KERALA HIGH COURT

United Mercantile Co. Ltd

Vs

Commissioner of Income-Tax

(M.S. Menon C.J.)

22.08.1966

JUDGMENT

M. S. Menon C.J.

1. This is a reference by the Income-tax Appellate Tribunal, Madras Bench, under section 66 (1) of the Indian Income-tax Act, 1922. The assessment year concerned is 1957-58, and the accounting period, the twelve months ended on the 31st December, 1956. The assessee is a public limited company doing business in printing and paper. For the assessment year in question, the assessee filed a return showing an income of Rs. 2,016. Along with the return, the assessee also produced the printed balance-sheet as at the 31st December, 1956, and the profit and loss account for the twelve months ended on that date. The assessment was completed on the 19th November, 1957, under section 23 (3) of the Indian Income-tax Act, 1922, on an income of Rs. 3,789 after adding back some items considered by the Income-tax Officer as inadmissible items of expenditure. The tax was worked out as under :

Rs.
Rs.
Income-tax at 30% 1,136.70 Surcharge at 5% 56.84 Corporation tax at 50% 1,894.50 Less rebate at 35% on Rs. 3,789 1,326.15 568.35 Total 1,761.89 During the accounting period the assessee had issued bonus shares, not our of premiums received in case, to the extent of Rs. 42,500. Under the Finance (No. 2) Act, 1957, such an issue would reduce the rebate from 35% to 5%. The papers produced before the Income-tax Officer did indicate that the bonus shares were not issued out of premiums received in cash and that only a 5% rebate - and not a 35% rebate - was attracted by the facts of the case. The fact that the bonus shares were not issued out of premiums received in case and the consequent result in the light of the Finance (No. 2) Act, 1957, were, however, not realised by the Income-tax Officer at the time the assessment was made on the 19th November, 1957. The realisation came only subsequently. A notice under section 34 (1) (b) of the Indian Income-tax Act, 1922, followed on the 17th March, 1962, and a fresh assessment on the 26th May, 1962. The assessee disputed the right of the Income-tax Officer to

invoke section 34 (1) (b) of the Act in his appeal before the Appellate Assistant Commissioner and the Appellate Tribunal, but without success. A reference to this court was then sought and the application in that behalf was allowed by the Tribunal.

The question referred reads as follows :

"Whether, on the facts and in the circumstances of the case, the reassessment under section 34 (1) (b) was valid ?" The relevant portion of section 34 provides that if the Income-tax Officer has in consequence of information in his possession reason to believe that income, profits or 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, or that excessive loss of depreciation allowance has been computed, had may at any time within four years of the end of that year, serve on the principal officer thereof, a notice containing all or any of the requirements which may be included in 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 the Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section. There can be no doubt that the expression "information" in section 34 (1) (b) of the Act includes information not only as to facts also as to the state of the law. It is not equally clear whether a mere change of opinion will enable an Income-tax Officer to proceed under that provision. In Maharaj Kumar Kamal Singh v. Commissioner of Income-tax, the Supreme Court said :

> "Mr. Rajagopala Sastry, for the respondent, suggested that under the provisions of section 34 as amended in 1948, it would be open to the Income-tax Officer to act under the said section even if he merely changed his mind without any information from an external source and came to the conclusion that, in a particular case, he had erroneously allowed an assessees income to escape assessment. We do not propose to express any opinion on this point in the present appeal. The case before us is not a case of a mere change of opinion; it is a case of an awareness, for the first time, to the true fact - that the issue of bonus shares was not out of premiums received in case - and the implications of that fact in the light of the provisions of the Finance (No. 2) Act, 1957. In a similar case, Salem Provident Fund Society Ltd. v. Commissioner of Income-tax, the Madras High Court said :"We are unable to accept the extreme proposition that nothing that can be found in the record of the assessment, which itself would show escape of assessment or under-assessment, can be viewed as information which led to the belief that there has been escape from assessment or under-assessment. Suppose a mistake in the original order of assessment is not discovered by the Income-tax Officer himself on further scrutiny by it is brought to his notice by another assessee or even by a subordinate or a superior officer, that would appear to be information disclosed to the Income-tax Officer. If the mistake itself is not extraneous to the record and the informant gathered the information from the record, the immediate source of information to the Income-tax Officer in such circumstances is in one sense extraneous to the record. It is difficult to accept the position

that while what is seen by another in the record is information what is seen by the Income-tax Officer himself is not information to him. In the latter case he just informs himself. It will be information in his possession within the meaning of section 34. In such cases of obvious mistakes apparent on the face of the information leads to a discovery or belief that there has been an escape of assessment or under-assessment";

and :

"We see no justification to accept the contention of the learned counsel for the assessee that to constitute information within the meaning of section 34, it must be wholly extraneous to the record of the original assessment. We hold that the mistake apparent on the face of the order of assessment itself constitutes information : whether someone else gave that information to the Income-tax Officer or whether he informed himself is immaterial. We are further of opinion that, in the circumstances of this case, the availability of the powers vested in the Income-tax Officer by section 35 did not bar recourse to the jurisdiction vested in him by section 34. The initiation of proceedings under section 34 was, in our opinion, valid."

In Maharaj Kumar Kamal Singh v. Commissioner of Income-tax, the Supreme Court said :

"It is clear that two condition must be satisfied before the Income-tax Officer can act under section 34 (1) (b). He must have information in his possession, which, in the context, means that the relevant information must have come into his possession subsequent to the making of the assessment order in question and this information must lead to his belief that income chargeable to income-tax has escaped assessment for any year, or that it has been under-assessed at too low a rate or has been made the subject of excessive relief under the Act."

"To inform" means "to impart knowledge" and a detail available to the Income-tax Officer in the papers field before him does not by its mere availability become an item of information. It is transmuted into an item of information in his possession only if, and only when, its existence is realised and its implications are recognised.

We consider the awareness of the Income-tax Officer, for the first time, after the assessment order of the 19th November, 1957, that the bonus shares were issued not out of premiums received in cash and the consequent result in the light of the Finance (No. 2) Act, 1957, as information within the meaning of that expression as used in section 34 (1) (b) of the Indian Income-tax Act, 1922. It follows that we should answer the question referred in the affirmative, that is, against and in favour of the department. We do so, but, in the circumstances of the case, without any order as to costs, A copy of this judgment under the seal of the High Court and the signature of the Registrar will be sent to the Appellate Tribunal as required by sub-section (3) of section 66 of the Indian Income-tax Act, 1922.

Question answered in the affirmative.