Commissioner of Income-Tax, Gujarat II

Vs

Kurban Hussain Ibrahimji Mithiborwala

Civil Appeals Nos. 1990 of 1968 and 1172 of 1971

(K.S. Hegde, A.N. Grover JJ)

02.09.1971

JUDGMENT

HEGDE J. -

1. Civil Appeal No. 1172 of 1971 is by special leave and Civil Appeal No. 1990 of 1968 is by certificate. These two appeals raise the same question for decision. In a reference under section 66(2) the Tribunal referred to the High Court of Gujarat the following question :

> "Whether, on the facts and in the circumstances of the case, there was a material irregularity in the notice issued to the assessee under section 34 and dated 28th February, 1958, and if so, whether such irregularity vitiated the proceedings taken under the said notice ?"

The High Court answered that question in the affirmative and in favour of the assessee. Aggrieved by that decision, the Commissioner of Income-tax, Gujarat, has brought this appeal.

The facts of the case as set out in the statement of case are these :

The concerned assessment year is 1949-50, the relevant previous year being S. Y. 2004 ending on November 1, 1948. For that assessment year the assessee was assessed. At the time of that assessment, the assessee pleaded that his account books had been destroyed during the communal riots in March, 1948. He also denied having any bank account. Some time after he made the assessment the Income-tax Officer came to know that the assessee had bank accounts during the relevant accounting year. Hence, he sought to commence proceedings under section 34 of the Indian Income-tax Act, 1922. On February 28, 1958, he issued notices both under section 22(2) as well as under section 34 of the Act. In his notice under section 22(2) as well as under section 34 of the Act. In his notice under section 22(2) he mentioned that he was going to reassess the assessee for the assessment year 1949-50. But in his notice under section 34 he stated :

> "Whereas, I have reason to believe that your income assessable to income-tax for the year ending 31st of March, 1949, has escaped assessment."

The notice under section 34 referred to the assessment of the assessee for the accounting year ending 1947, whereas the notice under section 22(2) referred to the assessment of the assessee for the accounting year ending November, 1948. After the receipt of those notices the assessee addressed a letter to the Income-tax Officer on November 19, 1958, pointing out the discrepancy about the assessment years mentioned in the two notices and further requested the Income-tax

Officer to clarify the position, whether the notice was under section 34(1) (a) or section 34(1) (b). The Income-tax Officer did not choose to reply to that letter but proceeded to reopen and reassess the assessee. Aggrieved by that order the assessee went up in appeal to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner allowed his appeal on the ground that the section 34 notice was invalid. But on a further appeal taken by the Commissioner, the Tribunal reversed the decision of the Appellate Assistant Commissioner. It held that the irregularity in the notice did not in any manner prejudice the assessee. Thereafter, as directed by the High Court, the Tribunal submitted to the High Court the question set out earlier. We have earlier referred to the opinion given by the High Court.

It is well-settled that the Income-tax Officer's jurisdiction to reopen an assessment under section 34 depends upon the issuance of a valid notice. If the notice issued by him is invalid for any reason the entire proceedings taken by him would become void for want of jurisdiction. In the notice issued under section 34 the Income-tax Officer sought to reopen the assessment of the assessee for the assessment year 1948-49 but in fact he reopened the assessment of the Year 1949-50. Hence, in our opinion, the High Court was right in holding that the notice in question was invalid and as such the Income-tax Officer had no jurisdiction to revise the assessment of the assessee for the year 1949-50.

In the result Civil Appeal No. 1172 of 1971 fails and the same is dismissed with costs.

Now coming to Civil Appeal No. 1990 of 1968, the High Court did not give any reason in support of the certificate granted by it. That being so, that appeal was not maintainable. We have not remitted the appeal back to the High Court for considering whether a certificate should be given or not as we have gone into the merits of the case in Civil Appeal No. 1172 of 1971. Hence, Civil Appeal No. 1990 of 1968 is dismissed as not maintainable. No costs.

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