

V. D. M. Rm. M. Rm. Muthiah Chettiar

Vs

Commissioner of Income-Tax, Madras

Civil Appeals Nos. 1457 to 1459 of 1968

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

14.02.1969

JUDGMENT

SHAH J. -

Ramanathan Chettiar, his son, Muthiah Chettiar - called hereinafter for the sake of brevity, Muthiah - and Ramanathan, Annamalai and Alagappan, sons of Muthiah, constituted a Hindu undivided family. The family owned a 3/5th share in M. RM. S. Firm, Seramban, in Malaya. The firm was assessed under the Indian Income-tax Act, 1922, in the status of firm resident within the taxable territories. On September 16, 1950. Muthiah separated from the family taking his 1/5th share in the M. RM. S. Firm. On April 13, 1951, the status of the family became completely disrupted and the three sons of Muthiah took in equal shares the remaining 2/5th share - the grandfather, Ramanathan, taking no share in the M. RM. S. Firm.

For the assessment year 1952-53 Muthiah submitted a return of his income as an individual and stated under the head "business income" "Kindly ascertain his (assessee's) share of profit and remittances from the Income-tax Officer, Second Additional Circle - I, Karaikudi, in F. 6098-m/1952-53". In Part III of the return Muthiah supplied the following information about his partners :

#-----	Name and address	Name of each partner
Share of the firm including assessee-----		Messrs.
R. RM. S. Firm 1. Assessee (Muthiah Chettiar) 60/303	Seramban, F. M. S. 2. VD. M. RM. M. RM.	
M. 40/303 Ramanathan Chettiar (minor) 3. VD. M. RM. M. RM. M. 40/303	Alagappan Chettiar	
(minor) 4. VD. M. RM. M. RM. M. 40/303	Annamalai Chettiar (minor) 5. C. P. R. 60/303	
6. M. S. S. 60/303 7. Charity 3/303-----		##

For the assessment year 1953-54 in column 3 in section B of the return Muthiah stated : Kindly ascertain the remittances from the Income-tax Officer, fifth Additional, Karaikudi, in F. 6098-m", and at page 3 of the return in column 3 of section F it was stated :

Assessee has 60/303 share in Messrs. M. RM. S. Joint Seramban (Malaya). Kindly ascertain share of profit or loss from the Income-tax Officer, Fifth Additional Karaikudi, in F. 6098."

In part III of the return he set out the names of the partners and were mentioned in the return for 1952-53. Against the names of Ramanathan Chettiar and Annamalai Chettiar it was not disclosed that they were minors.

For the assessment year 1954-55 at the foot at page 1 of the return Muthiah stated : "The assessee

has a remittance of Rs. 6,188-12-0 from R. RM. S. Firm, Seramban. His share of income maybe taken from the firm file. ", and in part III the names of seven partners as mentioned in 1952-53 return were set out - Ramanathan, Alagappan, and Annamalai were not shown as minors.

Ramanathan, Alagappan and Annamalai - the three minor sons of Muthiah - represented by their mother and guardian also filed return of their respective income for the year 1952-53, 1953-54 and 1954-55 and disclose therein their shares in the profit from the 2/5th share in the M. RM. S. Firm.

For the assessment years 1952-53, 1953-54 and 1954-55 the Income-tax Officer completed the assessments separately on the firm, on Muthiah as an individual and on the three minors represented by their mother and guardian. Muthiah was assessed in respect of his share in the income of the firm and from other sources. In his return Muthiah had not disclosed the shares received by his minor sons and the Income-tax Officer did not in making the assessments include shares of the minors from the firm under section 16(3) (a) (ii) of the India tax Act, 1922. The Income-tax Officer issued notices of reassessment to Muthiah under section 34(1) (a) of the Income-tax Act, 1922, for the years 1952-53 and 1953-54 and under section 34 (1) (b) for the years 1954-55. Muthiah filed returns under protest declaring the same income as originally assessed. In view of the Income-tax Officer Muthiah had not furnished in Part III, clause (c), of the return full facts regarding to the other parties and in column 2 he had merely disclo

The Appellate Assistant Commissioner confirmed the order made by the Income-tax Officer. In appeal to the Tribunal it was contended by Muthiah that he had fully and truly disclosed all the particulars he was required to disclose in the returns of his income for the three years in question 1952-53 and 1953-54 and for 1954-55 the re-opening was based only on a change of opinion. " Muthiah also contended that section 40 of the Income-tax Act was mandatory and since the Income-tax Officer had made separate assessments on the minors represented by their mother, no further assessment under section 16(3) could be made, the two sections being mutually exclusive.

The Tribunal observed that for the first two years section 34(1) (a) applied, that in respect of the year 1954-55 there is no charge of opinion but the assessment was made on information received within the meaning of section 34(1) (b) of the Income-tax Act and that separate assessments of the minors did not stop the Income-tax Act and that separate assessments of the minors did not stop the Income-tax Officer from assessing the income received by the minor sons in the hands of Muthiah. The Appellate Tribunal accordingly confirmed the order of the Appellate Assistant Commissioner.

At the instance of Muthiah the following questions were referred to the High Court of Madras :

"(i) Whether, on the facts and in the circumstances of the case, the reassessments made on the assessee under section 34 of the Act is valid in law for 1952-53 to 1954-55 ?

(ii) Whether, on the facts and in the circumstance of the cases the inclusion of the share income of the minor in the hands of the assessee by invoking the provisions of section 16(3) of the Act is valid in law notwithstanding that an assessment is made on them in or represented by his guardian ?"

The answer to the second question must, in view of the recent judgment of this court in C. R. Nagappa v. Commissioner of Income-tax, be in the affirmative.

In considering the first question it is necessary to refer to certain provisions of the Income-tax Act, 1922. By section 3 the total income of the previous year of every individual, Hindu undivided

family, company and local authority, and of every firm and other association of persons or the partners of the firm or the members of the association individually was charged to tax for that year in accordance with, and subject to the provisions of, the Act at any rate or rates prescribed by the Finance Act. "Total income" was defined in section 2(15) as meaning "total amount of income, profits and gains referred to in sub-section (1) of section 4 computed in the manner laid down in this Act." Section 4(1) set out the method of computation of total income; it enacted :

"(1) Subject to the provisions of this Act, the total income of any provisions year of any person includes all income, profits and gains from whatever source derived which -

(a) are received or are deemed to be received in the taxable territories in such year by or on behalf of such person, or

(b) if such person is resident in the taxable territories during such year, -

(i) accrue or arise or are deemed to accrue or arise to him in the taxable territories during such year, or....."

Section 22 by sub-section (1) required the Income-tax Officer to give notice by publication in the press in the prescribed manner, requiring every person whose total income during the previous year exceeds the maximum exempt from tax, to furnish a return in the prescribed form setting forth his total income. Sub-section (2) authorised the Income- tax Officer to serve a notice upon a person whose income in the opinion of the Income-tax Officer exceeded the minimum free from tax. Section 23 dealt with the assessment. It conferred power upon the Income-tax Officer to assess the total income of the assessee and to determine the sum payable by him on the basis of such return submitted by him. Rule 19 framed under section 59 of the Income-tax Act, 1922, required the assessee to make a return in the form prescribed thereunder, and in Form A applicable to an individual or a Hindu undivided family or an association of persons there was no clause which required disclosure of income of any person other than the income o

But section 16 sub-section (3), provided that in computing the total income of any individual for the purpose of assessment there shall be included the classes of income mentioned in clauses (a) and (b). Sub- section (3) (a) (ii), in so far as it is material, provided :

The assessee was bound to disclose under section 22(5) the names and addresses of his partners, if any, engaged in business, profession or vocation together with the location and style of the principal place and branches thereof and the extent of the shares of all such partners in the profits of the business, profession or vocation and any branches thereof, but the assessee was not required in making a return to disclose that any income was received by his wife or minor child admitted to the benefits of partnership of a firm of which he was a partner.

Counsel for the Commissioner contended that in the forms of returns prescribed in the "Notes of Guidance" for drawing up the return were printed, and thereby the assessee was informed that he had to disclose the income received by his wife and minor children from a firm of which the assessee was a partner. Counsel has, however, not placed before the court the forms of return in vogue in the relevant year of assessment. In the Income-tax Manual published under the authority of the Central Government in 1945 under clause (3) printed at page 185 the assessee is advised to include in the return under the appropriate head certain classes of income which are liable to be included in the assessment of an individual under section 16, and income liable to be taxed under

sections 41D, 44E and 44F. This instruction was repeated in the Manual, Parts II and III at pages 344 and 345 in the 10th edition published in 1950. But in the 11th edition of the Manual published in 1954 no such instructions were printed. About the d

We are, in the circumstances, unable to agree with the High Court that section 34 imposed an obligation upon the assessee to disclose all income includible in his assessment by reason of section 16(3) (a) (ii). Section 34(1) (a) sets out the conditions in which the power may be exercised : it did not give rise to an obligation to disclose information which enable the Income-tax Officer to exercise the power under section 16(3) (a) (ii), not had the use of the expression "necessary for his assessment" in section 34(1) (a) that effect.

The High Court did not consider the question whether in the year 1954- 55 the notice under section 34(1) (b) was properly issued against Muthiah. The Tribunal in their judgment observed :

"There is no basis for the argument that the Income-tax Officer had only changed his opinion and re-opened the assessment."

We agree with that view. The order of reassessment was made well within four years from the date of the last day of the year of assessment 1954-55. The notice was therefore competently issued by the Income-tax Officer.

The order passed by the High Court, in so far as it relates to the years 1952-53 and 1953-54 is set aside and the answer in the negative is recorded. For the year 1954-55 the answer recorded by the High Court is confirmed. There will be no order as to costs throughout.

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