

Commissioner of Income-Tax, Calcutta

Vs

Burlop Dealers Ltd.

Civil Appeal No. 649 of 1967

(CJI J. C. Shah, S. K. Hegde, A. N. Grover, G. K. Mitter, A. N. Ray, A. N. Reddy, S. M. Sikri, V. Bhargava, I. D. Dua, J. M. Shelat, C. A. Vaidialingam, P. Jagmohan Reddy JJ)

21.01.1971

JUDGMENT

SHAH, C.J. -

Burlop Dealers Ltd., hereinafter referred to as "the assessee", is a limited company. For the assessment year 1949-50, the assessee submitted a profit and loss account disclosing in the relevant year of account Rs. 1,75,875 as profit in a joint venture from H. Manory Ltd. and claimed that Rs. 87,937 being half the profit earned from H. Manory Ltd. was paid Ratiram Tansukhri under a partnership agreement. The assessee stated that on June 5, 1948, it had entered into an agreement with H. Manory Ltd. to do business in plywood chests and in consideration of financing the business the assessee was to receive 50% of the profits of the business. The assessee also claimed that it had entered into an agreement on October 7, 1948, with Ratiram Tansukhrai for financing the transactions of H. Manory Ltd. in the joint venture, and had agreed to pay to Ratiram Tansukhrai 50% of the profit entered by it from the business with H. Manory Ltd.

The Income-tax Officer accepted the returned filed by the assessee and included in computing the total income for the assessment year 1949- 50. Rs. 87,937 only as the profit earned on the joint venture with H. Manory Ltd. In the assessment year 1950-51 the assessee filed a return also accompanied by a profit and loss account disclosing a total profit of Rs. 1,62,155 in the relevant account year received from H. Manory Ltd. and claimed that it had transferred Rs. 81,077 to the account of Ratiram Tansukhrai as his share. The Income-tax Officer, on examination of the transactions, brought the entire amount of Rs. 1,62,155 to tax holding that the alleged agreement of October, 1948, between the assessee and Ratiram Tansukhrai had merely been "got up as a device to reduce the profits, received from H. Manory Ltd." This order was confirmed by the Appellate Assistant Commissioner and by the Income-tax Appellate Tribunal. The Tribunal then stated a case under section 66(1) of the Income-tax Act, to the High Court of Calcutta. The High Court agreed with the view of the Tribunal had answered the question against the assessee.

In the meanwhile on May 13, 1955, the Income-tax Officer issued a notice under section 34 to the assessee for the assessment year 1949- 50 to reopen the assessment and to assess the amount of Rs. 87,937 allowed in the assessment of income-tax as paid to Ratiram Tansukhrai. The assessee filed a return which did not include the amount paid to Ratiram Tansukhrai. The Income-tax Officer reassessed the income under section 34(1) (a) and added Rs. 87,937 to the income returned by the assessee in the assessment year 1949-50. The Appellate Assistant Commissioner held that the Income-tax Officer was entitled to take action under section 34(1) (a) of the Income-tax Act, 1922, after the amendment in 1948, and to reopen the assessment if income had been under-assessed

owing to the failure of the assessee to disclose fully and truly all material facts necessary for the assessment. He confirmed the order observing that the assessee had misled the Income-tax Officer into believing that there was a genuine arrangement with Ratiram Tansukhrai and had stated in the profit and loss account that the amount paid to Ratiram Tansukhrai was the share of the latter in the partnership, whereas no such share was payable to Ratiram Tansukhrai.

In appeal against the order of the Appellate Assistant Commissioner the Income-tax Appellate Tribunal held that the assessee had produced all the relevant account and documents and documents necessary for completing the assessment, and the assessee was under no obligation to inform the Income-tax Officer about the true nature of the transactions. The Tribunal on that view reversed the order of the Appellate Assistant Commissioner and directed that the amount of Rs. 87,937 be excluded from the total income of the assessee for the year 1949-50.

An application under section 66(1) of the Indian Income-tax Act for stating a case to the High Court was rejected by the Tribunal. A petition to the High Court of Calcutta under section 66(2) for directing the Tribunal to submit a statement of the case was also rejected. The Commissioner has appealed to this court.

Section 34(1) of the Indian Income-tax Act, 1922, as it stood in the assessment year 1949-50 provided :

"If -

(a) the Income-tax Officer has 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

(b) notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assessee, the Income-tax Officer has in consequence of information in his possession reason to believe that income, profits or gains chargeable to income-tax have escaped assessment for any year, or have been under-assessed,.....

he may in cases falling under clause (a) at any time within eight years and in cases falling under clause (b) at any time within four years of the end of that year, serve on the assessee,..... 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....."

The Income-tax Officer had, in consequence of information in his possession that the agreement with Ratiram Tansukhrai was a sham transaction, reason believe that income chargeable to tax had escaped assessment. Such a case would appropriately fall under section 34(1) (b). But the period prescribed for serving a notice under section 34(1) (b) had elapsed Under section 34(1) (a) the Income-tax Officer had authority to serve a notice when he had reason to believe that by reason of omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for the his assessment for the year, income chargeable to tax had escaped assessment. As observed by this court in *Calcutta Discount Co. Ltd. v. Income-tax Officer, companies District I, Calcutta* :

"The words used are 'omission or failure to disclose fully and truly all material facts necessary for his assessment for that year'. It postulates a duty on every assessee to disclose fully and truly and material facts necessary for his assessment. What facts are material a necessary for the assessing authority will, different from case to case. In every assessment proceeding, The assessing authority will, for the purpose of computing or determining the proper tax due from the purpose of computing or determining help him in coming to the correct conclusion. From the primary facts in his possession, whether on disclosure by the assessee, or discovered by him on the basis of the facts disclosed, or otherwise, the assessing authority has to draw inferences as regards certain other facts; and ultimately, from the primary facts and the further facts inferred from them, the authority has to draw the proper legal inferences, and ascertain on a correct interpretation of the taxing enactment, the proper tax leviable."

We are of the view that under section 34(1) (a) if the assessee has disclosed primary facts relevant to the assessment, he is under no obligation to instruct the Income-tax Officer about the inference which the Income-tax Officer may raise from those facts. The terms of the Explanation to section 34(1) also do not impose a more onerous obligation. Mere production of the books of account or other evidence from which material facts could with due diligence have been discovered does not necessarily amount to disclosure within the meaning of section 34(1), but where on the evidence and the materials produced the Income-tax Officer could have reached a conclusion other than the one which he had reached, a proceeding under section 34(1) (a) will not lie merely on the ground that the Income-tax Officer has raised an inference which he may later regard as erroneous.

The assessee had disclosed his books of account and evidence from which material facts could be discovered : it was under no obligation to inform the Income-tax Officer about the possible inferences which may be raised against him. It was for the Income-tax Officer to raise such an inference and if he did not do so the income which has escaped assessment cannot be brought to tax under section 34(1) (a).

The appeal fails and is dismissed with costs.

Appeal dismissed.

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