BOMBAY HIGH COURT

Harakchand Makanji

Vs

Commissioner of Income-Tax

(M Chagla, C.J. Tendolkar, J.)

12.03.1948

JUDGMENT

M.C. Chagla, C.J.

1. The facts which give rise to this reference may be briefly stated. On December 28, 1942, a notice under Section 43 was issued on the applicants, and the firm was declared to be an agent of a non-resident assessee. A notice under Section 84 was also issued on January 11, 1943. On April 2, 1943, the applicants filed their return in respect of the assessment year 1941-42. With regard to the assessment year 1942-43 no notice was served on the applicants but they filed their return on June 18, 1943, admitting that they were an agent and made the return on that basis. It is now contended by Sir Jamshedji on behalf of the applicants that the assessment of the applicants was bad and should be set aside on the ground that no notice was served on them under Section 43 and no notice was served on them under Section 34. The contention is that the mere fact that the applicants were found to be an agent in the assessment year 1941-42 does not lead to the necessary inference that they were also an agent in the assessment year 1942-43 and the law requires that the notice should be served on the agent in each assessment year. There is much force in that contention and we find that a bench of this High Court seems also to have taken the same view. In Govindram Seksaria v. Commissioner of Income-Tax (Central), Bombay (1942) 45 Bom. L.R. 168 : S.C. 11 I.T.R. 104, that question came up before Beaumont C.J. and Kania J., and Kania J. with respect rightly observed that the scheme of the Income-tax Act was that the assessment for each year was self-contained and therefore all notices should be served under Section 43 in respect of each assessment year. Beaumont C.J. also points out in his judgment that a man may admit that he was an agent and the circumstances may change next year and he may contend that he was not an agent. But in this case it is not necessary to decide that question, because by making their return on June 18, 1943, on the basis that the firm was an agent the applicants have admitted their position and status of an agent of a non-resident assessee. In my opinion it was not necessary to serve them with a notice when an admission was made by them

Which made the service of the notice entirely unnecessary and superfluous. In the case to which I have just referred both the learned Judges took the same view. There also the assessee paid tax without notice being served upon him and the Court held that as the agent did not dispute his liability to be assessed, it was not open to him to raise the contention with regard to the non-service of the notice.

2. The further contention raised by Sir Jamshedji is that a notice in any event was essential under Section 34 of the Act. Now that section deals with assessment escaping and Sir Jamshedji says that inasmuch as no assessment took place at all in the assessment year, viz. before March 31, 1943, assessment had escaped, and if the income-tax authorities wanted to assess the agent at all, they should have first issued a notice under Section 34. Now under Section 22(1) assessment proceedings are initiated by a public notice given by the Income-tax Officer on or before May 1 each year requiring persons whose total income during the previous year exceeded the maximum amount which is not chargeable to income-tax to furnish their return. Sub-section (2) of that section enables the Income-tax Officer to serve a similar notice personally upon any assessee. Therefore once a public notice is given under Sub-section (1), the assessment proceedings have commenced and there is no obligation upon the Income-tax to serve an assessee individually as well. The law does not lay down that if the return is not made within the prescribed time it would not be accepted by the Department. In this case the return was made on June 18, 1943, without any individual notice having been served upon the applicants by the Income-tax Officer under Section 22(2). The return having been made, no possible question can arise under Section 34 of assessment escaping, and I fail to see why it was necessary upon the Income-tax authorities to serve any notice under Section 34 at all. Notice under Section 34 is only necessary if at the end of the assessment year no return has been made by the assessee, and the Income-tax authorities wish to proceed under Section 22(2) by serving a notice individually. It may then be stated that as the assessment year had come to an end and as no return had been furnished and as the authorities wished to proceed under Section 22(2) they should not do so without a notice under Section 34. But as in this case the assessees themselves chose voluntarily to make a return, no question of notice either under Section 22(2) or Section 34 arises.

3. In our opinion the assessees were rightly assessed on the return made by them on June 18, 1943, and I would therefore answer both the questions referred by the Tribunal in the negative. Assessees to pay the costs of the reference.

4. I would like to say a word as to the paper book which has been submitted to us in this reference. Although it contains the statement of case the judgment of the Tribunal is not printed. Now it is perfectly true that under Section 66 we are exercising an advisory jurisdiction, but it has got to be remembered that the questions of law that come up before us are questions of law

arising out of the order made by the Tribunal, and in order to fully understand the order and the points of law that arise it is absolutely necessary that we should have the judgment of the Tribunal before us. We therefore hope that in future paper books submitted to us will contain not only the statement of the case but also the judgment of the Tribunal and all necessary papers and documents connected with the judgment.