

# **BOMBAY HIGH COURT**

Hiralal Amritlal Shah

Vs.

K.C. Thomas

Misc. Application No. 202 of 1957

(Chagla, C.J. and S.T. Desai, J.)

01.04.1958

## **JUDGMENT**

### **Chagla, C.J.**

1. By this petition a notice issued by the Income-tax Officer under Section 34 dated 27-3-1957 is being challenged. The notice is in respect of escaped income of Rs. 47,595 for the assessment year 1944-45 and it is not disputed that the case falls under Section 34(1)(a).

2. The contention of the petitioner is that this notice is bad because it has not complied with the two conditions laid down in the proviso to Section 34(1). In order to understand this contention we must take a historical view of the evolution of this section as far as limitation is concerned. Before the amendment of this section which was in force on 27-3-1957 the period of limitation of eight years was provided with regard to the issue of notices under Section 34(1)(a) and a period of four years for cases falling under Section 34(1)(b). By the amendment the period of limitation was removed and the Legislature provided that if the case fell under Section 34(1)(a) a notice can be served at any time. But while removing any bar of limitation, the Legislature provided some safeguards for the assessee and these safeguards were three in number and they were set out in the proviso. The first safeguard was that a notice shall not be issued for any year prior to the year ending on 31-3-1941; the second safeguard was that if eight years had elapsed then the notice should not be issued for an escaped income which aggregated to less than one lakh of rupees; and the third safeguard was that the Central Board of Revenue had to be satisfied on reasons to be recorded that this was a fit case for the issue of a notice, which was for a period beyond eight years. Now, admittedly, this notice is for an amount which is less than a lakh of rupees and admittedly the Central Board of Revenue has not considered this matter at all. Therefore, there does not seem to be any answer to the contention put forward by the petitioner.

3. The only answer which is suggested is that the case falls under Section 34(3) and therefore a

notice can be issued at any time without satisfying any condition. Now, Section 34(3) does away with any limitation of time in a case where a notice is issued in consequence of or for giving effect to any direction contained in an order under Section 31, Section 33, Section 33A, Section 33B, Section 66 or Section 66A and in this case the notice was issued in order to give effect to a direction contained in the order of the appellate tribunal. What is therefore urged is that the case falls under the second proviso to Section 34(3) and inasmuch as the Income Tax Officer is giving effect to a direction contained in an order of the tribunal the notice can be issued at any time and the proviso to Section 34(1) has no application. Now, when there was a limitation of eight years under Section 34(1)(a) the second proviso to Section 34(3) had to be resorted to by the Income Tax Department if it wanted to issue a notice after the period of limitation and a notice after eight years in a case falling under Section 34(1)(a) could only be issued provided it was a result of a direction contained in an order passed by an income Tax Authority. But by reason of the recent amendment the question of limitation does not arise, but the Legislature has provided certain safeguards as already pointed out. Therefore, whether a notice is issued as a result of a direction contained in any order of an Income Tax Authority or not, if it is a notice which is issued beyond eight years the notice must satisfy the conditions laid down in the proviso to Section 34(1). Therefore the result is that in some respects the law has been made more rigorous against the assessee; and in other respects it has been made more lenient. Before the amendment a notice could be issued after eight years in respect of any escaped income, whatever the amount, provided the notice was issued to give effect to a direction contained in an order of an Income Tax Authority. Now a direction is not necessary for the issue of a notice. But as against that an assessee whose escaped income is not a lakh of rupees is completely protected and even, though there may be a direction contained in an order of an Income Tax Authority no notice can be issued against the assessee if the escaped income is less than a lakh of rupees. Therefore, on the one hand, the assessee whose escaped income is less than a lakh of rupees is now put in a better position than he was before the amendment, the assessee whose escaped income is more than a lakh of rupees is put in a worse position because he can be proceeded against even without a direction contained in an order of an Income Tax Authority provided the Central Board of Revenue has applied its mind to the question of the issue of the notice.

4. In our opinion, therefore, the notice issued by the Income-tax Officer is clearly bad. The petition must therefore succeed. The rule will be made absolute and there will be an order in terms of prayers (a) and (b) of the petition. The Respondents to pay the costs.

5. We have not permitted Mr. Mehta to put forward his other contentions which he has set out in his petition, to show that the notice is bad apart from the question of limitation.

Petition allowed.