

Johri Lal (H. U. F.), Agra

Vs

The Commissioner of Income Tax

Civil Appeal No. 1089 of 1970

(K.S. Hegde, P. Jagmohan Reddy, H.R. Khanna JJ)

09.02.1973

JUDGMENT

HEGDE, J. -

1. This appeal by certificate arises from the decision of the High Court of Allahabad in a reference under section 66(1) of the Income Tax Act, 1922 (to be hereinafter referred to as the Act). The assessee is a Hindu Undivided Family. In this case we are concerned with the assessee's assessment for the assessment year 1950-51.

The question for decision in this case is whether on the facts and circumstances of the case the proceedings which were commenced by a notice under Section 34(1)(b) could have been converted into proceedings under Section 34(1)(a) by the Income Tax Appellate Tribunal. In order to decide this question it is necessary to refer to the material facts. For the assessment year in question the assessee was assessed without any objection. Thereafter the Income Tax Officer issued a notice to him under Section 34 of the Act without mentioning therein whether he was taking action under Section 34(1)(a) or 34(1)(b). The assessee filed its objection to the notice in question. It pleaded that it had supplied to the Income Tax Officer correct information and there was no justification for taking action against it under Section 34. The Income Tax Officer in his order opined that it had not given the full particulars but all the same it was not necessary to go into that question as he was taking action under Section 34(1)(b). The assessee's objection that proceedings under Section 34(1)(b) were barred by limitation, was rejected by the Income Tax Officer. The assessee went up in appeal to the Appellate Assistant Commissioner against the order of the Income Tax Officer. The only point considered by the Appellate Assistant Commissioner was whether proceedings under Section 34(1)(b) were barred by limitation or not. He did not go into the question whether the proceedings taken by the Income Tax Officer could be justified under Section 34(1)(a). The Appellate Assistant Commissioner agreeing with the Income Tax Officer came to the conclusion that the required notice had been served within time and therefore the proceedings taken under Section 34(1)(b) were valid proceedings. Against this order of the Appellate Assistant Commissioner the assessee went up in second appeal to the Income Tax Appellate Tribunal. The Tribunal not only upheld the order of the Appellate Assistant Commissioner but upheld that order on an alternative ground namely that the impugned proceedings could be justified under Section 34(1)(a). Thereafter at the instance of the assessee the Tribunal submitted the following questions soliciting the opinion of the High Court -

(1) Whether the reopening of the case by the Income Tax Officer by the issue of a notice under Section 34 of the Indian Income Tax Act fell within the ambit of Section 34(1)(a) of the Act or under Section 34(1)(b) of the Act ?

(2) Whether the service of the notice under Section 34 of the Indian Income Tax Act by affixure on the residential house of the assessee was legal and proper ?

(3) Whether the amount of Rs. 62,500/- was liable to tax under Section 4(1)(b)(iii) of the Indian Income Tax Act ?

3. The High Court answering the first question, came to the conclusion that the notice in question was a valid notice and it was a notice under Section 34(1)(a). It answered the second question in the negative and in favour of the assessee. It answered the third question in the affirmative and in favour of the Revenue. It came to the conclusion that the proceedings under Section 34(1)(b) were barred by time but it agreed with the Tribunal that the proceedings were validly initiated under Section 34(1)(a).

4. Our answer to the third question depends upon our answer to the first question. If we come to the conclusion that the proceedings were not validly initiated under Section 34(1)(a) then we will have to answer the third question also in favour of the assessee.

5. Before proceedings under Section 34(1)(a) could be validly initiated, the Income Tax Officer must have reasons to believe that by reason of the omission or failure on the part of the 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 and gains chargeable to income-tax, have escaped assessment for that year, or have been under unassessed, or assessed at too low a rate, or have been made the subject-matter of the excessive relief under the Act, or excessive loss or depreciation allowance have been computed. The formation of the required opinion by the Income Tax Officer is a condition precedent. Without formation of such an opinion he will not have jurisdiction to initiate proceedings under Section 34(1)(a). The fulfilment of this condition is not a mere formality but it is mandatory. The failure to fulfil that condition would vitiate the entire proceedings. As held by this Court in *Sheo Nath Singh v. Appellate Assistant Commissioner of Income Tax, (Central), Calcutta and Others*, ((1971) 82 ITR 147 (SC) : (1972) 3 SCC 234) the Income Tax Officer would be acting without jurisdiction if the reason for his belief that the conditions are satisfied, does not exist or is not material or relevant to the belief required by this section. It is true that the courts will not go into the sufficiency of the reasons which persuaded the Income Tax Officer to initiate proceedings under Section 34(1)(a) of the Act but the courts will examine the relevancy of the reasons which persuaded the Income Tax Officer to take proceedings under Section 34(1)(a). The formation of the required belief is not the only requirement. The Income Tax Officer is further required by Section 34 to record his reasons for taking action under Section 34(1)(a) and obtain the sanction of the Central Board of Revenue or the Commissioner, as the case may be.

6. In the instant case, as seen earlier, the Income Tax Officer did not choose to proceed under Section 34(1)(a). Consequently, he may or may not have recorded the reasons as required by this section nor do we know whether those reasons were submitted to the required authority and his sanction obtained on the basis of those reasons. This Court also has ruled that the Commissioner or the Board of Revenue, while granting sanction will have to examine the reasons given by the Income Tax Officer and come to an independent decision and the authority in question should not act mechanically. From the material on record there is no basis to hold that those requirements had been fulfilled. Possibly they could not have been fulfilled because the Income Tax Officer proceeded only on the basis of Section 34(1)(b) and not on the basis of Section 34(1)(a). He himself had declined to proceed on the basis of Section 34(1)(a) for whatever reason it may be. Therefore, it

was not open to the Tribunal to justify the proceedings taken by the Income Tax Officer under Section 34(1)(a). The Tribunal could not have initiated proceedings under Section 34(1)(a). If the Tribunal converts the proceedings into one under Section 34(1)(a) then the conditions prescribed in Section 34(1)(a) cannot be satisfied.

7. We are of the opinion that the Tribunal erred in upholding the impugned proceedings under Section 34(1)(a). The High Court also did not address itself to this question properly.

8. For the reasons mentioned above this appeal is allowed. The answers given by the High Court on questions Nos. 1 and 3 are discharged and in their place we answer question No. 1, that the proceedings taken were invalid. Consequently, we answer the third question in the negative and in favour of the assessee. The Revenue to pay the costs of the assessee both in this Court as well as in the High Court.

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