K. L. Varadarajan

Vs

Commissioner of Income-Tax, Madras

Civil Appeals Nos. 1275-1277 of 1970

(A . C. GuptaH. R. Khanna JJ)

05.11.1974

JUDGMENT

KHANNA, J. -

1. These three appeals by certificate are directed against the judgment of the Madras High Court whereby the High Court answered the following question referred to it under Section 66(1) of the Indian Income-tax Act, 1922 (hereinafter referred to as the Act) in respect of assessment years 1955-56, 1956-57 and 1957-58 against the assessee-appellant and in favour of the Revenue :

Whether the declaration filed by the assessee under Section 17(1) in respect of the assessment year 1958-59 was operative in relation to the re-assessments in respect of the previous years ending on December 31, 1954, December 31, 1955 and December 31, 1956 corresponding to the assessment years 1955-56, 1956-57 and 1957-58 ?

2. The assessee during the relevant period was studying abroad. He derived income during that period by way of dividend on shares and interest from deposits. The original assessments for the relevant years were completed on January 31, 1956, December 27, 1956 and February 28, 1958. The residential status adopted in those years was "resident and ordinarily resident person." Income-tax and super-tax were calculated at the rate applicable on the total income. In the course of the assessment proceedings for the assessment year 1958-59, corresponding to the year ending on December 31, 1957, the assessee filed a declaration under Section 17(1) of the Act on March 24, 1959 claiming to be assessed at rates appropriate to the total world income. This assessment was completed on March 23, 1960 in the status of a "non-resident". The application under Section 17(1) was rejected. As the Income-tax Officer found that the assessee was a non-resident in the three previous years ending on December 31, 1954 to December 31, 1956 and his total income had been assessed to income-tax at the normal rates and further as he had failed to make the requisite declaration under Section 17(1) within the requisite time, the Income-tax Officer formed the view that the earlier assessments had been made at a lower rate. Action under Section 34 of the Act was accordingly taken by the Income-tax Officer and assessments for the above mentioned three years were reopened and completed under Section 23(3) read with Section 34 of the Act. The status of the assessee was treated as that of a non-resident. The assessee's declaration under Section 17(1), which he had made in the course of assessment proceedings for the assessment year 1958-59, was rejected and ignored and his total income was brought to tax at the maximum rates. The assessee in the course of the proceedings for re-assessment requested that the income during the three years in question should be taxed at rates appropriate to his world income. According to the assessee, the omission on his part to make the declaration earlier under Section 17(1) was due to inadvertence and ignorance. It was also contended that as the assessments were being reopened and were thus

deemed to be pending for the earlier years, the assessee's declaration made during the assessment proceedings for the year 1958-59 should be taken into account for the purpose of re-assessments. The Income-tax Officer rejected all the submissions. According to the Income-tax Officer, option had been exercised by the assessee after the prescribed date and it could not have effect on the assessments for the three years in question. The Income-tax Officer also referred to the first proviso to Section 17(1) of the Act and said that the declaration could be entertained only on the first occasion on which the assessee became assessable. The second proviso, it was observed, would also not avail the assessee.

3. The assessee went up in appeal to the Appellate Assistant Commissioner. It was contended inter alia on his behalf that the Income-tax Officer was wrong in holding that the declaration under Section 17(1) could be entertained only on the first occasion when the person because assessable. According to the assessee, the declaration could be accepted even later provided sufficient cause was shown for not filing the declaration earlier. The assessee further submitted that the assessment as non-resident was made for the first time in respect of assessment year 1958-59 and as Section 34 proceedings were fresh proceedings the declaration made in 1958-59 ought to be accepted. The Appellate Assistant Commissioner held that the Income-tax Officer's reasoning for not accepting the declaration under Section 17(1) was not correct. In this connection the Appellate Assistant Commissioner referred to his order in the appeal by the assessee for the assessment year 1958-59 wherein he had held that the assessee had sufficient cause for not filing the declaration under Section 17(1) when the assessee became first assessable. It was also held that the failure to file the declaration had not resulted in a reduction of tax liability. The declaration filed on March 24, 1959 by the assessee, in the opinion of the Appellate Assistant Commissioner, could be availed of for the assessments for the three years in question as the assessment orders consequent upon the reopening of assessments were being made subsequent to that date.

4. The department went up in appeal to the Income-tax Appellate Tribunal against the order of the Appellate Assistant Commissioner. The Tribunal accepted the reasoning of the Appellate Assistant Commissioner and dismissed the appeal. On being moved by the Commissioner of Income-tax the Tribunal referred the question reproduced above to the High Court. The High Court in answering the question against the assessee referred to the expression "all assessments thereafter" in the two provisos to Section 17(1) of the Act and observed that those words showed that the declaration could be availed of in respect of assessments for subsequent years and not in respect of assessments made by the Revenue in exercise of its power under Section 34 of the Act. The word "assessments" in the above expression, in the opinion of the High Court, referred to only original assessments and not to assessments made by the Revenue in exercise of its power under Section 34 of the Act.

5. In appeal before us Mr. Desai on behalf of the assessee-appellant has assailed the judgment of the High Court and has contended that correct view of law was taken by the Appellate Assistant commissioner and the Tribunal. As against that Mr. Hardy on behalf of the Revenue has supported the view taken by the High Court.

6. After hearing the learned Counsel for the parties, we are of the opinion that the submission made by Mr. Desai is well-founded. The assessee, as mentioned earlier, filed the declaration in the course of assessment proceedings relating to the year 1958-59 on March 24, 1959. Although the above declaration was rejected by the Income-tax Officer, the Appellate Assistant Commissioner on appeal in respect of assessment for the assessment year 1958-59 held that there was sufficient cause for the assessee in not making the declaration on the first occasion on which he became assessable and that his failure to make such declaration had not resulted in reducing his liability to tax for any year. The

assessee was accordingly allowed to make the declaration after the expiry of the prescribed period. According to the second proviso to Section 17(1) of the Act, once the assessee is allowed to make the declaration after the expiry of the period specified "such declaration shall have effect in relation to the assessment for the year in which the declaration is made (if such assessment had not been completed before such declaration) and all assessments thereafter". The words of the second proviso to Section 17(1) reproduced above make it clear that the declaration would be operative not only for the assessment for the year in which the declaration is made if such assessment had not been completed before such declaration, but also for all assessments to be made thereafter. The words "all assessments thereafter", in our opinion, signify not only assessments for the subsequent years but would also cover assessments for the earlier years in case the assessments for those earlier years are being made subsequent to the filing of the declaration. The words "all assessments thereafter" have a wide amplitude and we see no cogent reason for not giving them their natural meaning or for restricting their scope. Those words would include within their ambit all assessments made subsequent to the filing of the declaration and it would be wrong to so construe them as if the Legislature had used the words "all assessments for the subsequent years".

7. We are unable to subscribe to the view taken by the High Court that the assessments referred to in the words reproduced above mean only the original assessments and not the re-assessments made under Section 34 of the Act. According to Section 2(8) of the Income-tax Act, 1961 the words "assessment" includes re-assessment. Although such a definition was not there in the Act of 1922, the word "assessment" in the second proviso to Section 17(1) of the Act must necessarily, in our opinion, cover re-assessment under Section 34 of the Act. In the case of A. N. Lakshman Shenoy v. I. T. O. ((1958) 34 ITR 275 : AIR 1958 SC 795), this Court held that the word "assessment" in the Finance Act, 1950 would include re-assessment. It was observed that the collocation of the words "levy, assessment and collection of Income-tax" showed that the word "assessment" had a comprehensive meaning so as to cover re-assessment. The case of C.I.T. v. Khemchand Ramdas ((1938) 6 ITR 414 : AIR 1938 PC 175 : 175 IC 1) upon which reliance had been place by the Revenue in Shenoy's case, as has also been done in the present case, was distinguished. This Court referred to the observations of the Judicial Committee in the case of Khemchand Ramdas and held that those observation lend no support to the view that the word "assessment" must always bear a particular meaning in the Income-tax Act. Reliance in this context was placed upon the following observations of the Judicial Committee :

These two questions are so closely related to one another that they can conveniently be considered together. In order to answer them it is essential to bear in mind the method prescribed by the Act for making an assessment of tax, using the word assessment in its comprehensive sense as including the whole procedure for imposing liability upon the taxpayer. The method consists of the following steps. In the first place, the taxable income of the taxpayer has to be computed. In the next place, the sum payable by him on the basis of such computation has to be determined. Finally, a notice of demand in the prescribed form, specifying the sum so payable, has to be served upon the taxpayer.

This Court further observed in Shenoy's case :

If the word 'assessment' is taken in its comprehensive sense, as we think it should be taken in the context of Section 13(1) of the Finance Act, 1950, it would include 're-assessment' made under the provisions of the Act. Such 'reassessment' will without doubt come within the expression 'levy, assessment and collection of Income-tax'. In his speech in Commissioners for General Purposes of Income Tax for the City of London v. Gibbs (1942 AC 402, 406) Lord Simon has pointed out that the word 'assessment' is used in the English Income-tax Code in more that one sense; and sometimes

within the bounds of the same section, two separate meaning of the word may be found. One meaning is the fixing of the sum taken to represent the actual profit and the other the actual sum in tax which the taxpayer is liable to pay.

It has been contended before us that the Finance Act and the Income-tax Act should be read together as forming one code, and so read the words 'assessment' and 're-assessment' acquired definite and distinct connotations. We are unable to agree, for the reasons which we have already given, that even if we read the Finance Act along with the Income-tax Act the word 'assessment' can be given a restricted meaning. To repeat those reasons : the Income-tax Code itself uses the word assessment in different senses, and in the context and collocation of the words of the Finance Act, the word 'assessment' is capable of bearing a comprehensive meaning only.

In the context of Section 17(1) of the Act the word "assessment" must necessarily include re-assessment under Section 34 of the Act. To hold otherwise would result in an anomalous situation. This can best be illustrated by taking a concrete case. An assessee files a declaration under Section 17(1) of the Act in respect of the assessment year 1955-56. Supposing his assessment for the year 1956-57 is reopened and an order for re-assessment is made. In case the declaration made under Section 17(1) can be availed of only for the original assessments and not for re-assessment under Section 34 of the Act, the result would necessarily be that the declaration would have to be excluded from consideration in making the re-assessment for the year 1956-57 even though the declaration had been filed much earlier. This could hardly have been the intention of the Legislature. The entire scheme of Section 17(1) as well as the context, in our opinion, clearly shown that the word "assessment" in Section 17(1) has been used in a comprehensive sense so as the include re-assessment.

8. It may also be observed that there are indications in the Act that whenever the Legislature intended that the word "assessment" should not include re-assessment, it used express word for the purpose. Section 33B of the Act empowers the Commissioner of Income-tax if he considers any order passed by the Income-tax Officer to the erroneous and prejudicial to the interest of Revenue to make inter alia an order after complying with the requirement of that section, cancelling the assessment and directing a fresh assessment. Sub-section (2) of that section makes it clear that no order can be made under that section to revise an order of re-assessment made under the provisions of Section 34. If the order of assessment did not include an order of re-assessment made under the provisions of Section 34, there would have been hardly any necessity of making a provision in sub-section (2) of Section 33B that no order can be made under sub-section (1) of that section to revise an order of re-assessment made under the provisions of Section 34.

9. According to Section 67 of the Act, no suit shall be brought in any Civil Court to set aside or modify any assessment made under the Act. It is obvious that the protection afforded by that section would be available not only for the original assessments but also for re-assessments made under Section 34 of the Act even though the word used in the section is assessment and not re-assessment. Likewise, the fact that the Legislature has used the word "assessments" and not "re-assessments" in the second proviso to Section 17(1) of the Act would not exclude the applicability of that proviso to cases of re-assessments subsequent to the filing of the declaration.

10. The matter may also be looked at from another angle. Proceedings under Section 34 of the Act can be initiated of the Income-tax Officer has reason to believe that income, profits or gains chargeable to Income-tax have escaped assessment for any year of have been under-assessed or assessed at too low a rate or have been made the subject of excessive relief the Act or excessive loss

or depreciation allowance has been computed. The first of the above five contingencies deals with income, profits or gains chargeable to Income-tax escaping assessment. In such an event the Income-tax Officer would after initiating proceedings under Section 34 make assessment of such income, profit or gain. In the other four contingencies, the order made by the Income-tax Officer would be for re-assessing such income, profit or gain or re-computing the loss or depreciation allowance. It the view propounded on behalf of the Revenue were to be accepted that assessment does not include re-assessment made under Section 34 of the Act, the result would be that the benefit of the declaration made under Section 17(1) of the Act, in case other conditions are fulfilled, would be available only in the first contingency mentioned above relating to escaped assessment and not in the remaining contingencies because they pertain to re-assessment. This would certainly be anomalous for it would result in placing persons whose income has escaped assessment in a better position compared to persons whose income has been under-assessed or assessed at too low a rate or has been the subject of excessive relied under the Act or in whose cases excessive loss or depreciation allowance has been computed. This could hardly have been the intention of the Legislature.

11. We, therefore, accept these appeals, set aside the judgment of the High Court and discharge the answer given by it to the question referred to it. The question reproduced above is answered in the affirmative in favour of the assessee-appellant and against the Revenue. The assessee-appellant shall be entitled to his costs both in this Court as well as in the High Court. One hearing fee.

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