ANDHRA PRADESH HIGH COURT

Akula Venkatasubbaiah

Vs

Commissioner of Income-Tax

(Chandra Reddy C.J.)

10.11.1961

JUDGMENT

Chandra Reddy C.J.

1. In this reference relating to the assessment years 1949-50, 1951-52 and 1952-53 we are called upon to determine the following questions :

> "(1) Whether the assessments were validly made under section 34 in respect of the assessment years 1949-50, 1951-52 and 1952-53; and (2) Whether the interest paid by the firm on the capital contributed by the four minor sons of the assessee admitted to the benefits of partnership is includible in the total income of the assessee under section 16(3) (a) (ii) of the Act ?"

The assessee is a partner in the firm of Messrs. Akula Venkatasubbaiah Chetty & Sons carrying on business in Cuddapah with two adults and four minor sons. He and his sons constituted a Hindu undivided family. On April 1, 1946, they effected a partition of the joint family properties and applied to the department for recognition of the partition under section 25A of the Income-tax Act (hereinafter referred to as the Act). Immediately thereafter, the erstwhile male coparceners constituted themselves from April 1, 1946, into a firm known as Akula Venkatasubbaiah & Sons and the minor sons of the assessee were admitted to the benefits of the partnership. On the basis of the instrument of partnership made of June 19, 1946, the concerned Income-tax Officer granted registration on March 31, 1951, for the assessment year 1947-48 and for subsequent years also on applications made in behalf of the partnership. In the returns submitted by the assessee, the income derived by the minors from the partnership was not included with the result that it was not brought to assessment for the relevant assessment years. Subsequently, the Income-tax Officer started proceedings under section 34(1) (a) of the Act to include such income in the assessment of the assessee by a notice issued on September 6, 1956, which was served on the assessee on September 10, 1956. The assessment was completed under section 34 on August 31, 1957, for the assessment year 1948-49 and on October 28, 1957, for the

assessment years 1949-50 to 1955-56 both inclusive.The appeals carried by the assessee to the Appellate Assistant Commissioner and further appeals to the Income-tax Appellate Tribunal proved unsuccessful so far as the three years are concerned. On the request of the assessee, the Tribunal referred the two question set set out above for the opinion of this court under section 66(1) of the Act.

It may at the outset be mentioned that tits was conceded by the learned counsel for the petitioner that so far as the assessment year 1951-52 was concerned, the department properly initiated proceedings under section 34(1) (a) of the Act as no return was submitted by the assessee. But he urges that, as regards the other two years, there was no case for the department to invoke section 34(1) (a) of the Act. It is section 34, since the assessee had filed his returns and had disclosed all the material facts necessary for the assessments for the concerned years. According to the learned counsel, the returns contained all the particulars as required by the relevant section of the Act and, therefore, section 34 could not be attracted to this case.In order to appreciate the relative contentions advanced on behalf of the parties, it is necessary to examine the relevant provisions of the Act. Section 34, in so far as it is of immediate relevance, says :

> "34. (1) (a) If the Income-tax Officer has reason to believe that by reason of the omission or failure on the part of an assessee to make a return of this income under section 22 for any year or to disclose fully and truly all material fact necessary for his assessment for that year, income, profits or gains chargeable to income-tax have escaped assessment for that year, or have been under assessed, or assessed at too low a rate, or have been made the subject of excessive relief under the Act, or excessive loss or depreciation allowance has been computed, or....."

We shall now read section 22 of the Act to the extent it has an impact on this enquiry :

"22. (1) The Income-tax Officer shall, on or before the 1st day of May in each year, give notice, by publication in the press and by publication in the prescribed manner, requiring every person whose total income during the previous year exceeded the maximum amount which is not chargeable to income-tax, to furnish, within such period not being less than sixty-days as may be specified in the notice, a return, in the prescribed form and verified in the prescribed manner, setting forth (along with such other particulars as may be required by the notice) his total income and total world income during that year."

Sub-section (5) recites :

> "22. (5) The prescribed form of the returns referred to in sub-sections (1) and (2) shall, in the case of an assessee engaged in any business, profession or vocation, require him to furnish particulars to the location and style of the principal place wherein he carries on his business, profession or vocation and of any branches thereof, the names and addresses of his partners, if any, in such business, profession or vocation and the extent of the share of the assessee and the shares of all such partners in the profits of the business, profession or vocation and any branches thereof."

It is manifest from section 34 that it comes into play when there is omission or failure on the part of the assessee to make a return of his income under section 22 or to disclose fully and truly all the material facts necessary for his assessment for that year.Before we proceed to discuss the applicability for these section, it is useful to mention here that, while for the assessment year 1952-53, Part III of the prescribed form was filled up, the assessee omitted to do it for the assessment year 1949-50. We will now consider the applicability of section 34 to the assessment year 1949-50. It is urged by Sri Srinivasa Rao that as the assessee had submitted his return under section 22 and given all the particulars necessary for the computation of the income of the assessee, section 34 could not be applied to either of the assessment years. On the other hand, the stand taken by the learned counsel for the department is that as the assessee had neither submitted a valid return nor furnished particulars that were necessary for the assessment of that year, the assessee brings himself within the mischief of section 34. Sri Kondiah suggests that, since Form No. III was not filled up, there was no valid return within the purview of section 34.
To substantiate this proposition, he relies on Ram Kissendas Bagri v. Commissioner of Income-tax, A. R. A. N. Chettiyar Firm v. Commissioner of Income-tax and Lal Mohammed Sardar Mohammed v. Commissioner of Income-tax. These decision lay down that an incomplete return will entail the consequence of the income being brought to be under section 23(4) of the Act. In other words, the Income-tax Officer could make the assessment to the best of his judgment on the assumption that there was a failure to make a return as required by the notice given under sub-section (1) of section 22. These rulings do not really come to the rescue of the department for the reason that in this case the assessment was made under section 23(1) on the footing that the return submitted by the assessee was correct. Section 23(1) enacts :

> "23. (1) If the Income-tax Officer is satisfied without requiring the presence of the assessee or the production by him of any evidence that a return made under section 22 is correct and complete, he shall assess the total income of the assessee, and shall determine the sum payable by him on the basis of such return."

That being so, it is not now open to the department to fall back upon the first part of section 34(1) (a) of the Act. It is true that it as competent originally for the department to ignore the return and to proceed to determine the assessment under section 23(4) but, having chosen to accept the return as correct, the department cannot now suggest that since the return was incomplete the assessee falls within the sweep of section 34(1) (a). That being so, we must take it that there was no omission or failure to make a return. Consequently, it is only the second part of section 34(1) (a) that applies to this case.
With regard to this part, the point sought to be made by Sri Srinivasa Rao on behalf of the assessee is that there was no obligation on the part of the assessee to give any particulars regarding the partnership or to describe the minors as having been admitted to the benefits of the partnership, since all the material necessary to enable the department to include the income of the minors in the total income of the assessee was available to them. In that position, the omission on

his part of section 34(1) (a). In support of this argument, our attention was drawn to section 23(5) of the Act which says :

> "23. (5) Notwithstanding anything contained in the foregoing sub-sections, when the assessee is a firm and the total income of the firm has been assessed under sub-section (1), sub-section (3) or sub-section (4), as the case may be –(a) in the case of a registered firm,...
>
> (ii) the total income of each partner of the firm, including, therein his share of its income, profits and gains of the previous year, shall be assessed and the sum payable by him on the basis of such assessment shall be determined."

On the strength of this section, the argument advanced on behalf of the assessee is that every data that was required to enable the department to include the income of the minors was before them and, as such, it was not incumbent on the assessee to reveal the facts relating to the partnership in his return. We are unable to accede to this proposition. It is pertinent to not that section 22 lays emphasis on the submission of the return in the prescribed form. The form prescribed under rule 19 of the Rules framed by the Central Board of Revenue under section 59 of the Act consists of several parts of which Part III expressly relates to "particulars required under sub-section (5) of section 22 of the Income-tax Act, 1922". Section 22(5), which has already been extracted, requires the assessee to furnish particulars regarding the shares of all the partners in the business, profession or vocation and any branches thereof, etc. If so, it could not be argued that the assessee has disclosed fully anill be no order as to costs.
Questions answered accordingly.