

A **V. D. M. R. M. M. R. M. MUTHIAH CHETTIAR**

v.

COMMISSIONER OF INCOME-TAX, MADRAS

February 14, 1969

B [J. C. SHAH, V. RAMASWAMI AND A. N. GROVER, JJ.]

Indian Income-tax Act (11 of 1922), ss. 34 and 16(3)—Assessee's return of income as individual not showing that other members of his firm were his minor sons—Income of minors separately assessed—S. 34(1) and s. 34(1)(b), applicability of income of a minor son whether can be added under s. 16(3)—Income of assessee after having been separately assessed.

C The assessee and his minor sons separately held shares in a resident firm. For assessment years 1952-53 to 1954-55, the assessee filed returns as an individual and therein stated under the head business income that the profit should be ascertained from the Income-tax Officer assessing the firm. The names of the partners were stated, but it was not stated in the return that some of the parties were his minor sons. The minors, through their mother as guardian, also filed returns for these assessment years, and they were assessed to tax. The assessee was also assessed as an individual, in respect of his share in the income of the firm and other sources, but the assessment order did not include the share of the minors from the firm. The Income-tax Officer issued notices of reassessment to the assessee under s. 34(1)(a) of the Indian Income-tax Act, 1922 for the years 1952-53 and 1953-54 and under s. 34(1)(b) for the year 1954-55. The Income-tax Officer took the view that the assessee had not disclosed the fact that his sons were minors and the income of the sons which should have been included under s. 16(3)(a)(ii) had escaped assessment in the assessee's hands and accordingly he brought that income to tax. The Appellate Assistant Commissioner confirmed this order. The Appellate Tribunal, in appeal held that for the first two years s. 34(1)(a) applied, that in respect of the third year there was no change of opinion but the assessment was made on information received within the meaning of s. 34(1)(b) and that the income of the minors could be assessed in the hands of the assessee notwithstanding the separate assessments already made on the minors. On reference, the High Court answered the questions against the assessee. In appeal, this Court,

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 H HELD: Section 16(3) of the Act imposed an obligation upon the Income-tax Officer to compute the total income of any individual for the purpose of assessment by including the items of income set out in cls. (a)(i) to (iv) and (b), but thereby no obligation was imposed upon the tax-payer to disclose the income liable to be included in his assessment under s. 16(3). For failing or omitting to disclose that income proceedings for reassessment could not be commenced under s. 34(1)(a). Section 22(5) required the assessee to furnish particulars of the names of the shares of the partners but imposed no obligation to mention or set out the income of the nature mentioned in s. 16(3). In the relevant years there was no head in the form of return prescribed under the rules under which income liable to be assessed to tax under s. 16(3)(a) & (b) could be disclosed. These assessments under s. 34(1)(a) for the years 1952-53 and 1953-54 could not, therefore be upheld. [721 A]

(ii) The income of a minor can be included in the hands of an assessee under s. 16(3) of the Act, notwithstanding that an assessment has been made on the minor represented by his guardian. [718 G-H]

C. R. Nagappa v. Commissioner of Income-tax, Mysore, [1969] 1 S.C.R. 979, followed. A

(iii) In respect of the assessment years 1954-55, there was no basis for the argument that the Income-tax Officer had only changed his opinion. The order of re-assessment was made well within four years from the date of the last day of that assessment year. The notice was, therefore, competently issued by the Income-tax Officer. [721 F]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1457 to 1459 of 1958. B

Appeals from the judgment and order dated August 21, 1964 of the Madras High Court in T.C. No. 75 of 1962 (Reference No. 50 of 1962).

M. C. Chagla and *T. A. Ramachandran*, for the appellant (in all the appeals). C

S. K. Aiyar and *B. D. Sharma*, for the respondent (in all the appeals).

The Judgment of the Court was delivered by

Shah, J. Ramanathan Chettiar his son Muthiah Chettiar—called hereinafter for the sake of brevity, Muthiah—and Ramanathan, Annamalai and Alagappan, sons of Muthiah, constituted a Hindu undivided family. The family owned a 3/5th share in M.R.M.S. Firm, Seramban in Malaya. The firm was assessed under the Indian Income-tax Act, 1922, in the status of a firm resident within the taxable territories. On September 16, 1950, Muthiah separated from the family taking his 1/5th share in the M.R.M.S. Firm. On April 13, 1951 the status of the family became completely disrupted and the three sons of Muthiah took in equal shares the remaining 2/5th share—the grandfather Ramanathan taking no share in the M.R.M.S. Firm. D

For the assessment year 1952-53 Muthiah submitted a return of his income as an individual and stated under the head business income “Kindly ascertain his (assessee’s) share of profit and remittances from the Income-tax officer, Second Additional Circle—I, Karaikudi, in F. 6098-m/1952-53”. In Part III of the return Muthiah supplied the following information about his partners : E

Name and address of the firm	Name of each partner including assessee	Share
Messrs. R.R.M.S. Firm Seramban, F.M.S.	1. Assessee (Muthiah Chettiar)	60/303
	2. VD. M.R.M. M. R.M. M. Ramanathan Chettiar (minor) .	40/303
	3. VD. M. R.M. M. R.M. M. Alagappan Chettiar (minor).	40/303
	4. VD. M. R.M. M. R.M. M. Annamalai Chettiar (minor)	40/303
	5. C.P.R.	60/303
	6. M.S.S.	60/303
	7. Charity	3/303

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A For the assessment year 1953-54 in column 3 in section B of the return Muthiah stated : "Kindly ascertain the remittances from the Income-tax Officer, Fifth Additional, Karaikudi in F. 6098-m", and at p. 3 of the return in column 3 of Section F it was stated :

B "Assessee has 60/303 share in Messrs. MRMS Joint Seramban, (Malaya). Kindly ascertain share of profit or loss from the Income-tax Officer, Fifth Additional. Karaikudi in F. 6098."

C In Part III of the return he set out the names of the partners as were mentioned in the return for 1952-53. Against the names of Ramanathan Chettiar, Alagappan Chettiar and Annamalai Chettiar it was not disclosed that they were minors.

For the assessment year 1954-55 at the foot of page 1 of the return Muthiah stated :

D "The assessee has a remittance of Rs. 6,188-12-0 from R.R.M.S. Firm, Seramban. His share of income may be taken from the firm's file.",

and in Part III the names of seven partners as mentioned in 1952-53 return were set-out—Ramanathan, Alagappan, Annamalai were not shown as minors.

E Ramanathan, Alagappan and Annamalai—the three minor sons of Muthiah represented by their mother and guardian also filed returns of their respective income for the years 1952-53, 1953-54 and 1954-55 and disclosed therein their shares in the profit from the 2/5th share in the M.R.M.S. Firm.

F For the assessment years 1952-53, 1953-54 and 1954-55 the Income-tax officer completed the assessments separately on the firm, on Muthiah as an individual and on the three minors represented by their mother and guardian. Muthiah was assessed in respect of his share in the income of the firm and from other sources. In his returns Muthiah had not disclosed the share received by his minor sons and the Income-tax Officer did not in making the assessments include shares of the minors from the firm under s. 16(3)(a)(ii) of the Indian Income-tax Act, 1922. The Income-tax Officer issued notices of reassessment to Muthiah under s. 34(1)(a) of the Income-tax Act, 1922 for the years 1952-53 and 1953-54 and under s. 34(1)(b) for the year 1954-55. Muthiah filed returns under protest declaring the same income as originally assessed. In the view of the Income-tax Officer Muthiah had not furnished in Part III clause (c) of the return full facts regarding the other parties and in column 2 he had merely disclosed that Ramanathan, Alagappan and Annamalai were minors : that "information was not full in the sense that he had not stated that

they were minors sons" of Muthiah. Accordingly the Income-tax Officer held that the income of the sons of Muthiah which should have been included under s. 16(3)(a)(ii) of the Income-tax Act had escaped assessment in Muthiah's hands and he brought that income to tax. A

The Appellate Assistant Commissioner confirmed the order made by the Income-tax Officer. In appeal to the Tribunal it was contended by Muthiah that he had fully and truly disclosed all the particulars he was required to disclose in the returns of his income for the three years in question, and "s. 34(a)(a) had no application to the assessment years 1952-53 and 1953-54 and for 1954-55 the re-opening was based only on a change of opinion". Muthiah also contended that s. 40 of the Income-tax Act was mandatory and since the Income-tax Officer had made separate assessments on the minors represented by their mother, no further assessment under s. 16(3) could be made, the two sections being mutually exclusive. B C

The Tribunal observed that for the first two years s. 34(1)(a) applied, that in respect of the year 1954-55 there was no change of opinion but the assessment was made on information received within the meaning of s. 34(1)(b) of the Income-tax Act and that separate assessment of the minors did not stop the Income-tax Officer from assessing the income received by the minor sons in the hands of Muthiah. The Appellate Tribunal accordingly confirmed the order of the Appellate Assistant Commissioner. D E

At the instance of Muthiah the following questions were referred to the High Court of Madras :

- (i) Whether on the facts and in the circumstances of the case, the re-assessment made on the assessee under s. 34 of the Act is valid in law for 1952-53 to 1954-55 ? F
- (ii) Whether on the facts and in the circumstances of the case, the inclusion of the share income of the minor in the hands of the assessee by invoking the provisions of s. 16(3) of the Act is valid in law notwithstanding that an assessment is made on the minor represented by his guardian ?" G

The answer to the second question must, in view of the recent judgment of this Court in *C. R. Nagappa v. The Commissioner of Income-tax, Mysore*⁽¹⁾, be in the affirmative.

In considering the first question it is necessary to refer to certain provisions of the Income-tax Act, 1922. By section 3 H

(1) [1969] 1 S.C.R. 979.

- A 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 was charged to tax for that year in accordance with, and subject to the provisions of the act at any rate or rates prescribed by the Finance Act.
- B "Total income" was defined in s. 2(15) as meaning "total amount of income, profits and gains referred to in sub-s. (1) of section 4 computed in the manner laid down in this Act." Section 4(1) set out the method of computation of total income : it enacted :

- C "(1) Subject to the provisions of this Act, the total income of any previous year of any person includes all income, profits and gains from whatever source derived which—
- (a) are received or are deemed to be received in the taxable territories in such year by or on behalf of such person, or
- D (b) if such person is resident in the taxable territories during such year,—
- (i) accrue or arise or are deemed to accrue or arise to him in the taxable territories during such year, or

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Section 22 by sub-s. (1) required the Income-tax Officer to give notice by publication in the press in the prescribed manner, requiring every person whose total income during the previous year exceeds the maximum exempt from tax, to furnish a return in the prescribed form setting forth his total income. Sub-section

- F (2) authorised the Income-tax Officer to serve a notice upon a person whose income in the opinion of the Income-tax Officer exceeded the minimum free from tax. Section 23 dealt with the assessment. It conferred power upon the Income-tax Officer to assess the total income of the assessee and to determine the sum payable by him on the basis of such return, submitted by him.
- G Rule 19 framed under s. 59 of the Income-tax Act, 1922, required the assessee to make a return in the form prescribed thereunder, and in Form A applicable to an individual or a Hindu undivided family or an association of persons there was no clause which required disclosure of income of any person other than the income of the assessee, which was liable to be included in his total
- H income. The Act and the Rules accordingly imposed no obligation upon the assessee to disclose to the Income-tax Officer in his return information relating to income of any other person by law taxable in his hands.

But s. 16 sub-s. (3) provided that in computing the total income of any individual for the purpose of assessment there shall be included the classes of income mentioned in cls. (a) and (b). Sub-section (3)(a)(ii) in-so-far as it is material, provided :

“In computing the total income of any individual for the purpose of assessment, there shall be included—

(a) so much of the income of a wife or minor child of such individual as arises directly or indirectly—

(i)

(ii) from the admission of the minor to the benefits of partnership in a firm of which such individual is a partner;”

The assessee was bound to disclose under s. 22(5) the names and addresses of his partners, if any, engaged in business, profession or vocation together with the location and style of the principal place and branches thereof and the extent of the shares of all such partners in the profits of the business, profession or vocation and any branches thereof, but the assessee was not required in making a return to disclose that any income was received by his wife or minor child admitted to the benefits of partnership of a firm of which he was a partner.

Counsel for the Commissioner contended that in the forms of returns prescribed in the “Notes of Guidance” for drawing up the return were printed, and thereby the assessee was informed that he had to disclose the income received by his wife and minor children from a firm of which the assessee was a partner. Counsel has however not placed before the Court the forms of return in vogue in the relevant year of assessment. In the Income Tax Manual published under the authority of the Central Government in 1945 under cl. (3) printed at p. 185 the assessee is advised to include the return under the appropriate head certain classes of income which are liable to be included in the assessment of an individual under s. 16, and income liable to be taxed under ss. 41D, 44E and 44F. This instruction was repeated in the Manual Parts II and III at pp. 344 and 345 in the 10th Edition published in 1950. But in the 11th Edition of the Manual published in 1954 no such instructions were printed. About the date on which the instructions were deleted Counsel for the Commissioner was unable to give any information. Assuming that there were instructions printed in the Forms of return in the relevant years, in the absence of any head under which the income of the wife or minor child of a partner whose wife or a minor child was a partner in the same firm, could be shown, by not showing that income the tax-payer cannot be deemed to have failed or omitted to disclose fully and truly all material

- A** facts necessary for his assessment. Section 16(3) imposes an obligation upon the Income-tax Officer to compute the total income of any individual for the purpose of assessment by including the items of income set out in cls. (a) (i) to (iv) and (b), but thereby no obligation is imposed upon the tax-payer to disclose the income liable to be included in his assessment under s. 16(3).
- B** For failing or omitting to disclose that income proceedings for reassessment cannot therefore be commenced under s. 34(1)(a). Section 22(5) required the assessee to furnish particulars of the names and shares of his partners, but imposes no obligation to mention or set out the income of the nature mentioned in s. 16(3). In the relevant years there was no head in the form under which income liable to be assessed to tax under s. 16(3)(a) and (b) could be disclosed.

We are in the circumstances unable to agree with the High Court that s. 34 imposed an obligation upon the assessee to disclose all income includible in his assessment by reason of s. 16(3)(a)(ii). Section 34(1)(a) sets out the conditions in which the power may be exercised ; it did not give rise to an obligation to disclose information which enabled the income-tax Officer to exercise the power under s. 16(3)(a)(ii), nor had the use of the expression "necessary for his assessment" in s. 34(1)(a) that effect.

- E** The High Court did not consider the question whether in the year 1954-55 the notice under s. 34(1)(b) was properly issued against Muthiah. The Tribunal in their judgment observed :

"There is no basis for the argument that the Income-tax Officer had only changed his opinion and re-opened the assessment."

- F** We agree with that view. The order of re-assessment was made well within four years from the date of the last day of the year of assessment 1954-55. The notice was therefore competently issued by the Income-tax Officer.

- G** The order passed by the High Court, in so far as it relates to the years 1952-53 and 1953-54 is set aside and the answer in the negative is recorded. For the year 1954-55 the answer recorded by the High Court is confirmed. There will be no order as to costs throughout.

Y.P.

Appeal partly allowed.