

SUPREME COURT OF INDIA

Commissioner of Income-Tax, Gujarat

Vs.

Bhanji Lavji Porbandar

C.A.Nos.1181 to 1183 of 1967

(J. C. Shah, C.J.I., K. S. Hegde and A. N. Grover, JJ.)

21.01.1971

JUDGEMENT

SHAH, C. J.:-

1. These appeals are filed with certificate granted by the High Court of Gujarat. They arise out of proceedings for re-assessment of income of the respondent relating to assessment years 1947-48, 1948-49 and 1949-50. The respondent who will hereinafter be called 'the assessee' carried on the business in ghee at Porbandar, which was at all material times relevant to the assessments in question outside the taxable territories. The Income-tax Officer C-III Ward, Bombay, initiated proceedings against the assessee as a non-resident for the assessment years, amongst others, 1947-48, 1948-49 and 1949-50. The assessee had in the relevant years of accounts a current account with the Bank of India Ltd., in Bombay and sale proceeds in respect of large quantities of ghee supplied outside taxable territories were credited in that account and were then transferred to Porbandar. The assessee had also a current account with the firm Shamji Kalidas and Company at Bombay and in this accounts Messrs. Shamji Kalidas and Company had paid interest to the assessee. The assessee being a nonresident, tax at the maximum rate was deducted by Messrs. Shamji Kalidas and Company, in respect of the interest paid to the assessee under Section 18 (3-A) of the Income-tax Act, 1922. The assessee disclosed those facts to the Income-tax Officer and contended that since the

assessee had no business in the taxable territories nor any income taxable in the taxable territories (other than the income from Messrs. Shamji Kalidas and Company in respect of which certificates showing deduction at the maximum rate), the assessment proceedings initiated by the Income-tax Officer be discharged. The Income-tax Officer upheld the contention and made an order on December 30 1948, for the assessment years 1947-48 and 1948-49 observing that there was no source of income taxable in British India and that the proceedings started should be dropped. In the assessment year 1949-50 the Income Tax Officer also Passed an order that the proceeding be discharged.

2. In 1956 the Income-tax Officer, Porbandar, initiated proceedings under Section 34 (1) (a) of the Income-tax Act, 1922, for re-opening the assessment of the assessee for the assessment years 1947-48, 1948-49 and 1949-50, and served the requisite notices. The assessee challenged the jurisdiction of the Income-tax Officer to assess him on various grounds one of which alone survives for consideration. The assessee submitted that it had disclosed fully and truly all the primary facts necessary for the purpose of assessment and on that account the Income-tax Officer had no jurisdiction to initiate re-assessment proceedings. The assessee contended that the Income-tax Officer could not commence re-assessment proceedings merely because he entertained a view different from the view of his predecessor. The Income-tax Officer rejected the plea raised by the assessee and brought the income which in his view had escaped assessment to tax. Appeals filed by the assessee to the Appellate Assistant Commissioner and to the Income-tax Appellate Tribunal were dismissed.

3. At the instance of the assessee, four questions were referred to the High Court of Gujarat as arising out of the order of the Tribunal. We are concerned with the third question :

"(3) Whether on the facts and circumstances of the case, the Tribunal was justified in upholding the action under Section 34 (1) (a) as valid in all the three assessment years?"

The High Court recorded on that question an answer in the negative. With certificate granted by the High Court, the Commissioner of Income-tax has appealed to this Court.

4. The High Court held that all primary facts relevant to the assessment of the income of the assessee were disclosed by the assessee. In respect of the notice for the first two years, viz 1947-48 and 1948-49 the Income-tax Officer had by his order dropped the proceedings of assessment observing:

"In response to notice issued under Section 23 (2) of the Act Mr. A. V. Deshpande x x x attends on behalf of the assessee states that the assessee is a non-resident and has absolutely no business in

British India. The assessee is doing ghee business at Porbandar and delivers goods at Porbandar to, merchants who buy ghee from Indian Union. There is no office nor any agency of the non-resident in British India. The non-resident assessee has maintained a Bank account in British India but this is only for recovering from the merchants dues in respect of goods delivered at Porbandar. Bank Pass Books are produced. It appears that the cheques that are received from the merchants are credited in this account and subsequently transferred to Porbandar. The assessee has, however, got a current account with Shamji Kalidas and Co., and receives interest on the amounts deposited in this firm. Mr. Deshpande, however, produces certificates of the taxes deducted at the maximum rate under Section 18 (3A) on interest received by the non-resident. The tax is regularly paid upto 1948-49 assessment years. As there is no source of income taxable in British India, I drop the proceedings already started." In the proceeding for assessment of income for the assessment year 1949-50 the assessee submitted a blank return stating :

"With reference to your above, we have to return herewith the forms sent by you and have to inform that the income-tax is always paid by us at maximum scale in British India and that we have no other income therefore and hence the forms sent by you are returned herewith with a request to cancel the same."

After considering the representation the Income-tax Officer passed the following order:

"Return of income for assessment year 1949-50 was served on the assessee direct at Porbandar, The assessee is a non-resident and has absolutely no business in British India. The nonresident has interest income in British India on which tax is recovered at the maximum rate. Assessment proceedings in the previous year were also dropped after enquiries. I, therefore, cancel the return of income issued for assessment year 1949-50."

5. The assessee had in the course of the assessment proceedings shown his bank pass-books of his account with the Bank of India Ltd. He also disclosed the account with Messrs. Shamji Kalidas and Company. The Tribunal in dealing with the appeals relating to the assessment years 1947-48 and 1948-49 observed

"The duty of the assessee is to disclose all the primers, facts in his possession. In the present case, a considerable portion of the sale proceeds of ghee was received in Bombay. There is difference between accrual and receipt x x x and x x it depended upon the opinion of the Income-tax Officer as to whether any profit had accrued in British India. Receipt of sale proceeds of ghee in British India, however, stands on a different footing, and the question of full and true disclosure on the part of the assessee of all material facts should be examined with regard to the sale proceeds of ghee only. If the assessee could satisfy us that there was no concealment with regard to the said question. that should be enough for our purposes, and it would not be necessary further to examine the position with regard to the profits which are deemed to have accrued in British India under Ss.

42 (1) and 42 (3)"

The Tribunal proceeded to observe that the statements made by the assessee's representative only disclosed that the assessee was a non-resident, that it had no business in British India, that it had delivered ghee at Porbandar, and that it had no office or agency in British India. They also observed that the Bank Account and the Bank Pass Books of the assessee were produced and the Income-tax Officer was informed that the cheques received were "subsequently transferred to Porbandar", and the current account with Messrs. Shamji Kalidas and Company and the amounts deposited therein were also disclosed. In the view of the Tribunal, by these disclosures, the "assessee did not furnish any particulars about how the delivery was given" and "the all-important, question about the price of the goods was not mentioned", that on that account the statement must be regarded as incomplete: that it was the duty of the assessee's representative to disclose "the profits embedded in the price, but the sequence of the several statements was such that the assessee wished to show thereby that there was no office or agency in British India and whatever was done was done at Porbandar"- that the question of receipt of sale proceeds in British India was "thus bypassed"; that the Income-tax Officer was informed about the interest paid to the assessee but "no question was raised of any possible liability of the assessee to tax on other account"; that "all the statements taken together contained such a meagre presentation of the facts, that it was difficult to consider that there was a full and true disclosure of material facts"; and that "the material facts were not disclosed, whatever was disclosed was not fully disclosed, and in that sense there was no true disclosure",. The Tribunal then observed:

"This is not a case where the Income-tax Officer drew a wrong legal inference from facts. This is a case where facts must be regarded as not fully or truly disclosed. x x x Even so, in this case, it is mainly the assessee who failed to carry out the obligation under the law, with the result that the income escaped assessment. The words "full" and "true" and "material facts" and the Explanation to S. 34 (1) (a) would lose all their meaning if the meagre statements by the assessee were to pass muster. Under those circumstances, we must hold that the initiation of action under S. 34 (1) (a) was valid "

6. In our judgment, the High Court was right in holding that the Tribunal misconceived the nature of the proceedings and the duty imposed upon the assessee by S. 34 (1) (a). It is not for the assessee to satisfy the Income-tax Officer that there was no concealment with regard to any question; it is for the Income-tax Officer, if that issue is raised, to establish that the assessee had failed to disclose fully and truly certain facts material to the assessment of income which had escaped assessment. Failure to disclose how the delivery of ghee was given at Porbandar was wholly irrelevant, and failure to furnish particulars in that behalf cannot assist the case of the Department. Observation relating to the failure to disclose the price of ghee supplied is not strictly accurate, for, it was disclosed by the assessee's representative that the cheques were delivered for payment of the dues for ghee supplied at Porbandar and that "they were subsequently transferred to Porbandar". It was again no duty of the assessee to disclose to or instruct the Income-tax Officer that there were "profits embedded in the receipt" of the money at Bombay. Section 34 (1) (a) does not cast any duty upon the assessee to instruct the Income-tax Officer on questions of law. The assessee had disclosed that ghee was delivered at Porbandar by him and the price in respect of those supplied was received in

Bombay which was subsequently transferred to Porbandar We are unable to accept the view of the Tribunal that the "question of receipt of sale proceeds in British India was thus by-passed". The assessee's representative had expressly stated that the assessee had maintained a Bank account in British India in which "for recovering from merchants dues in respect of the goods delivered at Porbandar" were credited. The assessee also produced the Bank Pass Books. The finding that "the question of receipt of sale proceeds was by-passed" cannot be accepted as correct. The statement that the cheques were "subsequently transferred to Porbandar" only means that the amounts realized by encashment of the cheques were sent to Porbandar, and not that the cheques were sent to Porbandar. We do not think that any more detailed disclosure was necessary to comply with the requirements that the assessee had fully and truly disclosed all the material facts necessary for the purpose of assessment.

7. The Income-tax Officer may, if he is satisfied, that on account of failure on the part of the assessee to disclose fully and truly all material facts necessary for the purpose of assessment, income has escaped assessment, he may assess or re-assess the income. But when the primary facts necessary for assessment are fully and truly disclosed, he is not entitled on change of opinion to commence proceedings for re-assessment. The Income-tax Officer was apprised of all the primary facts necessary for assessment, and he proceeded to "drop the assessment proceedings". He may have raised a wrong legal inference from the facts, disclosed but on that account he was not competent to commence re-assessment proceedings under Section 34 (1) (a) for the two assessment years 1947-48 and 1948-49.

8. Counsel for the Commissioner contended that in any event the assessee had in the assessment of income for the year 1949-50 not disclosed all the primary facts. Counsel contended that the statement before the Income-tax Officer was a bare statement about the receipt of interest from Messrs. Shamji Kalidas and Company and there was no reference to the account with the Bank of India Ltd. There is no substance in this contention. The assessee had invited the attention of the Income-tax Officer to the previous assessment proceedings and also had invited his attention to the fact that on the interest received tax at maximum rate was charged. In the Bank account there was no express reference. But we agree with the High Court that since the factual position having remained unaltered in the assessment year 1949-50 there was no non-disclosure of material facts necessary for assessment of the income. The income-tax Officer was fully aware of the assessment proceedings for the years 1947-48 and 1948-49, and in his order he expressly referred to those proceedings. Being aware of the earlier proceedings and the reasons for passing the previous order, if the Income-tax Officer passed an order in effect holding that there was no income of the assessee chargeable to tax, the Income-tax Officer cannot seek to reassess the income on the ground of failure to disclose fully and truly the facts necessary for assessment. We do not think that any ground is made out for disagreeing with the High Court in respect of the validity of the order of re-assessment for the Year 1949-50.

9. The appeals fail and are dismissed with costs. One hearing fee

Appeals dismissed.