

INCOME-TAX OFFICER, A-WARD, LUCKNOW

v.

BACHULAL KAPOOR

December 14, 1965

[K. SUBBA RAO, J. C. SHAH AND S. M. SIKRI, JJ.]

Indian Income-tax Act, 1922, (11 of 1922), s. 34—Hindu undivided family—Partition—Members assessed separately—Notice to reassess the family—If can be given.

The respondent used to be assessed to income-tax as *karta* of a Hindu undivided family. In a suit filed by members of his family against the respondent a compromise decree was passed. The Income-tax officer accepting the respondent's claim under s. 25A of the Income-tax Act that the family was partitioned, assessed the members of the family as individuals. Later the Income-tax Officer issued a notice under s. 34 of the Act to the respondent as *karta* of the Hindu undivided family requiring him to file a return for a year in which the members had been assessed as individuals on the ground that the respondent's income had escaped assessment. Thereupon the respondent filed a writ petition in the High Court for quashing the said notice. As the assessment of the same income in the hands of the members of the family for the same year was not set aside the High Court held that the notice was invalid as the same income could not be assessed again in the hands of the Hindu undivided family by taking proceedings under s. 34 of the Act. In appeal to this Court:

HELD: (i) The Income-tax Officer had jurisdiction to initiate proceedings under s. 34 of the Act against the respondent as the *karta* of the Hindu undivided family.

A Hindu undivided family is a separate unit of assessment. It is a distinct assessable entity. It is a 'person' within its definition in the Act. It is liable to be assessed to income-tax in respect of its income. A member of that Hindu undivided family is not liable to pay any tax in respect of any sum which he receives as a member of that family out of the income of that family. If the said Hindu undivided family has escaped assessment for any year, the Income-tax Officer, subject to the conditions laid down in s. 34(1) of the Act, may issue a notice thereunder calling upon the said Hindu undivided family to submit a return of its income for that year and proceed to assess it in terms thereof. It is manifest from a combined reading of ss. 3, 14(1) & (2), 22(1) and 34(1) that the Income-tax Officer can issue a notice to a Hindu undivided family under s. 34 of the Act on the ground that it has escaped assessment. [72 F-H]

The exercise of the option by an Officer to do one or other of the two alternatives (*viz.*, to assess either the Hindu undivided family or members thereof separately) assumes knowledge on his part of the existence of the two alternatives. If the case of the Revenue be true, the Income-tax Officer at the time he assessed the individual members of the family had no knowledge that a united family existed; he presumably proceeded on the basis that the said family had really ceased to exist under the terms of the compromise decree. This was, therefore, not a case of election between two alternative units of assessment, but an attempt to bring to tax the income of an assessable entity which had escaped assessment. The apart, under s. 3 of the Act, in the matter of assessment, there is no question of any election between a Hindu undivided

- A family and a member thereof in respect of the income of the family. If a Hindu undivided family exists under s. 3 of the Act the Income-tax Officer has to assess it in respect of its income. Indeed, under s. 14(1) of the Act, any part of the income received by its member cannot be assessed over again. While s. 3 confers an option on the Income-tax officer to assess either the association of persons or the members of the association individually, no such option is conferred on him thereunder in the case of a Hindu undivided family, and its existence excludes the liability of its members in respect of the income of the former received by the latter. [74 C-F]

Commissioner of Income-tax, U.P. v. Kanpur Coal Syndicate, (1964) 53 I.T.R. 225 : [1964] 8 S.C.R. 85 distinguished.

- C If the assessment proceedings initiated under s. 34 of the Act culminate in the assessment of the Hindu undivided family appropriate adjustments have to be made by the Income-tax Officer in respect of the tax realised by the Revenue in respect of the part of the income of the family assessed on the individuals of the said family. To do so is not to open the final orders of assessment, but in reality to arrive at the correct figure of tax payable by the Hindu undivided family. [75 C-D]

Case law referred to.

- D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 638 of 1961.

Appeal by special leave from the judgment and order dated December 15, 1960 of the Allahabad High Court (Lucknow Bench) at Lucknow in Writ Petition No. 86 of 1960.

- E *A.V. Viswanatha Sastri, N. D. Karkhanis, R. H. Dhebar, B.R.G.K. Achar and R. N. Sachthey*, for the appellant.

C.P.Lal, for the respondent.

Mohan Behari Lal, for the intervener.

- F The Judgment of the Court was delivered by

- G *Subba Rao, J.* This appeal by special leave arises out of the order of the High Court of Judicature at Allahabad quashing the notice issued by the appellant under s. 34 of the Indian Income-tax Act, 1922, hereinafter called the Act, to the respondent as the *karta* of a Hindu undivided family for the assessment year 1955-56.

- H The facts may be briefly stated. Up to the assessment year 1952-53, the respondent, Bachulal Kapoor, was assessed to income-tax as *karta* of the Hindu undivided family consisting of himself, his wife and a minor son. In a suit filed by the wife and the son of Bachulal Kapoor against him, a compromise was effected between the parties and on October 20, 1952, a compromise decree was passed. On January 18, 1954, the Income-tax Officer, A-Ward, Lucknow, passed an order accepting the

claim under s. 25-A by the respondent that the family was partitioned. For the assessment years 1953-54, 1954-55 and 1955-56, the members of the family were assessed as individuals. On March 24, 1960, the Income-tax Officer issued a notice under s. 34 of the Act to the respondent as the *karta* of the Hindu undivided family requiring him to file a return within the prescribed time of his world income on the ground that the respondent's income chargeable to tax for the assessment year 1955-56 had escaped assessment and also was under-assessed. Thereupon, the respondent moved the High Court at Allahabad under Art. 226 of the Constitution for quashing the said notice on two grounds, namely, (i) the income in respect of which the return had been called for had already been assessed in the hands of the individual members of the family and, therefore, the said income could not be assessed again as that of the Hindu undivided family; and (ii) the Hindu undivided family had ceased to exist, that the partition of the family was recognised by the Income-tax Officer under s. 25-A of the Act, and, therefore, no valid notice could be issued to the respondent in his capacity as the *karta* of the Hindu undivided family. On an admission made by the learned counsel for the Revenue, the notice, so far as it related to the re-assessment of the income on the ground of under-assessment, was ignored as it was inconsistent with the alternative ground of escaped assessment. The High Court held that the said notice was invalid as it offended the principle against double taxation. As the assessment of the same income in the hands of the members of the family for the same year was not set aside, the High Court held that the same income could not be assessed again in the hands of the Hindu undivided family by taking proceedings under s. 34 of the Act. In that view, it thought that it was not necessary to go into the second ground, namely, whether the proceedings under s. 34 of the Act could have been validly taken in view of the orders passed under s. 25-A of the Act. Pursuant to the view expressed on the first question, the said notice was quashed. Hence the appeal.

The 4th respondent in Civil Appeals Nos. 805 and 806 of 1962 filed Civil Miscellaneous Petition No. 2655 of 1965 praying for permission to intervene in the present appeal on the ground that a common question arose in the said appeals as well as in the present appeal and it was ordered.

Mr. A. V. Viswanatha Sastri, learned counsel for the Revenue, contended that under the Act a Hindu undivided family and the individuals thereof were different assessable entities; that, as the

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A alleged compromise decree was a collusive one, the said Hindu undivided family continued to exist as a separate entity; that it had escaped assessment; and that, therefore, subject to the conditions laid down in s. 34 of the Act, the Income-tax Officer was within his rights to issue a notice thereunder.

B The argument of Mr. C. P. Lal, learned counsel for the respondent, may be put thus: the Income-tax Officer had assessed the same income assessable for the year 1955-56 in the hands of the individual members of the family and the assessments made on them had become final. Having elected to assess the individuals as separate entities, the Income-tax Officer had no jurisdiction under the Act to assess the same income in the hands of a separate assessable entity, namely, the Hindu undivided family. He also relied upon the principle of avoidance of double taxation alleged to underlie the scheme of the Act in respect of the same income.

D On the question argued before us, the following provisions of the Act will be relevant:

E *Section 3.* Where any Central Act enacts that income-tax shall be charged for any year at any rate or rates, tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of the total income of the previous year of every individual, Hindu undivided family, company and local authority, and of every firm and other association of persons or the partners of the firm or the members of the association individually.

F *Section 14. (1).* The tax shall not be payable by an assessee in respect of any sum which he receives as a member of a Hindu undivided family where such sum has been paid out of the income of the family

G *Section 2. (9)* "person" includes a Hindu undivided family and a local authority.

H *Section 22. (1)* The Income-tax Officer shall, on or before the 1st day of May in each year, give notice, by publication in the press and by publication in the prescribed manner, requiring every person whose total income during the previous year exceeded the maximum amount which is not chargeable to income-tax to furnish, within such period not being less than sixty days as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner,

setting forth (along with such other particulars as may be required by the notice) his total income and total world income during that year.

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Section 34. (1) If—

(a) 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 under section 22 for any year or to disclose fully and truly all material facts necessary for his assessment for that year, income, profits or gains chargeable to income-tax have escaped assessment for that year, or have been under-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, he may in cases falling under clause (a) at any time serve on the assessee, or, if the assessee is a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22 and may proceed to assess or re-assess such income, profits or gains or recompute the loss or depreciation allowance; and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section :

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The gist of the said provisions may be given thus : A Hindu undivided family is a separate unit of assessment. It is a distinct assessable entity. It is a "person" within its definition in the Act. It is liable to be assessed to income-tax in respect of its income. A member of that Hindu undivided family is not liable to pay any tax in respect of any sum which he receives as a member of that family out of the income of that family. If the said Hindu undivided family has escaped assessment for any year, the Income-tax Officer, subject to the conditions laid down in s. 34(1) of the Act, may issue a notice thereunder calling upon the said Hindu undivided family to submit a return of its income for that year and proceed to assess it in terms thereof. It is manifest from a combined reading of the said provisions that the Income-tax Officer can issue a notice to a Hindu undivided family under s. 34 of the Act on the ground that it has escaped assessment.

The impugned notice under s. 34(1) of the Act issued to the respondent reads thus :

A “Whereas I have reason to believe that your income assessable to income-tax for the assessment year 1955-56 has

- (a) escaped assessment,
- (b) been under-assessed,

B I, therefore, propose to reassess the said income that has (a) escaped assessment, (b) been under-assessed.

C I hereby require you to deliver to me not later than 30th March, 1960, or within 35 days of the receipt of this notice, a return in the attached form of your total income and total world income assessable for the said year ending 31st March 1956.”

D In the counter-affidavit filed by the Income-tax Officer in the High Court it was stated that he had reason to believe, in consequence of information in his possession, that income, profits or gains chargeable to income-tax had escaped assessment. His information was that notwithstanding the compromise decree the members of the family were living together, had joint mess and the business was run by the respondent. In short, the case of the Revenue was that the compromise was a make-believe one and the family in fact continued to be a joint Hindu family. If the case of the Revenue was true—on which we do not express any opinion—and the fact of the continuance of the joint Hindu family was kept back from the knowledge of the Income-tax Officer, it would be a clear case of the said family escaping assessment during the relevant year. If that be so, s. 34(1) would immediately be attracted and the notice issued would be good. But, it was contended that under s. 3 of the Act, the Income-tax Officer had the option to assess either the Hindu undivided family or the members thereof separately and that, as the said Officer, in exercise of the option, had assessed the individual members of the family, he had no longer any jurisdiction to assess the Hindu undivided family. In support of that contention reliance was placed on a decision of this Court in *Commissioner of Income-tax, U.P. v. Kanpur Coal Syndicate*⁽¹⁾. Therein, construing s. 3 of the Act, this Court observed :

H “The section expressly treats an association of persons and the individual members of an association as two distinct and different assessable entities. On the terms of the section the tax can be levied on either of

(1) (1964) 53 I.T.R. 225, 228; [1964] 8 S.C.R. 85.

the said two entities according to the provisions of the Act. There is no scope for the argument that under section 3 the assessment shall be only on the association of persons as a unit though after such assessment the share of the income of a member of that association may be added to the other income under section 14(2) of the Act. This construction would make the last words of the section *viz.*, "members of the association individually", a surplusage."

But, these observations in the context of the present case have no bearing. The exercise of the option to do one or other of the two alternatives open to an Officer assumes knowledge on his part of the existence of two alternatives. If the case of the Revenue be true, the Income-tax Officer at the time he assessed the individual members of the family had no knowledge that a united joint family existed; he presumably proceeded on the basis that the said family had really ceased to exist under the terms of the compromise decree. This is, therefore, not a case of election between two alternative units of assessment, but an attempt to bring to tax the income of an assessable entity which had escaped assessment. That apart, under s. 3 of the Act, in the matter of assessment, there is no question of any election between a Hindu undivided family and a member thereof in respect of the income of the family. If a Hindu undivided family exists, under s. 3 of the Act the Income-tax Officer has to assess it in respect of its income. Indeed, under s. 14(1) of the Act, any part of the income received by its members cannot be assessed over again. While s. 3 confers an option on the Income-tax Officer to assess either the association of persons or the members of the association individually, no such option is conferred on him thereunder in the case of a Hindu undivided family, as its existence excludes the liability of its members in respect of the income of the former received by the latter.

It was then forcibly brought to our notice that the said view would be subversive of the doctrine of "double taxation". It was said that as the orders of assessment on the individual members of the said family had become final, if the Income-tax Officer was permitted to assess the Hindu undivided family for the same assessment year, tax would be imposed on the same income twice over. It is true that the Act does not envisage taxation of the same income twice over "on one passage of money in the form of one sort of income". It is equally true that s. 14(1) of the Act expressly debars the imposition of tax on any part of

- A the income of a Hindu undivided family received by its members. The fact that there is no provision in the Act dealing with a converse position does not affect the question, for the existence of such a converse position is legally impossible under the Act. So long as the Hindu undivided family exists, the individuals thereof cannot separately be assessed in respect of its income. Nonetheless,
- B if, under some mistake, such income was assessed to tax in the hands of the individual members, which should not have been done, when a proper assessment was made on the Hindu undivided family in respect of that income, the Revenue had to make appropriate adjustments; otherwise, the assessment made in respect of that income on the Hindu undivided family would be contrary to
- C the provisions of the Act, particularly s. 14(1) of the Act. We, therefore, hold that if the assessment proceedings initiated under s. 34 of the Act culminates in the assessment of the Hindu undivided family, appropriate adjustments have to be made by the Income-tax Officer in respect of the tax realised by the Revenue in respect of that part of the income of the family assessed on the
- D individuals of the said family. To do so is not to re-open the final orders of assessment, but in reality to arrive at the correct figure of tax payable by the Hindu undivided family.

E The decisions, except one, cited at the Bar do not speak in a different voice : they are consistent with the view expressed by us.

- F The Lahore High Court in *Jaikishan Das v. Commissioner of Income-tax, Lahore*⁽¹⁾ ruled that the provisions of s. 34 of the Income-tax Act could not be rendered inapplicable merely because income which was alleged to have escaped from the assessment of a particular person was included in the income of another person.
- G The Allahabad High Court in *Joti Prasad Agarwal v. Income-tax Officer, B Ward, Mathura*⁽²⁾ held that once the income of an association of members was charged to income-tax in the hands of the members individually and assessments of the members remained valid assessments, there could be no fresh assessment of the income in the hands of the association. That conclusion was arrived at on a construction of s. 3 of the Act. Therein, Bhargava, J., speaking for the Court, observed :

H “ the income, which was earned by the Association, was assessed and charged to tax in the hands of the members of the association individually under one of the alternatives provided under section 3 of the Income-tax Act. ”

(1) (1951) 20 I.T.R. 540

(2) (1959) 37 I.T.R. 107, 111

Section 3 of the Act, which is the main charging section, only talks of charging the income of certain persons and does not talk of income-tax being charged on persons. This implies that the charge is to be levied on an income only once. Whether it is to be charged in the hands of one person or another can certainly be determined under section 3 and other relevant provisions of the Income-tax Act. Section 3 is clear enough to indicate that the same income cannot be charged repeatedly in the hands of different persons or in the hands of the same person."

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In that case there was no question of suppression of the fact of the existence of an association of persons when the members were individually assessed. The decision proceeded mainly on the basis of the exercise of the option conferred on the Income-tax Officer under s. 3 of the Act to assess an association of members or the members individually and that if once the option was exercised and the income was assessed in the hands of the members, it was held that in regard to the same income the association of members could not be assessed. Where the Income-tax Officer first assessed a partnership firm but later on issued a notice under s. 34 of the Act for assessing the alleged partners of the firm as constituting an association of persons, the Allahabad High Court in *Moti Chandra v. Income-tax Officer,—District III(ii), Kanpur*⁽¹⁾, held that the Income-tax Officer had jurisdiction to do so. Therein, Upadhyya, J., adverting to *Joti Prasad Agarwal's* case⁽²⁾ said :

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"The decision is wholly inapplicable to the case in hand. Here the assessment was never made either on members of the association or on the association itself. It had been made on certain persons who claimed to be the partners of the firm Messrs. Rup Narain Ram Chandra. The Income-tax Officer now wants to assess the association of persons which was not assessed to tax at all. Even the income of the members of the association had not been subjected to tax in their hands. Section 3 therefore provides no bar to such assessment."

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This is a case of an assessable entity, namely, an association of persons, escaping assessment, though the same income was assessed in the hands of the firm.

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(1) A.I.R. 1962 Allahabad 291, at 298

(2) (1959) 37 I.T.R. 107, 111

- A In *S. Gyani Ram and Co. v. Income-tax Officer, A. Ward, Ferozabad*⁽¹⁾, when the Income-tax Officer assessed a person to tax on a certain income and later on for the same income proposed to take action under s. 34 of the Act against another person, the Allahabad High Court held that action under s. 34 of the Act could be initiated against him in respect of the same income previously taxed on the ground that it had escaped assessment in his hands.

- B These cases, except *Joti Prasad Agarwal's case*⁽²⁾ accept the principle that the Income-tax Officer has jurisdiction to initiate proceedings under s. 34 of the Act, if the conditions laid down therein are complied with, against a person on the ground that the income, though it has been assessed in the hands of another, has escaped assessment in his hands. They do not deal with the connected question, how the adjustments will have to be made to avoid double taxation of the same income. The only question that arises at the time the Income-tax Officer proposes to take proceedings under s. 34 of the Act is, whether the income has escaped assessment or has been under-assessed in the hands of the person against whom the said proceedings are initiated. At that stage, the question of resolving the conflict between the proposed assessment and an earlier assessment made on a wrong person does not arise.

- C D E Some argument was advanced on the question of the validity of what are called "protective or precautional assessments". Reference was made to *Jagannath Hanumanbux v. Income-tax Officer*⁽³⁾ and to the decision of this Court in *Lalji Haridas v. Income-tax Officer*⁽⁴⁾. In the former, the validity of protective assessment was approved; and in the latter, this Court, though the question of assessment was raised, did not express its final opinion thereon. This Court held that when there was a doubt as to which person among two was liable to be assessed, parallel proceedings might be started against both; and it also laid down an equitable procedure to be followed in that situation. In this case, the question of protective assessment does not call for our decision and we do not express our opinion thereon.

- F G H We, therefore, hold that the High Court went wrong in holding that the Income-tax Officer had no jurisdiction to initiate proceedings under s. 34 of the Act against the respondent as the *karta* of a Hindu undivided family.

(1) (1963) 47 I.T.R. 472

(3) (1957) 31 I.T.R. 603

(2) (1959) 37 I.T.R. 107

(4) (1961) 43 I.T.R. 387

The High Court, as we have indicated earlier, has not expressed its opinion on the question based upon s. 25-A of the Act. In the result, the order of the High Court is set aside and the appeal is remanded to the High Court for disposal in accordance with law. The costs of this appeal will abide the result. A

Appeal remanded. B