

# **BOMBAY HIGH COURT**

Onkarmal Meghraj

Vs.

Commissioner of Income Tax

J.T. Ref. No. 54 of 1958

(Shah and S.T. Desai, JJ.)

25.06.1959

## **JUDGMENT**

**Shah, J.**

1. This Reference substantially deals with two assessments. One part of the reference concerns the assessment year 1944-45 in which 11 assessees are interested and the other part concerns the assessment year 1943-44 in which the assessee Onkarmal Meghraj is interested. We are at this stage primarily concerned with the assessment of the following 11 assessees :

1. Narayandas Pokermal.
2. Govindram (s/o No. 1).
3. Bhagwandas (s/o. No. 1).
4. Vasudeo (s/o. No. 1).
5. Meghraj Pokermal
6. Onkarmal Meghraj (s/o No. 5).
7. Banarisilal (s/o No. 5).
8. Beniprasad (s/o No. 5).
9. Hanumandas Sewakram
10. Kedarnath (s/o. -No. 9).
11. Durgaprasad (s/o. No. 9).

Sixteen persons entered on 19-5-1930 into an agreement of partnership to conduct a business in partnership in the name of Messrs. Narayandas Kedarnath. Amongst these sixteen persons there were three sets of persons who constituted Hindu United Families. Narayandas Pokermal and his three sons Govindram. Bhagwandas and Vasudeo - constituted one Hindu United Family : Meghraj Pokermal and his three sons - Onkarmal, Banarasilal and Beniprasad constituted another Hindu United Family and Hanumandas Sewakram and his four sons - Kedarnath, Banarasidas,

Durgaprasad and Harikisondas - constituted the third Hindu United Family. Besides these 13 persons there were three strangers who were partners in the firm. For the assessment year 1944-45, the members of the original three Hindu United Families made returns for income-tax in their status as individuals returning their respective incomes in the firm. The Income-tax Officer following his orders in the previous year of assessment ordered that the firm of Narayandas Kedarnath be registered under Section 26A of the Income-tax Act and the total income be assessed in the hands of only six assesseees, viz., the three outsiders and the three Hindu United Families of Narayandas Pokermal, Meghraj Pokermal and Hanumandas Sewakram and he closed the assessment of the others by declaring their cases as of "no assessment". Against the order passed by the Income-tax Officer, the three Hindu United Families preferred appeals to the Appellate Assistant Commissioner and claimed that the income of the sons of the respective Managers in the three Hindu United Families be excluded from the family income as it belonged to those sons exclusively and was not the income of the Hindu United Families to which they belonged. In support of their contention, they relied upon an agreement reached with the Income-tax Department for the assessment years 1939-40 to 1941-42 by which it was admitted that a partition has taken place in the three families on 19-7-1940. The Appellate Assistant Commissioner following the decision of the Tribunal in respect of the profits from the firm for the assessment year 1943-44 directed the Income-tax Officer to quash the assessment of the three Hindu United Families and to tax the income assessed in the hands of the H. U. F. in the hands of the separated members of the family entitled to receive the income. The Income-tax Officer purporting to exercise powers under Section 34 then issued notices to all the thirteen members of the original three Hindu United Families for reopening the assessment of the year 1944-45. These notices were issued in April 1954, after obtaining the Commissioner's approval for taking action under Section 34(1) read with Section 34(3) as amended by Act 18 of 1953. For the purpose of these assessments, the assesseees Narayandas, Meghraj, Hanumandas and Beniprasad respectively assesseees Nos. 1, 5, 9 and 8 in the table set out hereinbefore made their fresh returns in the status of individuals and the other assesseees made their returns in the status of H. U. F. It may be observed that all thirteen assesseees had submitted their original returns as individuals and the Income-tax Officer had assessed them in the status of Hindu United family. Against the order passed by the Income-tax Officer assessing the thirteen assesseees as separated members of the families entitled to receive their share of income from the firm in separate shares, appeals were preferred to the Appellate Assistant Commissioner and that officer confirmed the order passed by the Income-tax Officer. In appeal to the Tribunal, the order passed by the Income-tax Officer was substantially confirmed. The Tribunal held that the notices issued by the Income-tax Officer in April 1954 were issued under Section 34(1)(a) read with Section 34(3) as amended by Section 18 of the Income-tax (Amendment) Act, 1953 and that the Act having retrospective operation as from the 1st of April 1952 the notices issued on the assesseees were within the period of eight years prescribed by Section 34(1)(a). They also held that the case of the other 7 members who were appellants before them fell within Section 34(1) read with Section 34(3) of the Income-tax Act as amended. Accordingly, the Tribunal confirmed the order passed by the Revenue Authorities.

2. On applications made by these 11 assesseees., the Tribunal has referred the following questions :

"Whether having regard to the direction given by the Appellate Assistant Commissioner in his order dated 9-3-1954 in the case of the appropriate Hindu undivided families and having regard to the second proviso to Section 34(3) as amended by Section 18 of the Indian Income-tax (Amendment) Act, 1953, the reassessment made by the Income-tax Officer on 31-1-1955 in the case of any one or more of the assesseees, is governed by any limitation period such as mentioned in the substantive part of Section 34(3)?" In respect of the four assesseees, Narayandas, Meghraj, Beniprasad and Hanumandas, the Tribunal has referred the following question :

"Whether in the case of the assessee, the remedy available to the Income-tax Officer has already become time-barred under Section 34 before that section was amended in 1953 with retrospective effect from 1-4-1952?"

3. Section 34(1) by the first sub-section, in so far as it is material, before it was amended by the Finance Act of 1956 provided :

"If the Income-tax Officer has reason to believe that by reason of the omission or failure on the part of an assessee to make a return of his income or to disclose fully and truly all materials facts necessary for his assessment in that year, income, profits or gains chargeable to income-tax have escaped assessment for that year or have been under-assessed, or assessed at too low a rate, or have been made the subject of excessive relief under the Act or excessive loss or depreciation allowance has been computed, or

(b) notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assessee, 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....."

he may in cases falling under clause (a) at any time within eight years and in cases falling under clause (b) at any time within four years of the end of that year, serve on the assessee or assesseees a notice under Sub-Section (2) of Section 22 and may proceed to assess or reassess all such income, profits or gains. By the Finance Act of 1956, the time limit of 8 years was omitted from Sub-Section (1) in its application to clause (a). It is evident that whereas before the 1st of April 1956 notice of assessment or reassessment could be issued under Section 34(1)(a) within eight years from the last day of the year of assessment to which the notice related, under the amendment made by the Finance Act, 1956, that notice could be issued at any time subject to certain conditions prescribed by the proviso incorporated in Section 34(1) one of the important conditions being that the income which had escaped assessment was rupees one lakh or more.

4. Counsel for the assessee contends that having regard to the circumstances of the case, the conditions prescribed for the issue of a notice under Section 34(1) (a) were absent and the notices issued against the assessee for reassessment were invalid. It is submitted that all the assessee had made their returns containing full and true disclosure of all the material facts necessary for assessment of the income in the year 1944-45 and therefore notices under section 34(1)(a) could not be issued for reopening the assessment and that the Tribunal was in error in holding that, because in the year 1954 some of the assessee had submitted their fresh returns in their status as individuals, i. e., as separated members of the erstwhile Hindu United Families, whereas in the earlier returns they had made their returns as individuals, the assessee had omitted or failed to disclose fully and truly all material facts necessary for the assessment. It is not disputed that the assessee have in the fresh returns made by them made claims which were inconsistent with the claims made by them in the earlier returns. In the original returns made by the eleven assessee they had claimed that they were separated members and were partners of the firm in their individuals rights. After the order of the Appellate Assistant Commissioner four out of the eleven assessee made their returns in the status of individuals, and the remaining in the status of Hindu United Families. Even the four members made their returns claiming that they were sole coparceners in their families. In the view we take in this case we do not purpose to express at this stage any opinion on the correctness of the view of the Tribunal in its order dated 31-7-1953 that the facts represented by all the eleven assessee were "diametrically" opposed to the real state of affairs.

5. Counsel then contends that in any event the right to reopen the assessment was barred by limitation before the date on which fresh assessment was made, and that right cannot be revived by the subsequent amendment of the Act. The period of eight years from the last day of the year of assessment expired on 31-3-1953 and the notice for reopening the assessment was admittedly not issued before that date, and, therefore, the amendment of Section 34 by the Finance Act of 1956 may not authorise the Income-tax Officer to reassess the assessee, because the period during which the order of reassessment may be made has expired. But Mr. Joshi contends that even if the period prescribed by Section 34(1) for issuing a notice of reassessment under clause (a) had expired, the reassessment proceedings are validated by the Indian Income-tax (Amendment) Act, 1959 (Act No. 1 of 1959) which provides that in certain cases the issue of a notice under Section 34(1)(a) and the assessment or reassessment in consequence thereof shall not be called in question on the ground that the period prescribed in that behalf had expired. By Section 2 of the Indian Income-tax (Amendment) Act 1 of 1959 Sub-Section (4) has been added to Section 34. That sub-section reads as follows :

"A notice under clause (a) of Sub-Section (1) may be issued at any time notwithstanding that at the time of the issue of the notice the period of eight years specified in that sub-section before its amendment by clause (a) of Section 18 of the Finance Act, 1956 (18 of 1956), had expired in respect of the year to which the notice relates."

Evidently, this provision is prospective in terms and a notice under Section 34(1)(a) may, since the enactment of Act 1 of 1959, be issued at any time notwithstanding that the period of eight years prescribed by Sub-Section (1) clause (a) before it was amended by Act of 1956 had expired. Presumably this provision was enacted with a view to supersede a judgment of the Calcutta High Court in which it was held that to a notice of assessment or reassessment issued under Section 34(1)(a) as amended by the Finance Act of 1956, when the period of eight years after the last day of the year of assessment to which the notice relates, had expired before the Finance Act of 1956 was enacted the plea of a bar of limitation could effectively be set up. By Section 4 of Act 1 of 1959 it was provided :

"No notice issued under clause (a) of Sub-Section (1) of Section 34 of the principal Act at any time before the commencement of this Act and no assessment, reassessment or settlement made or other proceeding taken in consequence of such notice shall be called in question in any court, tribunal, or other authority merely on the ground that at the time the notice was issued or at the time the assessment or reassessment was made, the time within which such notice should have been issued or the assessment or reassessment should have been made under that section as in force before its amendment by clause (a) of Section 18 of the Finance Act, 1956 (18 of 1956), had expired".

Whereas Section 2 authorises the issue of notice of assessment or reassessment even if the period prescribed in that behalf by Section 34(1)(a) before that section was amended by the Finance Act 1956 had expired by Section 4 it was inter alia enacted that a notice issued under Section 34(1)(a) at any time before the commencement of the Act 1 of 1959 could not be called in question on the ground that when the notice was issued, the time for issuing the notice before the clause was amended had expired. Counsel for the assessee contends that Section 4 was enacted with a view only to validate notices which had even though the period of eight years from the last day of the assessment year had expired been issued under Sub-Section (1) of Section 34 as amended by the Finance Act of 1956. It is submitted by counsel that the expression "at any time" used in Section 4 means "at any time after the 1st of April 1956" and the words "clause (a) of Sub-Section (1) of Section 34" occurring in the first clause meant "clause (a) of Sub-Section (1) of Section 34 as amended by the Finance Act of 1956." Counsel submits that any other interpretation of the section is likely to give to Section 4 a wider retrospective operation than was intended by the legislature and in effect to supersede certain other provisions of the Act which are not either expressly or by necessary implication amended by Section 4. Our attention was invited by counsel to the Objects and Reasons for enacting this Act. Counsel says that in the Statement of Objects and Reasons, it was stated :

"It has recently been held by the Calcutta High Court that in the absence of an express provision to that effect, the amended section cannot be applied to assessment which had become more than eight years old by 1-4-1956. The present Bill seeks to place this matter beyond doubt by an amendment to Section 34 of the Act."

Mr. Palkhiwala contends that if that was the object of the legislature, no wider effect should be given to the expression and it will be only legitimate to restrict the connotation of the expression "at any time" as submitted by him. The cardinal rule of interpretation of a statute is to read the words used by the legislature in their ordinary natural grammatical meaning; and it is only when context of the words used or the scheme of the statute justifies that course the Court may be justified in cutting down the meaning of the words of the statute. In interpreting the words used in a statute, especially when the words used are plain, the Statement of Objects and Reasons cannot be pressed into service. In construing a statute the Court may ascertain the legislative history, may also ascertain what was the understanding of the law prior to the amendment and may even ascertain what the defect sought to be remedied by enacting the amending Act was. But the courts are not entitled to interpret the Act by assuming that the Legislature has effectuated the purpose which it had in mind as set out in the Objects and Reasons and has only effectuated that purpose and no other purpose. The meaning of Section 2 of Act 1 of 1959 which incorporated Sub-Section (4) in Section 34 of the Income-tax Act is fairly plain. A notice for assessment or reassessment under Sub-Section (1), clause (a) of Section 34 after the amendment by Act 1 of 1959 may be issued at any time - even though the period of eight years prescribed by that sub-section before it was amended by the Finance Act of 1956 had expired. By Section 4 notices issued before Act 1 of 1959 and assessment, reassessment, settlement and proceeding, consequent upon such notices, are saved from the bar of limitation prescribed by Section 34 before it was amended by the Finance Act of 1956. The section in terms saves notices under clause (a) of Sub-Section (1) issued "at any time" before the commencement of the Act, notwithstanding that at the time of issue of the notice the period prescribed by Section 34(1) before it was amended by the Finance Act of 1956 had expired, and there is nothing in Section 4 or in Section 3 of Act 1 of 1959 nor has our attention been invited to any other part of the Act which may support the contention that the words "at any time" used in Section 4 are used in a restricted sense as meaning "at any time after the 1st of April 1956;" nor is there any warrant for holding that the reference to clause (a) of Sub-Section (1) of Section 34 in the opening part of Section 4 was only to the clause as amended by the Act 18 of 1956. Undoubtedly by the scheme of the Act or the context in which a provision occurs a statute in terms retrospective may be given only a limited retrospective operation. But we are unable to hold that there is anything in the provisions of the amending Act which limits its retrospective operation. On the plain words used by the legislature, a notice issued at any time under Section 34(1)(a) before the commencement of the Act and assessment or reassessment made in consequence of such notice shall not be called in question on the ground that the notice was not issued or the assessment or reassessment was not made within the prescribed period. Before Section 34 was amended by the Finance Act of 1956, assessment or reassessment under Section 34(1)(a) could be made if a notice was issued within eight years from the last day of the year of assessment to which the notice related and under Section 34(3) an order for assessment could not be made after the expiry of eight years from the end of the year in which the income was first assessable, unless a notice for assessment or reassessment was issued within the time limited by Section 34(1)(a). If such a

notice was issued, the assessment could be made within one year from the date of service. By the amendment made by the Finance Act of 1956, these periods of limitation prescribed by section 34 are abrogated, and Section 4 of Act 1 of 1959 seeks to protect from challenge notices of assessment or reassessment which have been issued and assessments and reassessments made in pursuance of such notices after the periods prescribed by Section 34 before it was amended by the Finance Act of 1956. The notice which is protected must accordingly be a notice which when issued was barred under Section 34 before it was amended. Therefore, there is the clearest indication in the framework of Section 4 which supports the view that the notices of assessment or reassessment to which the bar of limitation prescribed by the unamended Section 34 cannot be set up may be notices issued before the 1st of April 1956.

6. But Counsel for the assessee contends that this interpretation of Section 4 is likely to render certain important provisions contained in Section 34 ineffective, and our attention is invited to the proviso incorporated in Sub-Section (1) to the Finance Act 1956. Undoubtedly even after the amendment of the substantive provision which deletes the requirement that a notice of assessment or reassessment shall be issued within eight years, the proviso imposes a restriction prohibiting the Income-tax Officer, from issuing a notice where the escaped income is not one lakh of rupees or more after the expiry of eight years from the year of assessment. The condition relating to the issue of a notice within eight years from the year of assessment to which the notice relates remains in case of certain assessments imbedded in Section 34. Counsel for the assessee submits that if the expression any time used in Section 4 of Act 1 of 1959 be interpreted without any restriction, a clear inconsistency will result. In order to appreciate this contention, the material parts of the proviso incorporated by the Finance Act of 1956 may be set out;

"Provided that the Income-tax Officer shall not issue a notice under clause (a) of Sub-Section (1) of Section 34 for any year prior to the year ending on the 31st day of March 1941 and (2) for any year if eight years have elapsed after the expiry of that year, unless the income, profits or gains chargeable to income-tax which have escaped assessment..... are likely to amount to, one lakh of rupees or more in the aggregate either for that year or that year and any other year or years after which or after each of which eight years have elapsed ..... (3) for any year, unless he has recorded his reasons for doing so and in any case falling under clause (2), unless the Central Board of Revenue and in any other case the Commissioner, is satisfied on such reasons recorded that it is a fit case for the issue of such notice."

By this proviso, the jurisdiction of the Income-tax Officer to issue a notice at any time under the operative part of sub-section (1) clause (a) of Section 34 to assess or re-assess income, profits or gains is restricted by the three conditions set out in the proviso. The Legislature by enacting this proviso put a restriction upon the authority of the Income-tax Officer to issue a notice after the expiry of eight years from the last day of the assessment year when the escaped income did not amount to one lakh rupees or more. Evidently by enacting the proviso to Section 34(1) the Legislature has classified the notices for assessment or reassessment into two broad divisions,

notices where the escaped income is Rs. one lakh or more and other notices. If the escaped income is Rs. one lakh or more the notice under the amended provision may be issued at any time, but in other cases the notice may be issued only within eight years from the year of assessment to which the notice relates. But the restrictions imposed by the proviso have no retrospective operation. A notice of assessment or reassessment issued after 1-4-1956 will of necessity be subject to the restrictions contained in the proviso to clause (1). Such a notice may not by virtue of Section 4 of Act 1 of 1959 be called in question merely on the plea that it was not issued within the time prescribed by Section 34 before it was amended by the Finance Act of 1956; but the exercise of the jurisdiction of the Income-tax Officer being conditioned by the proviso, the plea of non-fulfilment of the conditions may certainly be set up in defence. The proviso not being retrospective, a notice of assessment or reassessment issued before 1-4-1956 but not within eight years from the assessment year to which it relates, could successfully be challenged on the ground of limitation before Act 1 of 1959 was enacted. Act 1 of 1959 expressly protects such a notice against that challenge whatever may be the amount of escaped income. But the Legislature has by enacting Section 4 protected notices issued before the enactment of Act 1 of 1959 merely against the plea of the bar of limitation, and no other bar is sought to be abrogated thereby. Therefore, in giving full retrospective operation to Section 4 we are not faced with any inconsistency with any other provision contained in Section 34.

7. In that view we hold that since the enactment of Act 1 of 1959 a notice issued after the 1st of April 1956 for reopening assessment by virtue of Section 4 will not be permitted to be called in question on the ground that the notice was not issued within the period prescribed by the unamended section 34(1)(a) but all other pleas which circumscribe the jurisdiction of the Income-tax Officer will certainly be entertainable. To a notice for assessment or reassessment under Section 34(1)(a) issued before the 1st of April 1956 and to an assessment or reassessment pursuant to such notice, by Section 4, the plea of a bar of limitation under Section 34 before it was amended by the Finance Act 1956 will not be entertained. There is therefore no warrant for the submission that by Section 4 of Act 1 of 1959 proviso to Section 34(1) is in any manner abrogated.

8. But this view, which we have expressed, is not sufficient to dispose of this Reference. Evidently, Section 4 of Act 1 of 1959 prevents a plea of the bar of limitation being set up against a notice under clause (a) of Sub-Section (1) of Section 34 and not to any other notice. In the present case, it is not clear on the record whether the notice issued was under clause (a) of Sub-Section (1) of Section 34 or under clause (b) of Sub-Section (1). Even the copies of the notices served upon the assessee are not before the court. The reasons recorded by the Income-tax Officer for issuing the notices under the relevant proviso as it stood when the notices were issued are also not before the Court and there is no evidence of the Commissioner's satisfaction on the reasons recorded by the Income-tax Officer. Even the order of the Income-tax Officer and the manner in which the reassessment proceedings were dealt with are not before the Court. The reasons given by the Income-tax Tribunal for coming to the conclusion that the Notices fell

within the terms of Section 34(1)(a) were made in a different context and we do not think that they can be regarded as conclusive or binding in considering whether the case is governed by the proviso to Section 4 of Act I of 1959. In the circumstances, before this Reference can be decided in the light of the provisions of Act 1 of 1959, we think that we must have a supplementary Statement of facts as to the character of the notices issued by the Income-tax Officer in April 1954 upon the assesseees. After the supplementary Statement of facts is received from the Tribunal, we will proceed to reframe the questions in the light of the provisions of Act 1 of 1959 and will proceed to answer the same.

Order accordingly.