

Income Tax Officer, Calcutta and Others

Vs

Radheshyam Ladia

Civil Appeal No. 1187 Of 1974

(CJI R. S. Pathak, Ranganath Misra JJ)

21.04.1987

JUDGMENT

RANGANATH MISRA, J. -

1. This appeal by the revenue is by certificate and is directed against the judgment of a Division Bench of the Calcutta High Court which upheld the decision of a Single Judge in a writ petition quashing the notices issued to the petitioner under Section 147(a) of the Income Tax Act of 1961 in respect of the assessment years 1960-61, 1961-62 and 1962-63.

2. Respondent was assessee to income-tax for the assessment year 1960-61 under Section 23(3) of the Act of 1922 on March 4, 1961 and for the following two assessment years under Section 143(3) of the Act of 1961 on June 10 and 11, 1963, respectively. Notices under Section 147(a) read with Section 148 of the Act of 1961 were issued to the respondent in respect of these three assessment years whereupon he challenged the validity of those notices by filing an application under Article 226 of the Constitution. Though the notices did not disclose at material to justify their issue, the Income Tax Officer in his return to the rule nisi before the High Court stated :

... The assessment for the year 1963-64 of Smt. Sushila Bala Devi Ladia, wife of the petitioner, was taken up by me. During the course of the said assessment, she contended having received valuable assets from the petitioner between December 11, 1955, and October 28, 1960, without adequate consideration in money or money's worth. It was contended on her behalf that she received over 1203 tolas of gold in jewellery on or about December 11, 1955, and Rs. 1,00,000 in cash on or about October 28, 1960. It was further contended on her behalf that the said jewellery was sold between the years 1959 and 1962. The income from the said assets which should have been included in the return of the petitioner was not so included by him. The capital gains arising therefrom was also not included or disclosed by the petitioner in his returns.

On behalf of the assessee, reliance was place on the decision of this Court in V. D. M. R. M. M. R. M. Muthiah Chettiar v. CIT ((1969) 74 ITR 183, 187 (SC) : (1969) 1 SCC 675 : AIR 1970 SC 10 : (1970) 1 MLJ (SC) 16, where with reference to failure of the assessee to include the share income of his wife and minor child in a firm, this Court held : (SCC pp. 679-80, paras 9 and 10)

In considering the first question it is necessary to refer to certain provisions of the Income Tax Act, 1922. By Section 3 the total income of the previous year of every individual, Hindu undivided family, company, and local authority, and of every firm and other association of persons or the

partners of the firm or the members of the association individually was charged to tax for that year in accordance with, and subject to the provisions of the Act at any rate or rates prescribed by the Finance Act. "Total Income" was defined in Section 2(15) as meaning "total amount of income, profits and gains referred to in sub-section (1) of Sections 4 computed in the manner laid down in this Act". Section 4(1) set out the method of computation of total income, it enacted :

- (1) Subject to the provisions of this Act, the total income of any previous year of any person includes all income, profits and gains from what ever sources derived which -
 - (a) are received or are deemed to be received in the taxable territories in such year by or on behalf of such parson, or
 - (b) if such person is resident in the taxable territories during such year, -
 - (i) accrue of arise or are deemed to accrue or arise to him in the taxable territories during such year, or

Section 22 by sub-section (1) required the Income Tax Officer to give notice by publication in the press in the prescribed manner, requiring every person whose total income during the previous year exceeds the maximum exempt from tax, to furnish a return in the prescribed form setting forth his total income. Sub-section (2) authorised the Income Tax Officer to serve a notice upon a person whose income in the opinion of the Income Tax Officer exceeded the minimum free from tax. Section 23 dealt with the assessment. It conferred power upon the Income Tax Officer to assess the total income of the assessee and to determine the sum payable by him on the basis of such return, submitted by him. Rule 19 framed under Section 59 of the Income Tax Act, 1922, required the assessee to make a return in the form prescribed thereunder, and in Form A applicable to an individual or a Hindu undivided family or an association of persons there was no clause which required disclosure of income of any person other than the income of the assessee, which was liable to be included in his total income. The Act and the Rules accordingly imposed no obligation upon the assessee to disclose to the Income Tax Officer in his return information relating to income of any other person by law taxable in his hands.

But Section 16 sub-section (3), provided that the computing the total income of any individual for the purpose of assessment there shall be included the classes of income mentioned in clauses (a) and (b). Sub-section (3)(a)(ii), insofar as it is material, provided :

- In computing the total income of any individual for the purpose of the assessment, there shall be included -
 - (a) so much of the income of a wife or minor child of such individual as arises directly or indirectly -
 - (ii) From the admission of the minor to the benefit of partnership in a firm of which such individual is partner.

The assessee was bound to disclose under Section 22(5) the names and addresses of his partners, if any, engaged in business, profession or vocation together with the location and style of the principal place and branches thereof and the extent of the shares of all such partners in the profits of the business, profession or vocation and branches thereof, but the assessee was to required in making a return to disclose that any income was received by his wife or minor child admitted to the benefits

of partnership of a firm of which he was a partner.

Upon this conclusion this Court therein held : (SCC p. 680, para 11)

For failing or omitting to disclose that income proceedings for reassessment cannot therefore be commenced under Section 34(1)(a).

3. Relying upon this decision, the learned Single Judge quashed the notices. The revenue appealed to the Division Bench but failed to obtain any relief in view of the said decision of this Court. The Division Bench also took note of the decision in the case of Malegaon Electricity Co. (P) Ltd. v. CIT ((1970) 78 ITR 466, 472-73 (SC) : (1970) 2 SCC 431 : AIR 1970 SC 1982). Therein after referring to Muthiah Chettiar case ((1969) 74 ITR 183, 187(SC) : (1969) 1 SCC 675 : AIR 1970 SC 10 : (1970) 1 MLJ (SC) 16), Hedge, J. speaking for the court, stated : (SCC p. 435, para 10)

Hence, by the showing the income of his wife and minor children, the assessee cannot be deemed to have failed to disclose fully and truly all material facts necessary for his assessment within the meaning of Section 34(1)(a) of the Act.

4. It is appropriate to take note of a later decision of this Court in CIT v. Smt. P. K. Kochammu Amma Peroke ((1980) 125 ITR 624 : (1981) 1 SCC 241 : 1981 SCC (Tax) 47 : AIR 1980 SC 2114). That was of a two-Judge Bench. Reliance was sought to be placed on Muthiah Chettiar case ((1969) 74 ITR 183, 187(SC) : (1969) 1 SCC 675 : AIR 1970 SC 10 : (1970) 1 MLJ (SC) 16). Dealing with the question of imposition of penalty under Section 271(1)(c) of the 1961 Act, the Division Bench observed : (SCC pp. 245-46, para 4)

It is obvious that on this view the order imposing penalty on the assessee would have to be sustained but there is a decision of this Court in Muthiah Chettiar v. CIT ((1969) 74 ITR 183 187 (SC) : (1969) 1 SCC 675 : AIR 1970 SC 10 : (1970) 1 MLJ (SC) 16) which is binding upon us and where we find that a different view has been taken by a Bench of three Judges of this Court. It was held in this case that even if there were any printed instructions in the form of the returns requiring the assessee to disclose the income received by his wife and minor child from a firm of which the assessee was a partner, there was, in the absence in the return of any head under which the income of the wife or minor child could be shown, no obligation on the assessee to disclose this item of income, and the assessee could not be deemed to have failed or omitted to disclose fully and truly all material facts necessary for his assessment within the meaning of Section 34(1)(a) of the Indian Income Tax Act, 1922. With the greatest respect to the learned Judges who decided this case, we do not think, for reasons already discussed, that this decision lay down the correct law on the subject, and had it not been for the fact that since April 1, 1972, the form of the return prescribed by Rule 12 has been amended and since then, there is a separate column providing that 'income arising to spouse/minor child or any other person as referred to in Chapter V of the Act' should be shown separately under that column and consequently there is no longer any scope for arguing that the assessee is not bound to disclose such income in the return to be furnished by him, we would have referred the present case to a larger Bench. But we do not propose to do so since the question has now become academic in view of the amendment in the form of the return carried out with effect from April 1, 1972. We would therefore follow the decision in Muthiah Chettiar case ((1969) 74 ITR 183, 187 (SC) : (1969) 1 SCC 675 : AIR 1970 SC 10 : (1970) 1 MLJ (SC) 16) which being a decision of a Bench of three Judges of this Court is binding upon us

5. We agree with what has been stated in Kochammu Amma case ((1980) 125 ITR 624 : (1981) 1

SCC 241 : 1981 SCC (Tax) 47 : AIR 1980 SC 2114) and for the reasons indicated therein, we do not propose to refer this case to a larger Bench. Following the law as laid down in the two cases reported in Muthiah Chettiar v. CIT ((1969) 74 ITR 183, 187 (SC) : (1969) 1 SCC 675 : AIR 1970 SC 10 : (1970) 1 MLJ (SC) 16), Malegaon Electricity Co. (P) Ltd. v. CIT ((1970) 78 ITR 466, 472-73 (SC) : (1970) 2 SCC 431 : AIR 1970 SC 9182) we dismiss this appeal. There would be no order for costs throughout.

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