

CALCUTTA HIGH COURT

Jethmal Lakhani

Vs

Commissioner of Income-Tax

(G.K. Mitter J.)

06.02.1962

JUDGMENT

G. K. Mitter J.

1. The question referred to this court under section 66(1) of the Indian Income-tax Act is :

"Whether on the facts and in the circumstances of the case, the Income-tax Officer was justified in including the income from undisclosed sources in the reassessment for the year 1946-47 ?"

The facts are follows :The assessee was a member of a Hindu undivided family until October, 1944. By a deed of partition the assessee separated from his brothers and this deed which purported to give the entire family holding was accepted by the revenue authorities. After the partition the first assessment year of the assessee was the year 1946-47. He did not produce any account books nor did he specify any mode of accounting but claimed to go by the Dewali year. The Dewali year 2002 ended some time in November, 1945. The assessee was assessed to an income of Rs. 2,800 in his business of broking and another sum of Rs, 2,000 from "other sources" because of the fact that he had encashed two one thousand rupee notes for the possession of which he failed to give any satisfactory explanation. This assessment was made on March 22, 1949. Thereafter the Income-tax Officer came to know that the assessee held a money-lenders licence and had a money-lending business which he had failed to disclose. On July 6, 1954, a notice under section 34 of the Income-tax Act was issued on the assessee by the Income-tax Officer stating that he had reason to believe that the assessee's income assessable to stating that he had reason to believe that the assessee's income assessable to income-tax for the assessment year 1946-47 had escaped assessment and it was, therefore, proposed to reassess the said income escaping assessment." On September 10, 1954, the Income-tax Officer issued a notice under section 22(4) for the assessment year 1946-47 (2002 Dewali) pursuant to notice under section 34 calling upon the assessee to produce his books of account along with the books

for the year 2002 Dewali and bank pass books. On June 27, 1955, the assessee filed a duly verified list of debtors against some of whom he had filed suits while other had filed insolvency petitions. He did not however, disclose three specific debts the particulars whereof are as follows :Sl. No. Name of the debtor Date of advance Amount K. G. Marston 24-12-1945 M. A. Rashid 1-01-1946 10,000 D. Rajagopal Pillai 20-3-1946 Being asked to explain the source of these investments the assessee stated that they had come out of his ancestral funds. This was rejected by the Income-tax Officer who estimated that the assessee had invested Rs. 1,50,000 in his said business and that income therefrom was Rs. 18,000. In appeal the Appellate Assistant Commissioner confirmed the said estimated with regard to money-lending business but reduced the income from undisclosed sources. The Income-tax Officer treated the financial year 1945-46 as the previous year for this assessment. The point now taken is that inasmuch as the revenue authorities had stated in the notice under section 34 that income for the Dewali year 2002 had escaped assessment it was not open to them to take into account any investment which fell beyond that period. It will be noticed that the three investment which fell beyond that period. It will be noticed that the three specific debts which the assessee failed to disclose dated from December 1945, onwards and they are not within the Dewali year 2002. The question which arises is whether on the basis of the notice which had stated that income for the Dewali year had escaped assessment it was open to the revenue authorities to assess income which fell outside that year but during the financial year 1945-46. Under section 34(1) of the Act as it stood at the relevant time "if in consequence of definite information which has come into his possession the Income-tax Officer discovers that income profits or gains chargeable to income-tax have escaped assessment in any year. . . the Income-tax Officer may in any case in which he has reason to believe that the assessee has concealed the particulars of his income or deliberately furnished inaccurate particulars thereof at any time within eight years, and in any other case at any time within four years of the end of that year, serve on the person liable to pay tax on such income, profits or gains 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 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." Under section 22(4) "the Income-tax Officer may serve. . . . on any person who has made a return under sub-section (1) or upon whom a notice has been served under sub-section (2) a notice requiring him on a date to be therein specified to produce.... such accounts or documents as the Income-tax Officer may require. "Further, under sub-section (2) of section 22 "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 his 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 form and verified in the prescribed manner setting forth (alone with such other particulars as may

be provided for in the notice) his total income... during the previous year." "previous year" has been defined under section 2(11) of the Act to mean "in respect of any separate source of income, profits and gains - (a) the twelve months ending on the 31st day of March next preceding the year for which the assessment is to be made or if the amounts of the assessee have been made up to a date within the said twelve months in respect of a year ending on any date other than the said 31st day of March, then at the option of the assessee the year ending on the day to which his accounts have been so made up." It will therefore, be noticed the assessment being for the assessment year 1946-47 the previous year would end on March 31, 1946, unless the assessee had exercised his option with regard to this source of income of the effect that his accounts had been made up to some other day within the 31st day of March, 1946, as claimed by him in this case for his business of broking on a date ending in November, 1945. The assessee did not exercise any option with regard to the money-lending business and never claimed before the Income-tax Officer that he went by the Dewali year in respect of this source of income. He cannot therefore, complain if his income from money-lending had been computed for the year ending March 31, 1946. This is the view taken by Sinha J. in the case of Sushil Chandra Ghose v. Income-tax Officer. In that case the petitioners assessment for the year 1945-46 was completed on August 18, 1945. The petitioner there had declared his accounting year as beginning from May 1 of every year and ending on April 30 in the year following. According to this the assessment year 1945-46 would correspond to the accounting year of the assessee from May 1, 1943, to April 30, 1944. The petitioner was a director and a shareholder of a company which had resolved on February 28, 1945 that a sum of Rs. 60,395 was available in the shape of pre-incorporation assets purchased by the company against which there was no liability. This was distributed among the shareholders including the petitioner at the rate of Rs. 230 per share. According to the petitioner this was not income but a capital receipt and he had no disclosed it in his income-tax return. On March 24, 1954, a notice was issued under section 34 upon the petitioner stating that he had been under-assessed for the year ending March 31, 1946 and directing him to file a return of total income for the year ending on that date. The petitioner thereupon filed a return but contended that the amount above mentioned was not income or dividend and was not liable to payment of income-tax, On January 31, 1955 the Income-tax Officer made the assessment order whereby the total income of the petitioner was reassessed at Rs. 70,808. On behalf of the petitioner it was contended that since he had declared his year of calculation to be from May to April 30 following the above income from the company would fall within "other sources" and the year of assessment therefor would not be the financial year but the year declared by the assessee. This was negated by the learned judge who said that until the assessee declared his option with regard to the separate source of income the ordinary financial year would be applicable to his case. A similar view was taken by a Division Bench of the Patna High Court in Commissioner of Income-tax v. P. Darolia & Sons. In this case the assessee was a

Hindu undivided family which carried on the business of sale and manufacture of vermilion. The assessment year was 1947-48 and the corresponding accounting year was Dewali year commencing November 4, 1945 and ending October 24, 1946. In his return the assessee showed a gross profit of Rs. 8,814 and a net profit of Rs. 402 from the said business. The Income-tax Officer rejected the account books of the assessee and estimated the net profit to be Rs. 10,877. He also noticed certain unexplained cash credits in the account books of the assessee. He rejected the explanation of the assessee with regard to the cash credits and treated the amount of Rs. 15,000 shown therein as secret profits from an undisclosed source. These entries relating to cash credits were all dated November, 1945. The assessee preferred an appeal to the Appellate Assistant Commissioner which was dismissed. Before the Appellate Tribunal it was argued on behalf of the assessee that the amount of Rs. 15,000 should not be taxed in the assessment year 1947-48, as there could be no previous year for the undisclosed income except the financial year 1945-46. This was accepted by the Tribunal and confirmed by the High Court on a reference under section 66. Before the High Court it was contended on behalf of the revenue that the Tribunal had gone wrong in holding that the amount of Rs. 15,000 was income derived by the assessee from a source different from the business in vermilion and that the same should have been treated as undisclosed profit for the accounting year corresponding to the period from November 4, 1945, to October 24, 1946, and not the financial year 1945-46 on the ground that the onus being on the assessee to give an explanation as to the source and nature of the cash credit it was open to the income-tax authorities to presume that the cash credit was income from the same source of business presume that the cash credit was income from the same source of business, namely that in vermilion. This was rejected by the High Court which held that the principle was well established in respect of an amount of cash received during the accounting year that the burden of proof was upon the assessee to show positively the source and nature of the receipt and in the absence of an adequate explanation the revenue authorities were entitled to draw the inference that the receipts were of an income nature and liable to be taxed. The High Court went on to observe that there was no presumption in such a case that the cash receipt was income of the same business for which the assessee kept regular books of account. According to the High Court the question was really a question of fact to be decided upon the materials furnished in each particular case. The High Court further held that in respect of the amount of Rs. 15,000 there was no account maintained by the assessee and no option exercised on his part as to the year of accounting and in the absence of any such system of accounting as year of accounting and in the absence of any such system of accounting as also in the absence of the exercise of any option on his part the only course open to the income-tax authorities was to take the financial year ending on March 31, 1946, as the previous year for the amount of Rs. 15,000. I do not think that the argument that the income-tax authorities could only assess the income which fell within Dewali year 2002 in terms of the notice issued under section 34 has any force. Under section

22(1) the Income-tax Officer has to give notice by publication on or before May 1 in each calendar year requiring every person whose total income during the previous year exceeded the maximum amount which was not chargeable to income-tax to furnish within such period not being less than sixty days as might be specified in the notice a return in the prescribed form setting forth his total income and total world income during that year. Ordinarily therefore, a notice under section 22(1) would call upon the assessee who was being assessed for the year 1946-47 to give his income for the financial year ending March 31, 1946. Under section 34 the Income-tax Officer gave the assessee a notice that he had failed to return his income for the assessment year 1946-47. While it is true that he had stated that income for the Dewali year 2002 had escaped assessment the assessee was given sufficient notice that the income which had escaped assessment related to the assessment year 1946-47. If he was so minded the assessee could have disclosed his money-lending business stating that he was maintaining accounts in respect thereof according to the Dewali year but the assessee did not do anything of the kind. He cannot therefore complain if the income-tax authorities went by the financial year as they were bound to do in the absence of exercise of any option. It was pointed out in Commissioner of Income-tax v. Jagan Nath Maheshwary on 34 of the Act has not in any manner crippled or fettered the power of the Income-tax Officer regarding the receiving of definite information in consequence of which any escapement of income, profits or gains has been discovered. The words definite information and discovers in this context do not bear any rigid, or narrow etymological meaning, but are to be interpreted in their broad and generally accepted sense. The only restriction in using the words definite information which the framers of section 34 had in view as it emerged after the passing of the Amending Act of 1939, was to prevent the Income-tax Officer from making assessments blindly and officiously or on the basis of rumours, gossips or vague apprehensions. The Income-tax Officer was not called upon to discover the exact quality or quantity of the omission; it was sufficient if he found that there had been some omission and it would be immaterial if it was greater or smaller than he had supposed it to be. It would be no less a discovery when the actual omission was of some different kind to the supposed omission." If therefore the Income-tax Officer after giving notice that he had reason to believe that income during the Dewali year 2002 had escaped assessment found that the income which really had escaped such assessment fell outside the said year but was otherwise assessable to tax under the notice given he could proceed to assess the same so long as it fell within the "previous year" which in this case was the financial year 1945-46. The answer to the question must therefore be in the affirmative and the assessee must pay the costs of this reference.

RAY J. - I agree.

Question answered in the affirmative.