

BOMBAY HIGH COURT

P.T. Anklesaria

Vs

Commissioner of Income-Tax

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

25.09.1958

JUDGMENT

Chagla, C.J.

1. The answer that we must give to the question submitted to us by the Tribunal is covered directly by a decision of this court in Ranchhoddas Karsondas v. Commissioner of Income-tax, and also in Harakchand Makanji & Co. v. Commissioner of Income-tax.

2. A few facts may be stated. The assessee is a firm and on the 17th March, 1952, it made a return for the assessment year 1947-48 declaring a loss of Rs. 74,140. It is common ground that no notice under section 22 (2) had been served upon this assessee by the Income-tax Officer. When the Income-tax Officer received this return he issued a notice under section 23 (2) and the return of notice was fixed on the 24th March, 1952. On the 24th March, 1952, the Commissioner gave permission to the Income-tax Officer to issue a notice under section 34, but in fact no notice under section 34 was issued. The Income-tax Officer once more issued a notice under section 23 (2) on the 20th February, 1953, and the order made by the Income-tax Officer was :

"Return has been filed under section 34, claiming a loss of Rs. 74,140 only. Since, however, I find that no income has escaped assessment, proceedings under section 34 are dropped."

3. This order proceeded on the assumption by the Income-tax Officer that the return had been filed under a notice issued under section 34. The assessee's contention was that it had filed a voluntary return on the 17th March, 1952, that there was a valid return under section 22 (3), and as such the order of the Income-tax Officer passed under section 34 is invalid and bad in law. The Tribunal rejected the contention of the assessee.

4. Now, it is difficult to understand Ranchhod's case can be distinguished. In that case no notice was issued under section 22. The assessee made a return of an income which was not assessable.

There a notice under section 34 was actually issued and an order was passed assessing the assessee under section 34 was bad inasmuch as it had been issued after the assessee had filed a voluntary return. It is difficult to understand how this case can be distinguished. The only possible distinguishing feature is that in Ranchhod's case the return was made of an income which was not assessable; in this case the return is made of a loss. But when we look to the ratio of the judgment this particular fact does not alter the application of the principle that we laid down in that case. As Mr. Kolah has pointed out to us, it maybe vital for an assessee to have his loss assessed. In this case the assessee had also applied for registration and if the firm had been registered the losses assessee could have been allocated to each of the partners according to his share and the partner in his own individual assessment could have claimed a set off or could have claimed to carry forward the loss. The firm itself could have required this particular loss to be carried forward if it had continued the business. But there is a further consideration. We pointed out in Ranchhod's case that although an assessee may submit a return of an income which was not assessable, it is open to the Income-tax Officer to hold that he has a larger income, an income which is assessable to tax. Similarly here, the ingenuity of the Taxing Department is so great that it is quite possible for them to convert the loss of Rs. 74,140 into a profit of an equivalent or even a larger amount. Therefore, we do not understand why and under what provision of the law an Income-tax Officer can refuse to assess a loss shown in a return, the more so as in this case he actually issued a notice under section 23 (2) after the return had been made.

5. Mr. Joshi is not in a position to distinguish Ranchhod's case but he put forward a rather amazing argument that because he wants to appeal to the Supreme Court he wants to satisfy us that the judgment is erroneous because a certain aspect of the matter was not considered by us. Now, we have often said in this court that when we have a judgment of a co-ordinate authority we accept the judgment without more. The correctness of that judgment can only be challenged in a higher court or if the Chief Justice is persuaded to constitute a Full Bench. Therefore, although we have listened to Mr. Joshi's argument with interest, we feel that that argument should be accepted or answered by a higher Tribunal.

6. We answer the questions submitted to us -

(1) in the affirmative, and (2) in the affirmative.

7. Commissioner to pay the costs.

8. Questions answered in the affirmative.

