

BALCHAND

v.

INCOME-TAX OFFICER, SAGAR

August 19, 1968

[J. C. SHAH AND V. RAMASWAMI, JJ.]

Income-tax Act (11 of 1922), s. 34 and Income-tax Act (43 of 1961), 148—Assessment made by Income-Tax Officer—Further return thereafter by assessee—Whether such return should be disposed of before taking action under s. 34 of the 1922-Act or s. 148 of the 1961-Act.

The appellant was assessed to pay tax on his income for the assessment years 1945-46 and 1946-47 under s. 23(3) of the Income-tax Act, 1922. Thereafter, on June 24, 1959, the Income-Tax Officer issued a notice of reassessment under s. 34 requiring the appellant to submit a return of his income assessable for the year ending March 31, 1946 on the ground that the income of the appellant had escaped assessment. The preamble to the notice however, referred to the assessment years 1946-47 and 1945-46. The appellant filed a return for the assessment year 1946-47, and when his attention was drawn to the body of the notice, he filed a fresh return for the assessment year 1945-46 admitting that he had misunderstood the notice. On March 14, 1963 the Income-Tax Officer issued another notice under s. 148 of the Income-tax Act, 1961, calling upon the appellant to submit a return of his income for the assessment year 1946-47, on the ground that his income for that year also had escaped assessment. The appellant, thereupon filed a writ petition in the High Court for quashing the two notices dated June 24, 1959 and March 14, 1963 but the petition was dismissed.

In appeal to this Court, on the questions, whether: (1) by the notice dated June 24, 1959 the appellant was called upon to file a return for the assessment year 1946-47 and therefore the reassessment proceedings for the assessment year 1945-46 were incompetent; and (2) since the appellant had submitted another return for the assessment year 1946-47 the notice dated March 14, 1963, was incompetent, because a notice under s. 34 of the Income-tax Act, 1922, or s. 148 of the Income-tax Act 1961, could not be issued so long as the return was not considered and disposed of.

HELD: (1) Though there was some negligence in drawing up the preamble to the notice dated June 24, 1959 it did not affect its validity for the assessment year 1945-46. The appellant was clearly informed that he had to file a return of his income assessable for the year ending March 31, 1946 that is for the assessment year 1945-46, and the appellant himself had admitted his mistake in construing it. [706 B-D]

(2) The Act does not provide any machinery for dealing with voluntary returns filed by an assessee after assessment of income for the year of assessment was completed. When the income of the assessee had been assessed to tax, it was not open to him, to file another voluntary return and avoid the issue of a notice either under s. 34 of the 1922 Act or s. 148 of the 1961-Act. The cases, *Commissioner of Income-tax v. Ranchhoddas Karsondas*, 36 I.T.R. 569 (S.C.) and *Commissioner of Income-tax v. S. Raman Chettiar*, 55 I.T.R. 630 (S.C.) on which the appellant relied are cases where there was no order of assessment for the rele-

A vant year and their principle has no application to the present case. Unless a notice of reassessment is issued by the Income-Tax Officer, the assessee cannot, after an order of assessment is made, submit a return of his income for the year for which he was already assessed and call upon the Income-Tax Officer to assess his income. [707 G; 708-C, F-G]

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 640 of 1966.

Appeal by special leave from the judgment and order dated September 2, 1965 of the Madhya Pradesh High Court in Misc. Petition No. 92 of 1964.

N. D. Karkhanis, and *A. G. Ratnaparkhi*, for the appellant.

C *D. Narsaraju* and *R. N. Sachthey*, for the respondent.

The Judgment of the Court was delivered by

D **Shah, J.** The Income-tax Officer, Sagar, assessed the appellant to pay under s. 23(3) of the Income-tax Act, 1922, tax on his income computed for the assessment years 1945-46 and 1946-47. On June 24, 1959, the Income-tax Officer issued a notice of reassessment under s. 34 of the Income-tax Act, 1922, reciting that the income of the appellant had escaped assessment and requiring the appellant to submit a return of his total world income assessable for the year ending March 31, 1946. On August 17, 1959, the appellant filed a return for the assessment of his income for the year 1946-47. The appellant was informed by the Income-tax Officer that he was called upon to submit a return of his income for the assessment year 1945-46 and not for the assessment year 1946-47. The appellant on March 22, 1960, filed a fresh return for the assessment year 1945-46 admitting that he had "misunderstood the notice" served upon him. In his return he admitted that he had a third share in a firm styled "Sheoprasad Shobharam". On March 14, 1963, the Income-tax Officer issued another notice under s. 148 of the Income-tax Act, 1961, calling upon the appellant to submit a return of his income for the assessment year 1946-47 on the ground that income of the appellant had escaped assessment. The appellant then moved the High Court of Madhya Pradesh for an order quashing the notices dated June 24, 1959 and March 14, 1963, and for a writ of *mandamus* or *prohibition* restraining the Income-tax Officer from continuing the proceedings of assessment under the two notices. The High Court rejected the writ petition. Against the order of the High Court, the appellant has appealed to this Court with special leave.

H The appellant contended that by the notice dated June 24, 1959, he was called upon to file a return for the assessment year 1946-47 and initiation of proceedings on that notice for reassessment of income for the assessment year 1945-46 was incompetent.

In the preamble of the notice it is recited : "Whereas I have reason to believe that your income assessable to income-tax for the assessment year 1946-47, 1945-46 has—(a) escaped assessment . . . , I therefore propose to assess the said income", but in the body of the notice it is clearly recited that the appellant was called upon to deliver a return of his total world income assessable for the year ending March 31, 1946. A demand for return of income assessable for the year ending March 31, 1946 could obviously be for the assessment year 1945-46 and not for 1946-47. By his letter dated March 22, 1960, the appellant admitted that he was called upon to file a return for the assessment year 1945-46 and he had "misunderstood" the notice and had filed a return for the assessment year 1946-47. There was apparently some negligence in drawing up the preamble to the notice, but that does not affect the validity of the notice, for the appellant was clearly informed that he had to file a return for the year ending March 31, 1946.

The appellant then contended that in any event on August 17, 1959, the appellant had submitted a return for the assessment year 1946-47 and even if no notice for assessment year 1946-47 calling upon him to submit a return for that year was issued, a notice under s. 34 of the Income-tax Act, 1922, or under s. 148 of the Income-tax Act, 1961, was incompetent so long as the return submitted by the appellant in August 1959 for the assessment year 1946-47 was not considered and disposed of. Reliance in support of this contention was placed upon two decisions of this Court : *Commissioner of Income-tax v. Ranchhoddas Karsondas*⁽¹⁾ and *Commissioner of Income-tax v. S. Raman Chettiar*⁽²⁾.

Under s. 22(1) of the Income-tax Act, 1922, the Income-tax Officer was required before the 1st day of May in each year to give notice, by publication in the press and by publication in the prescribed manner, calling upon every person whose total income during the previous year exceeded the maximum amount 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. Sub-section (2) authorised the Income-tax Officer to serve a notice upon any person whose total income was in the opinion of the Income-tax Officer of such an amount as to render such person liable to income-tax, requiring him to furnish within such period, not being less than thirty days, as may be specified in the notice, a return of his total income during the previous year. Sub-section (3) provided :

"If any person has not furnished a return within the time allowed by or under sub-section (1) or sub-section

(1) 36 I.T.R. 569.

(2) 55 I.T.R. 630.

- A (2), or having furnished a return under either of those sub-sections, discovers any omission or wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made."
- B Section 34 of the Act authorised the Income-tax Officer to serve a notice on the assessee for assessment or reassessment if—
- C (a) the Income-tax Officer had 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 s. 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 underassessed, 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 if (b) in cases not mentioned in cl. (a) the Income-tax Officer had in consequence of information in his possession reason to believe that income, profits or gains
- D chargeable to income-tax had escaped assessment for any year, or had been under-assessed, or assessed at too low a rate, or had been made the subject of excessive relief under the Act or that excessive loss or depreciation allowance had been computed, and to proceed to reassess the income of the assessee.

- E The appellant was already assessed to income-tax for the years 1945-46 and 1946-47 under the Act of 1922. Counsel for the appellant concedes that the appellant did not comply with the notice dated June 24, 1959, and filed first a return for the assessment year 1946-47 and thereafter a return for the assessment year 1945-46. He, however, submits that even if the return was not demanded, since the return for 1946-47 was filed by the appellant
- F the Income-tax Officer was bound to consider that return according to law and to pass appropriate orders of assessment thereon and so long as he did not do so, he was incompetent to issue a notice of reassessment either under s. 34 of the Income-tax Act of 1922, or s. 148 of the Income-tax Act, 1961. We are unable to accept that contention. The Act does not provide for any machinery for dealing with voluntary returns filed by an assessee
- G after assessment of income for the year of assessment is completed. Such a voluntary return does not operate as a bar to the Income-tax Officer issuing a notice of reassessment.

- H This Court has held in *Ranchhoddas's case*⁽¹⁾ that 'where no return has been filed by the assessee within the period prescribed by s. 22(1) of the Income-tax Act, 1922, the assessee is entitled in law to submit a voluntary return in answer to the general notice under s. 22(1) before assessment is completed, for a return in

(1) 36 I.T.R. 569.

answer to the general notice *can under s. 22(3) be filed at any time before assessment* and for filing such a return there is no limit of time, and *when such a voluntary return is filed*, the Income-tax Officer cannot ignore that return voluntarily filed and issue a notice of reassessment under s. 34 of the Income-tax Act, 1922. A notice of reassessment before the voluntary return is disposed of is therefore invalid. But the principle of *Ranchhod-das's case*⁽¹⁾ only applies to cases where no assessment of the income of the assessee has been made. Where the income of the assessee has been assessed to tax, it is not open to the assessee on coming to learn or apprehending that proceedings under s. 34 of the Act will be taken against him to file a voluntary return and avoid the issue of a notice under s. 34 against him. In *S. Raman Chettiar's case*⁽²⁾ also a Hindu undivided family had not filed any return for the assessment year 1944-45. The Income-tax Officer issued a notice under s. 34 of the Indian Income-tax Act, 1922, in April 1948 calling upon the assessee to file a return of income, and the assessee complied with the notice and filed a return on September 4, 1948. In the course of the proceeding, it was discovered that the notice under s. 34 was invalid, because the Commissioner's sanction was not obtained. The Income-tax Officer then issued a fresh notice on February 27, 1953, in respect of the assessment year 1944-45 and passed an order of assessment in respect of the income which had not been assessed. This Court held that the return submitted on September 4, 1948, by the assessee in response to the invalid notice under s. 34 was a return within the meaning of s. 22(3) of the Act, and the Income-tax Officer could not ignore it and issue a notice under s. 34 on the assumption that there had been omission or failure by the assessee to make a return of his income under s. 22, and on that account the assessment under s. 34 was invalid. In that case also no return had been filed by the assessee pursuant to s. 22 and no order of assessment of the income of the assessee for the year 1944-45 was recorded. The principle of *Ranchhod-das's case*⁽¹⁾ and *S. Raman Chettiar's case*⁽²⁾ has, in our judgment, no application to cases where a return has been filed by the assessee and assessment made and thereafter apprehending proceedings under s. 34 of the Indian Income-tax Act, 1922, the assessee files another return. Unless a notice of reassessment is issued by the Income-tax Officer, the assessee cannot after an order of assessment is made submit a return of his income for the year for which he is already assessed and call upon the Income-tax Officer to assess his income. Such a proceeding would be futile. It is true that a notice under s. 34 is also a notice of assessment, but relying upon s. 22(3) the assessee may furnish a revised return to rectify an omission or wrong statement, or furnish a return pur-

(1) 36 I.T.R. 569.

(2) 55 I.T.R. 630.

A suant to a requisition under s. 34: he cannot seek to rectify his return on which assessment has already been made.

The return filed on August 17, 1959, therefore, did not deprive of the Income-tax Officer of his jurisdiction to start proceedings under s. 34 of the Indian Income-tax Act, 1922, against the assessee. There is no dispute that after the repeal of the Act of 1922, it was competent to the Income-tax Officer to issue a notice under s. 148 of the Income-tax Act, 1961, for assessment of the income of the assessee if no proceeding for assessment had been commenced prior to April 1, 1962.

The appeal fails and is dismissed with costs.

V.P.S.

Appeal dismissed.