

# SUPREME COURT OF INDIA

Union of India

Vs.

Rai Singh Dev Singh Bist

C.A.Nos.2392 to 2403 of 1969

(K. S. Hegde and P. Jaganmohan Reddy, JJ.)

15.12.1972

## JUDGEMENT

### **HEGDE, J.:-**

1. These appeals by certificate arise from several writ petitions filed by the H.U.F. M/s. Raj Singh's Deb Singh Bist and its Karta Thakur Mohan Singh Bist, challenging the validity of certain notices issued under Section 34 (1) (a) of the Indian Income-tax Act, 1922 (in short the Act) by the Income-tax Officer, Central Circle Delhi. The High Court of Delhi allowed these writ petitions and quashed the impugned notices. Hence these appeals.

2. The assessee in these cases is an H.U.F. The assessment years with which we are concerned in these appeals range from 1942-43 to 1953-54. The assessee filed its return for these years in due time. The assessee's account-books showed considerable cash credits in the name of the brother-in-law of the 2nd respondent, the Karta of the H.U.F. Those alleged creditors were living in Nepal. The account books also showed certain credit entries in the name of Rana Anand Nar Singh alleged to be in connection with expenses incurred by him for getting trees cut on behalf of the assessee. The

assessee was a forest contractor. He had taken large tracts of forests for felling trees in Nepal. The Income-tax Officer went into the genuineness of the cash credit entries standing in the name of the alleged creditors of the assessee as well as to the alleged amount due to one of them. The contention of the assessee was substantially accepted either by the Appellate Assistant Commissioner or by its Revenue Appellate Tribunal with regard to the assessment for the assessment years 1943-44 to 1949-50, the final, assessments were made in pursuance of an agreement or settlement arrived at between the assessee and the Deputy Director of Inspection (Investigation) New Delhi on October 18, 1954, Long after the assessments in question were finalised the Income-tax Officer issued notices to the appellant under Section 34(i)(a) of the Act seeking to reopen the assessment already finalised. The validity of those notices is in issue.

3. Before an Income-tax Officer can issue a statutory notice under section 34(1)(a), he must have reason to believe that by reason of omission or failure on the part of an assessee to disclose fully and truly all material facts necessary for his assessments for the years in question income profits or gains chargeable to income-tax have escaped assessment during those years, further before doing so he must have recorded his reasons for acting under Section 34 (1)(a) and the Central Board of Revenue must have been satisfied on those reasons that it is a fit case for the issue of the notice. The recording of the reasons in support of the belief formed by the Income-tax Officer and the satisfaction of the Central Board of Revenue on the basis of the reasons recorded by the Income-tax Officer that it is a fit case for issue of notice under S.34 (1)(a) are extremely important circumstances to find out whether the Income-tax Officer had jurisdiction to proceed under S.34 (1)(a).

4. In *Calcutta Discount Co. Ltd. v. Income-tax Officer* 11 ITR 191 = (AIR 1961 SC 372) this Court laid down (1) that to confer jurisdiction under Section 34 to issue notice in respect of assessments beyond the period of four years but within a period of eight years from the end of the relevant year two conditions had to be satisfied. The first, was that the Income-tax Officer must have reason to believe that Income, profits or gains chargeable to Income-tax had been under - assessed. The second was that he must also have reason to believe that such "under-assessment" had occurred by reason of either (1) omission or failure on the part of an assessee to make a return of his income under Section 22, or (2) omission or failure on the part of an assessee to disclose fully and truly all material facts necessary for his assessment for that year. Both these conditions are conditions precedent to be satisfied before the Income-tax Officer could have Jurisdiction to issue a notice for the assessment or re-assessment beyond the period of four years but within the period of eight years from the end of the year in question.

5. In *Chhugamal Rajpal v. S. P. Chaliha* 79 ITR 603 = (AIR 1971 SC 730) this Court ruled that before an Income-tax Officer can be said to have had reason to believe that some income had escaped assessment, he should have some relevant material before him from which he could have drawn the inference that income has escaped assessment. His vague feeling that there might have been some escape of income from assessment is not sufficient. This Court also took the view that the Central Board of Revenue before reaching its satisfaction that the case was a fit one to be proceeded under Section 34(1)(a) must have examined the reasons given by the Income-tax Officer

and arrived at its own conclusion : and that it is not permissible for it to act mechanically. The same view was again taken by this Court in *Shoe Nath Singh v. Appellate Assistant Commr. of Income-tax (Central) Calcutta* 82 ITR 147 = (AIR 1971 SC 2451).

6. In the instant case, the assessee alleged in his writ petitions that there was no relevant material before the Income-tax Officer before he issued notices under Section 34(1)(a) on the basis of which he could have had reason to believe that any income had escaped assessment. In the writ petitions the assessee called upon the Income-tax Officer to produce the report made by him to the Central Board of Revenue as well as the order of the Central Board of Revenue thereon. Despite this prayer neither the Union of India nor the Income-tax Officer cared to produce the report made by the Income-tax Officer to the Central Board of Revenue under Section 34(1)(a) or the order of the Central Board of Revenue. Before the hearing of the writ petitions commenced, the assessee again applied to the Court to call upon the Union of India and the Income-tax Officer to produce those documents. In response to that application, an affidavit was filed before the Court stating that the relevant records could not be traced from the file of the Central Board of Revenue. Assuming that the concerned records were missing from the file of the Central Board of Revenue the copy of the report made by the Income-tax Officer and the order received by him must have been in the file of the Income-tax Officer. No reason was given for not producing those records. These circumstances give rise to an adverse inference against the department. We are constrained to come to the conclusion that the records in question were not produced because they did not assist the department's case. Under these circumstances it is not possible to come to the conclusion that the facts necessary to confer jurisdiction on the Income-tax Officer to proceed under Section 34(1)(a) had been established.

7. All that was said on behalf of the department was that sometime in the year 1955 the assessee sold large tracts of land to two of his brothers-in-law for a sum of Rs.47 lakhs but in reality that property was not worth that amount we do not know whether there was any basis for this conclusion. As seen earlier the cash credit entries were brought to the notice of the Income-tax Officer before the relevant assessment orders were passed. He had an occasion to investigate into them. It is not necessary to go into this question more deeply in view of the fact that there is nothing to show that there was any relevant material before the Income-tax Officer before he issued the notices under Section 34(1)(a) to have reason to believe that as a result of the assessee's failure to state in its return truly and fully any fact, any income had escaped assessment.

8. In the result these appeals fail and they are dismissed with costs - one hearing fee.

Appeals dismissed.