**PUNJAB AND HARYANA HIGH COURT**

Commissioner of income-tax

Vs

ganeshi lal sham lal

(S. K. Kapur J. )

04.05.1965

**JUDGMENT**

**S. K. Kapur J.**

1.firm ganeshi lal sham lal (hereinafter referred to as the assessee) was a hindu undivided family, assessed as such up to the assessment year 1946-47. In the present reference we are concerned with the assessment years 1947-48 and 1952-53. During the assessment proceedings for the assessment year 1947-48, the assessee claimed that there was a total disruption of the family on 10th of july, 1945. The order made under section 25a of the indian income-tax act, 1922, by the income-tax officer shows that 10th july, 1945, was the last day of the accounting year relevant to the assessment year 1946-47. By order dated the 28th of november, 1951, the income-tax officer, business circle, new delhi, recognised the total disruption of the assessee with effect from the 10th of july, 1945. After the said order was passed under section 25a, assessments were made on some of the coparceners of the erstwhile hindu undivided family for the assessment years 1947-48 onwards. The two coparceners put forth a claim before the income-tax officer that the business styled hariram shriram which was previously being carried on by the assessee was after the disruption carried on by them as partners in pursuance of an agreement of partnership. A claim for registration of the said partnership firm was also made before the income-tax officer who allowed the registration of the firm under section 26a of the said act. It appears that in 1955 the income-tax officer received some information that the hindu undivided family was really subsisting and had not, in fact, been dissolved. He, therefore, initiated proceedings under section 34 of the said act for the assessment year 1947-48 on the ground that the hindu undivided family was really subsisting and the order under section 25a was ineffective and bad in law having been obtained by misleading the income-tax officer. He also issued a notice to the assessee under section 22(2) with respect to the assessment year 1952-53. In compliance with the notices issued by the income-tax officer under section 34 of the said act for the assessment year 1947-48 and under section 22(2) for the assessment year 1952-53, the assessee filed returns for each of the two years under consideration. During the assessment proceedings taken in pursuance of the notices under section 34 with respect to the assessment year 1947-48 and under section 22(2)

with respect to the assessment year 1952-53, the income-tax officer called upon the assessee to show cause why the assessees claim under section 25a of the said act, which had been accepted by the income-tax officer by his order dated the 28th november, 1951, should not be rejected. The income-tax officer came to the conclusion that the firm, ganeshi lal sham lal, had not disrupted on the 10th of july, 1945, but had continued till 10th may, 1952. He according made an assessment on the hindu undivided family for each of the said two years. The assessee challenged these assessments before the appellate assistant commissioner, inter alia, on the ground that proceedings under section 34 were without jurisdiction inasmuch as the order passed by the income-tax officer under section 25a of the said act was subsisting and had not been set aside by the commissioner under section 33b of the act. The contention in short was that the successor income-tax officer could not receive the order passed by his predecessor under section 25a and was not competent to go into the validity of the claim that the joint hindu undivided family had disrupted. In appeal the appellate assistant commissioner held that the income-tax officer was justified in initiating proceedings under section 34. He, however, felt that the question as to whether the family had or had not disrupted on 10th of may, 1952, should have been first investigated by the income-tax officer. He accordingly set aside the assessments made by the income-tax officer and directed him to complete the assessments de novo after passing proper order under section 25a of the act. The assessee, aggrieved by the order of the appellate assistant commissioner, filed an appeal before the income-tax appellate tribunal. It was contended there that it was never the assessees case that the family had disrupted in may, 1952, and consequently the authorities concerned were not competent to investigate whether the family had disrupted on 10th of may, 1952, or not. The contention advanced before the appellate assistant commissioner regarding the applicability of section 34 was repeated before the tribunal. The appellate tribunal by its order dated 15th september, 1960, held that, (a) the income sought to be assessed in the hands of the family had already been assessed in the hands of the coparceners of the family who carried on business as firm, hariram shriram, and (b) the income-tax officer having himself recognised the disruption of the hindu undivided family under section 25a it was no longer open to him to reconsider whether the said over had been properly passed or not as the succeeding income-tax officer could not sit in judgment over the order passed by his predecessor and review the same. The tribunal accordingly held that the proceedings under section 34 were bad in law. In these circumstances the following question of law has been referred to this court under section 66(1) of the said act the instance of the commissioner of income-tax :

> "whether it was open to the income-tax officer to initiate proceedings under section 34 of the indian income-tax act against the assessee holding that its status was that of a hindu undivided family although an order recognising the total disruption of the family had already been passed by his predecessor under section 25a of the indian income-tax act ?"

Mr. Hardy, the learned counsel for the appellant, contends that section 34 is wide enough to enable an income-tax officer to tax the escaped income by disregarding or ignoring an order under section 25a and that an income-tax officer can, in view of section 34, consider the fresh

materials brought before him and set aside an order under section 25a obtained by concealment of certain material facts. He further submits that on the basis of the said order the assessment was made at too low a rate within the meaning of section 34. The matter is certainly not free from difficulty and we must confess that we were not completely unmoved by the arguments of mr. Hardy. On a closer analysis of the relevant provisions of the said act, however, we find that we are unable to agree with him. If we accept mr. Hardys contention, anomalous results would follow. Section 34 confers power to reassess the income where it has, inter alia, escaped assessment in a particular year. It gives no general power to review an order like an order under section 25a, which in its very nature, is effective for all the subsequent years. Let us then take, for instance, a case where in the year 1952-53 an income-tax officer gets an information that the order under section 25a was obtained during the assessment proceedings for 1948-49 by misrepresentation. He may issue a notice, in the assessment year 1952-53, under section 34 with respect to the assessment year 1948-49, and a notice under section 22(2) with respect to the assessment year 1952-53. What would then be the position ? The income-tax officer will then be competent to revise or disregard the order under section 25a with respect to the assessment year 1948-49 but yet it would not be open to him to do so with respect to the assessment year 1952-53 if the assessee files a return in time in response to the notice under section 22(2). That would be so because section 34 would not apply in those circumstances to the assessment year 1952-53. Could it have been intended by the legislature that he may, for the assessment year 1948-49, reopen the assessment under section 34 and make a fresh assessment in disregard of the order under section 25a but yet he must, with respect to the year 1952-53, make an assessment recognising the order under section 25a as valid ? When confronted with this situation, mr. Hardy submitted that it would be open in such circumstances to the income-tax officer to make an assessment for the year 1952-53 and then take proceedings under section 34. Apart from the fact that we are doubtful whether section 34 would in those circumstances apply we feel that that could not have been the intention of the legislature. It may be noticed that if an assessees fails to furnish a return of his total income, as required by a public notice under sub-section (1) of section 22 and such failure results in no assessment having been made at all, proceedings may be taken under section 34 in a subsequent year although no individual notice under section 22(2) may have been served on the assessee in the relevant assessment year, but where an assessee who has not been served with an individual notice under section 22(2) voluntarily files a return even after the expiry of the assessment year, no proceedings can be taken under section 34. Similarly no proceedings under section 34 can be taken if an assessee files a return in response to a notice under section 22(2) served at any time in the course of the assessment year. It is difficult to accept that the legislature intended that in such circumstances an income-tax officer must first honour the order under section 25a for the assessment year 1952-53, make an assessment under section 23 and then reopen the same under section 34 and yet this result must follow unless an income-tax officer has a power to review his own order which in our opinion he does not possess. Even if the income-tax officer takes resort to a most unusual procedure of first making an assessment under section 23 and then reopening the same under section 34, it may be said with considerable force the all the information on which action was sought to be taken under

section 34 was in the possession of the income-tax officer at the time of making the assessment under section 23 and, therefore, section 34 was not applicable. We would, however, not express or final views on the question of applicability of section 34 in these circumstances as it is not necessary for us to decide that question. We may give one more example to demonstrate the anomaly which may result from accepting the contention of the learned counsel for the commissioner. Take a case where an income-tax officer issues notice in the assessment year 1950-51 under section 34 with respect to the assessment year 1948-49 on the ground that the order under section 25a had been obtained by concealment of material facts. In view of a notice under section 34, an assessee chooses to file a return for the subsequent assessment years subject to his claim that the family had disrupted earlier and an order passed under section 25a recognising the disruption. Again, with respect to such assessment years, section 34 would not be applicable with the result that the order under section 25a may be ignored or reviewed for the assessment year 1948-49 and not for the subsequent years, unless a power to review inheres in an income-tax officer. In these circumstances, we fell that where an income-tax officer get an information that an order under section 25a had been obtained by concealment of material facts, the only course open to him may be to move the commissioner under section 33b for setting aside the same. Mr. Hardy submits that the result of such a construction may be that if such an information is received after the expiry of two years, the income-tax officer may have no remedy at all since the powers under section 33b could be exercised only within two years. That may be so but the same result would follow if such an information is received by an income-tax officer after the expiry of the period of limitation prescribed for the applicability of section 34.
Mr. Kirpal, the learned counsel for the assessee, submits that the moment the order under section 25a is passed, the hindu undivided family ceases to be an assessee for the purpose of the said act and, consequently, no action under section 34 can be taken. He further draws our attention to rule 6b of the rules framed under the indian income-tax act and submits that, although an order under section 26a, registering the firm, has to be passed from year to year, a special provision has been made by the said rule for cancellation of the certificate so granted. He submits that from the said special provision it should be inferred that the legislature intended to confer no power to review an order under section 25a. We need not pronounce upon the validity of these arguments since we are of the view that no power exists under section 34 to ignore or nullity an order made under section 25a and proceedings under section 34 must be taken on the footing that a valid order under section 25a subsists till the same is set aside by the commissioner in exercise of powers under section 33b. We would, however, like to point out that an order under section 25a has to be passed only once and remains effective for subsequent years unless set aside in accordance with law. By virtue of sub-section (3), a hindu undivided family is deemed to continue notwithstanding its disruption unless an order is passed. If an order passed under section 25a is effective for subsequent years, there can be no justification for holding that such order has to be given effect to or ignored in the subsequent assessment years at the sweet will of an income-tax officer or it is to be reviewed from time to time. There would, in that view, be no sanctity or finality attached to the order. There is no decision of any court one way or the other on this point. Mr. Hardy, however, sought assistance from the decision of their lordships of the supreme court

in lakshminarain bhadani v. Commissioner of income-tax. In that case a hindu undivided family was assessed to income-tax for the year 1939-40. In 1944 the income-tax officer felt that certain income of the family taxable in 1939-40 had escaped assessment. In the meanwhile the family had become divided and an order had been passed under section 25a(1). The income-tax officer issued a notice in the name of the joint hindu family and served it on the appellant, the karta of the family, under section 34 read with section 22 requiring a return in respect of the escaped income to be filed. The appellant sent a return in response to that notice and the income-tax officer made an assessment and issued a notice of demand on the appellant as the karta and two other members of the family. It was held by their lordships of the supreme court that as the income-tax officer was proceeding to assessees the income of the family as in the year 1939-40, the proceedings were validly initiated and it was not necessary to issue the notice under section 34 read with section 22 to every member of the family. That case has no applicability to the present case since the question there was entirely different. Again reference has been made to mathra das and sons v. Commissioner of income-tax. In that case the learned judges of the lahore high court rejected the contention of the assessee that the income-tax authorities having accepted the allegation about partition of the family property were estopped in the subsequent years from reopening the question. It must be noticed that in that case this question had not been referred to the court and, secondly, it appears that no order under section 25a had been made. In these circumstances, we must answer the question in the negative and in favour of the assessee. The commissioner will pay the costs which are fixed at rs. 200.
A. N. Grover j. - i agree.
Question answered in the negative.