

BOMBAY HIGH COURT

The Commissioner of Income-Tax

Vs

Pirojbai N. Contractor

(John Beaumont, Kt., C.J. Rangnekar, J.)

06.10.1936

JUDGMENT

John Beaumont, Kt., C.J.

1. This is a reference by the Commissioner of Income-tax under Section 66(2) of the Indian Income-tax Act, XI of 1922, which raises a question within a narrow compass, but of considerable importance in the administration of the law relating to income-tax, and there appears to be no direct authority upon the point. The question is :Inasmuch as the income of the assessee for the year ended March 31, 1934, was not at all assessed in the year 1934-35, was the Income-tax Officer justified in taking action in the following year under Section 34 of the Act to assess the said income which, had escaped assessment?In spite of the absence of authority, I do not feel any doubt as to how the question should be answered.

2. The material facts are these. The year of assessment is the year ending March 31, 1935, and the previous year ended on March 31, 1934. No notice was served on the assessee under Section 22, Sub-section (2), during the year of assessment, but on June 24, 1935, a notice was served on the assessee under Section 34, alleging that her income for the year of assessment had escaped assessment.

3. Under Section 3 of the Indian Income-tax Act, a tax is charged in respect of all income, profits or gains of the previous year of every individual. In Section 22(2) it is provided that In the case of any person other than a company whose total income is, in the Income-tax Officer's opinion, of such an amount as to render such person liable to income-tax, the Income-tax Officer shall 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 form and verified in the prescribed manner setting forth (along with such other particulars as may be provided for in the notice) his total income during the previous! year.

So that, in the case of an individual, his liability; to assessment starts with al! notice from the

Income-tax Officer requiring him to make a return, and if he receives no notice, he is not liable to make a return. In this case the assessee received no notice during the year of assessment. Then we come to Section 34, which provides that If for any reason income, profits or gains chargeable to income-tax has escaped assessment in any year or has been assessed at too low a rate, the Income-tax Officer may, at any time within one year of the end of that year, serve on the person liable to pay tax on such income, profits or gains, or, in the case of 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, 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 :There is no doubt in this case that the assessee had income, profits or gains chargeable to income-tax, but it is said that the income, profits or gains had not escaped assessment within Section 34, because no assessment had ever been started, and, therefore, there was no assessment to escape. Reliance is placed by the assessee on a dictum of Sir George Rankin in *In re Lachhiram BasanU lalp-* There the learned Chief Justice said as follows (p. 912) :Section 34 deals with income which has escaped assessment and it may be, though it is not necessary for the present purpose to decide it, that income cannot be said to have escaped assessment except in the case where an assessment has been made which does not include the income. I do not proceed upon that footing, because it is unnecessary for the purpose of the present case. Reliance is also placed by the assessee on some observations of the Privy Council in *Rajendra Nath Mukerjee v. Income-tax Commissioner* in which their Lordships held that the expression "has escaped assessment" in Section 34 is not equivalent to "has not been assessed," but their Lordships were dealing with a different point in that case, and later in their judgment they say this (p. 271). It may be that if no notice calling for a return under Section 22 is issued within the tax year, then Section 34 provides the only means available to the Crown of remedying the omission, but that is a different matter. So that the actual point, which we have to deal with, was expressly left open by the Privy Council.

4. With all respect to Sir George Rankin, I do not think there is any force in the suggestion he made. It is quite true that the word "escape" denotes that some risk has been avoided. If a man were to say that he spent a month in Bombay and escaped the plague, one would infer that there was an epidemic of plague, or, at any rate, some risk of plague at the time, in Bombay, otherwise the use of the word "escape" would be inappropriate; but under Section 34 what must be escaped is assessment, and that means the whole process of assessment, which, in the case of individuals, starts with the service of a notice under Section 22(2). The liability to assessment is a risk to which every person in British India entitled to income is liable, and I cannot see why the process of assessment has not been just as much escaped by a person who receives no notice under Section 22(2) as by a person who receives such a notice, which proves in fact ineffective. It

seems to me that a person who receives no notice under Section 22(2) has escaped assessment, although through no fault of his own, the process of assessment has never been set in motion.

5. It is argued by Sir Jamshedji Kanga on behalf of the assessee that the scheme of the Act is against applying Section 34 to a case in which no notice has been given under Section 22(2). But I do not see the force of that argument, because Section 34 itself provides that the notice served under that section may contain all or any of the requirements which may be included in a notice under Sub-section (2) of Section 22, and then the assessment may proceed, and the provisions of the Act are to apply, so far as may be, as if the notice were a notice issued under that sub-section. In my opinion, where the assessment starts, as in this case, with a notice under Section 34, all the relevant provisions of the Act apply as effectively as where the assessment starts with a notice under Section 22(2).

6. In my opinion, therefore, the view of the Income-tax Commissioner is right, and the question submitted to us should be answered in the affirmative.

7. The assessee to pay the costs less the amount of the deposit of Rs. 100. Costs to be taxed on the Original Side scale by the Taxing Master.

Rangnekar, J.

8. I agree. The question raised on this reference is not covered by any direct authority, and counsel, therefore, have, not unnaturally, relied upon the scheme of the Act and some judicial dicta in several cases in support of their respective contentions.

9. Shortly put, the assessee's contention is that, having regard to the scheme of the Act, Section 34 is inapplicable when; no notice at all has been issued to an individual under Section 22(2) and consequently his total income not at all assessed under Section 23. He says that in that case the expression "escape assessment" used under Section 34 cannot apply, and that the expression is only appropriate when an individual has been assessed in respect of his total income but for some reason or other part of the income chargeable to the tax was in fact not so charged.

10. Section 34 is in these terms :

If for any reason income, profits or gains chargeable to income-tax has escaped assessment in any year or has been assessed at too low a rate, the Income-tax Officer may, at any time within one year of the end of that year, serve on the person liable to pay tax on such income, profits or gains, or, in the case of 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, 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 :Provided that the tax shall be charged at the rate at which it would have been charged had the income, profits or gains not escaped assessment or full assessment, as the case may be. In my opinion, the section plainly means that, if for any reason the income of an individual chargeable to the tax has not in fact been charged, or where the income is charged at a lower rate, then it is competent to the Income-tax authorities to take action under the section. The section is wide enough to include not only a case where there has been a previous assessment but some part of the income was not assessed or has been assessed wrongly, but also the case where there has been no previous assessment at all.

11. Now, it is true that the dictionary meaning of the word "escape" is inter alia "to get off safely when pursued" or "to get clear away from (pursuit or pursuer)" or "to succeed in avoiding (anything painful or unwell come)" etc. Even so, it is difficult to see why the expression "escape assessment" cannot apply to the case where there has been no assessment at all, particularly having regard to the very scheme on which reliance is placed.

12. Section 3 is the charging section. Then the next important section is Section 22, which starts the machinery by which the assessable income of an individual or a company has to be determined. Sub-section (2) of Section 22 provides that the Income-tax Officer shall serve a notice upon a person, whose total income is in his opinion of such an amount as to render him liable to income-tax, to furnish a return in the prescribed form of his total income. Section 23 empowers the Income-tax Officer to assess the total income of the individual and determine the amount of the tax payable by him.

13. Therefore, it is clear that every individual in this country, whose total income is of such an amount as to render him in the opinion of the Income-tax Officer liable to income-tax, is exposed to the risk of being assessed to the tax, and if, for some reason or other, no notice under Section 22(2) is issued to him, he certainly to that extent "escapes assessment." Assessment means, according to the Privy Council in *Rajendra Nath Mukerjee v. Income-tax Commissioner*¹ the whole process of assessment which is started by the notice under Section 22(2). If the individual, therefore, gets no notice, I see no difficulty in holding that he "escapes assessment". It is for this purpose that Section 34 in its concluding portion brings the whole scheme into operation. Thus it provides that in such a case, a notice containing all or any of the requirements which may be included in a notice under Section 22(2) has to be issued and the assessment to commence, and that all the provisions of the Act, so far as may be, shall apply as if the notice issued under Section 34 was issued under Section 22(2).

14. The learned Counsel relied on a dictum of their Lordships of the Privy Council in *Rajendra Nath Mukerjee v. Income-tax Commissioner*. It was argued in that case that upon the facts it was

a case of income escaping assessment within the meaning of Section 34. It was with reference to this argument that Lord Macmillan observed as follows : "This involves reading the expression ' has escaped assessment' as equivalent to 'has not been assessed.' Their Lordships cannot assent to this reading" (p. 271). In the first place, in my opinion, a case is an authority for what it decides, and not what may seem logically to follow from it, and expressions of opinion, even of eminent Judges, must be limited, unless there is a very strong indication to the contrary, to the facts which they had before them. Apart from this, I think, when their Lordships said that the expression 'has escaped assessment' is not equivalent to 'has not been assessed', all that their Lordships intended to mean is that as in that case the course of the assessment had not been completed, and no final order of assessment was made, it could not be said that income had 'escaped assessment'. If this dictum means what the learned Income-tax, counsel says it does, then their Lordships would not have made the following observations at the end of the same paragraph. This is what they say (p. 271) :It may be that & no notice calling for a return under Section 22 is issued with- in the tax year, then Section 34 provides the only means available to the Crown of remedying the omission, but that is a different matter.In any event, it is therefore clear that the point which we have to consider in this case was left open by their Lordships of the Privy Council.

15. The learned Counsel also relied on some observations made by me in *Commissioner of Income-tax v. Gopal* . I do not think that I have said anything in that case which is contrary to the view which I am now taking on this reference. In that case we had to consider Section 34 with reference to the facts before us. The facts were that a person had already been assessed previously by one Income-tax Officer. In the next year of assessment, another Income-tax Officer thought that the previous assessment was wrong and was made at a lower rate, and it was in that connection that the observations I made became necessary. On the other hand, the view which we are taking was also taken in *Commissioner of Income-tax v. N.N. Burjorjee*², and in *Modem Mohan Lal v. The Commissioner of Income-tax, Punjab*³ It is true that the facts in those cases were not similar to the facts before us; but I think the opinions expressed in those cases seem to me, with respect, to be correct.

16. I agree, therefore, that the question should be answered in the way proposed by my Lord the Chief Justice.

Cases Referred.

1(1933) L.R. 61 I.A. 10 : s.c. 36 Bom. L.R. 267

2(1931) I.L.R. 9 Ran. 161

3(1935) I.L.R. 16 Lah. 937