ANDHRA PRADESH HIGH COURT

Pulavarthi Viswanadham

Vs

Commissioner of Income-Tax

(Chandra Reddy C.J.)

19.09.1962

JUDGMENT

Chandra Reddy C.J.

1. The question we are called upon to answer in both the references is formulated in these terms :

> "Whether on the facts and circumstances of the case the share income from the Guntur firm could be included in the assessment validly reopened under section 34(1) (a) of the Indian Income-tax Act, 1922 ?"

R. C. No. 14 of 1961 relates to the assessment year 1945-46 while R. C. No. 13 of 1961 pertains to the year ended March 31, 1948. The assessee, who is an individual, claimed to be a partner in the firm of Messrs. J. V. Subba Rao and B. Satyanarayana Murthy, Guntur. He included his one-fourth share of income from the firm in his return for the year 1945-46. However, the Income-tax Officer excluded this income from the assessees assessment under the impression that it belonged to the estate of late J. V. Subba Rao and the assessment was finalised on that basis. Later on, in an appeal filed on behalf of the estate of J. V. Subba Rao against the order of assessment bringing to tax the one-fourth share of the income above referred to, the Income-tax Appellate Tribunal held that this share income really belonged to the assessee.Meanwhile, the Income-tax Officer initiated proceedings under section 34(1) (a) of the Indian Income-tax Act with the previous approval of the Commissioner for the year 1945-46, as it came to light that the assessee was indulging in extensive money-lending and other business activities without disclosing them to the department, and he included the said share income in the revised assessment.The assessee objected to this inclusion before the Income-tax Officer on the plea that section 34(1) (b) was a bar to reopen the assessment so far as this item was concerned. This objection did not prevail with the Income-tax Officer.

The appeals carried by the assessee to the Appellate Assistant Commissioner and the Income-tax Appellate Tribunal proved unsuccessful as they concurred in the above-mentioned opinion of the Income-tax Officer.However, on the request of the assessee, the Tribunal referred the question indicated above under section 66(1) of the Income-tax Act for the opinion of this court.The primary question that calls for determination in these references is whether the sum of Rs. 7,553 and another sum of Rs. 478 representing the one-fourth share of the profits earned by Messrs. J. V. Subba Rao and which were originally excluded by the Income-tax Officer from the taxable income of the assessee could be included in the revised assessments.It is urged by Sri Rajeswara Rao, learned counsel for the assessee, that it was not competent for the department to reassess this item as the notice issued under section 34(1) (b) was barred, the notice having been issued only on March 11, 1954, while the original assessment was completed on March 2, 1948.To understand the issue arising in this controversy, it is necessary to read the relevant statutory provisions. Section 34 says :

"34. (1) If -

(a) 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 his 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

(b) Notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assessee, the Income-tax Officer has in consequence of information in his possession reason to believe that income, profits and gains chargeable to income-tax have escaped assessment for any year, or have been under-assessed, or assessed at too low a rate, or have been made the subject of excessive relief under this Act, or that excessive loss or depreciation allowance has been computed.he may in cases falling under clause (a) at any time and in cases falling under clause (b) at any time within four years of the end of that year, serve on the assessee, or, if the assessee is a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22 and may proceed to assess or reassess such income, profits or gains or recompute the loss or depreciation allowance; and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section."

It is immediately plain that when once the Income-tax Officer reaches the conclusion on the material that is before him that there has been a non-disclosure as regards part of the income, profits or gains chargeable to income-tax by the assessee, he is entitled to issue a notice either

under clause (a) or (b), as the case may be, under section 22(2) of the Income-tax Act. Section 22(2) is in these terms :

> "22. (2) In the case of any person whose total income is, in the Income-tax Officers opinion, of such an amount as to render such person liable to income-tax, the Income-tax Officer may serve a notice upon him requiring him to furnish, within such period, not being less than thirty days, as may be specified in the notice, a return in the prescribed manner setting forth (along with such other particulars as may be provided for in the notice) his total income and total world income during the previous year."

What emerges from sub-section (2) of section 22 is that when once an assessee is required to submit a return of his income, he is obliged to disclose the totality of his income. The question that falls to be decided on the language of these two sections is whether after notice is issued under section 34(1) (a) the assessment should be limited to items which escaped assessment by reason of the failure on the part of the assessee to disclose all his income, profits or gains which are subject to tax. The contention of learned counsel for the assessee is that having regard to the terms of clause (b), it was not within the powers of the Income-tax Officer to bring to charge such of the items as have escaped from being taxed without any remissness on his part. It is only items that escaped assessment due to omission or failure of the assessee that come within the range and sweep of section 34, continues learned counsel for the assessee. We do not think that we can accede to this proposition. When once the assessment is reopened, no distinction could made between items falling under clause (a) and those coming within the pale of clause (b). As pointed out by a Division Bench of this court in R. C. No. 12 of 1960 [Since reported as Parimisetti Seetharamamma v. Commissioner of Income-tax, to which one of us (the honble the Chief Justice) was a party :

> ".... when once an assessment is reopened under section 34, the Income-tax Officer proceeds de novo under the relevant sections of the Income-tax Act, i.e., he issues notice under section 22(2) and proceeds to assess the assessee. He has to follow the same procedure as in the case of the first assessment as is clear from the clause in section 34 and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section. The proceedings under section 34 must be deemed to relate to proceedings which commence with publication of notice under section 22(1)."

The principle enunciated in the passage extracted above applied with full vigour to the instant case. Any doubts that may be entertained in this behalf will be dispelled, if section 22(2) is read carefully. It lays down in unambiguous terms that the assessee is under an obligation to disclose his total income and it is not open to him to omit any part of his income. If he does so, he does at

his peril of attracting section 23(4). In that situation, it is futile to contend that it is only such portion of the income which was not included in the original return that would be liable to tax in the reassessment proceedings. The position obtaining after invoking section 34(1) (a) is the same as it obtained prior to the completion of the original assessment. In that situation, it was open to the department to subject the above-said shares of income to tax. If that were the only item which escaped assessment, proceedings would have been started only under section 34(1) (b).In these circumstances, we have to answer the reference in favour of the department and against the assessee. The assessee will pay the costs of the department in R. C. No. 14 of 1961. Advocates fee Rs. 100 (One hundred).