time as was a Hindu undivided family. The relevant assessment year is 1944-45 corresponding to the accounting year ending on Diwali Samvat 2000 (October 28, 1943). On February 20, 1945, the income-tax Officer made an assessment on a total income of Rs. 26,800 odd which comprised income from the share in the business of Kasi Iron Foundry and the income from the property. This order was revised under section 34 of the Indian Income-tax Act, 1922, hereinafter called the Act. In the revised assessment order the total income of the assessee was computed at Rs. 71,731. In this amount a sum of Rs. 40,000 was included as income from undisclosed sources. This assessment was challenged before the Appellate Tribunal, and was set aside on the ground that there had not been proper service of a notice under section 34. A fresh notice under section 34 was issued in October, 1951. On October 16, 1952, a revised assessment o

"The Income-tax officer who made the assessment for 1945-46 might have had all the accounts of the business in sarpat and bamboos before him and might have known the investments made by the assessee in that business. The question for consideration is whether the Income-tax officer had reason to believe that the failure on the part of the assessee to fully and truly disclose all the material facts necessary for the making of the assessment for the year 1944-45, income had escaped assessment. Surely, even if the income tax officer had known that the investment made by the assessee in that business were his revenue income he could not have proceeded under section 34 because the income could not have been assessee in the assessment year 1945- 46. It could be assessed in the assessment year 1944-45. The income appearing by way of deposits in the sarpat business could be assessed only is income from some undisclosed source and the previous year for the income from undisclosed source for which the assessee had not e

The Tribunal, however, found, as is apparent from its order dated March 21, 1957, that the unexplained investment which was really the income of the assessee from undisclosed source was Rs. 27,875 instead of Rs. 32,000. The Tribunal called for a report on certain other matters with which we are not concerned and which were disposed of by a subsequent order dated August 31, 1958. On a petition filed under section 66 (1) of the Act the Tribunal referred a the following question to the High Court for decision :

"Whether, on the facts and in the circumstances of the case, the revised assessments under section 34 dated 16th October, 1952, and 18th March, 1954, are legal and valid

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As regards the first revised assessment the High Court was of the view that the even if the provisions of section 34 (1) (b) were to apply the assessment could be said to be barred by time nor could it be apply the assessments could not be barred by time nor could is be said to be barred under section 34 (1) (a) as the assessee had failed to show that the Income-tax officer was were that the assessee had received income from its share in the firm. The question was consequently answered in the affirmative so far as the assessment order dated October 16, 1952, was concerned. The assessment to order of March 18, 1952, was challenged before the High Court to the ground that there was not the part on the part of the assessee attracting applicability of section 34(1)(a). It was noticed by the High Court on that although the Income-tax Officer had, during the proceedings for the assessment year 1945-46, made an enquiry about the investments in sarpat and bamboo business no action had been taken in those assessme

The argument of Mr. S. C. Manchanda in respect of the assessment made in October, 1952, is that there was no failure on the part of the assessee to disclose material facts. It is submitted that the share income of the assessee's son from the firm, Rajnarian Durga Prasad, could not be shown in the assessee's return as the accounting period of that firm closed on April 1, 1944, which was well after the close of the previous year of the assessee which ended on October 28, 1943. It is said a that neither the income of the firm nor the share of the assessee's son had been determined till then and it was not possible for the assessee to show the said income in his return. Moreover, the Income-tax Officer had knowledge of the assessee's interest in the firm, Ramnarain Durga Prasad, on May 12, 1947, when the assessment for the year 1945-46 was made. Thus, the escapement, if any, has not resulted from any default or omission on the part of the assessee. The High Court had disposed of this contention by observing tha

Mr. Manchanda has called our attention to section 68 of the Income-tax Act, 1961, according to when where any sum is found credited in the books an assessee maintained for any previous year and the assessee offers no explanation about the nature and source there of or the explanation offered by him is not, in the opinion of the income tax officer satisfactory, the sum so credited maybe charged to income-tax as the income of the assessee of that previous year. It is, however, obvious that even under the provisions embodied under the new Act it is only when any amount is found credited in the books of an assessee that the section will apply. On the other hand if the undisclosed the income was found to be from some unknown source or the amount represents some concealed income which is not credited in his books the position would probably not be different from what was laid down in the various case decided when the Act was in force.

The last argument of Mr. Manchanda is that, in order to attract the applicability of section 34(1)(a) of the Act, the omission or the failure on the part of the a assessee to disclose fully and truly all material facts necessary for his assessment must be found to be wilful and deliberate. In support his submission he has relied on P. R. Mukherjee v. Commissioner of Income-tax in which it was observed that a person cannot be said to have omitted or failed to disclose something when, of such thing, h has no knowledge and that a similar implication is carried by the word "disclose" because one cannot be expected to disclose a thing unless it is a matter which he had known or knows of. It is altogether unnecessary to decide whether this view is sustainable or not. At any rate, in the present case, the assessee had failed to show that he did not know and was not aware of the true position in respect of the sum of Rs. 27,000 odd which was invested in the sarpat and bamboo business.

For all these reasons the appeals fail and are dismissed with costs.

Appeals dismissed.

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