COMMISSIONER OF INCOME TAX, CALCUTTA

v.

BURLOP DEALERS LTD.

January 21, 1971

[J. C. SHAH, C.J., K. S. HEGDE AND A. N. GROVER, JJ.]

Income-tax Act, 1922, *s.* 34(1)(*a*)—*Scope of—Assessee disclosing primary facts necessary for assessment—Duty of Income-tax Officer to draw necessary inferences.*

For the assessment year 1949-50 the assessee submitted a profit and loss account disclosing a certain amount as profit in a joint venture and claimed that half of this profit was paid to R under a partnership agreement. The Income-tax Officer accepted the return and included only half of the profit in the joint venture in computing the assessee's total income. In the next assessment year the assessee filed a return accompanied by a profit and loss account and claimed that it had transferred half the profit to R as his share. But the Income-tax Officer on examination of the transactions brought the entire amount of profit in the joint venture to tax, holding that the partnership agreement was got up a devise to reduce the profits received from the joint venture. This order was confirmed by the Tribunal and the High Court. Meanwhile, the Income-tax Officer issued a notice under s. 34 of the Income-tax Act, 1922 to reopen the assessment for the assessment year 1949-50 and to assess the amount allowed in that assessment as paid to R. The Income-tax Officer reassessed the income under s. 34(1)(a) and added that amount to the income returned by the assessee in the assessment year 1949-50. The Appellate Assistant Commissioner confirmed that order but the Tribunal reversed. The High Court, on reference, answered in favour of the assessee. Dismissing the appeal by the Revenue,

HELD: Under s. 34(1)(a), if the assessee has disclosed primary facts relevant to the assessment, he is under no obligation to instruct the Income-tax Officer about the inference which the Income-tax Officer may raise from these facts. The terms of the Explanation to S. 34(1) also do not impose a more onerous obligation. Mere production of the books of account or other evidence from which material facts could with due diligence, have been discovered does not necessarily amount to disclosure within the meaning of s. 34(1); but where on the evidence and the materials produced the Income-tax Officer could have reached a conclusion other than the one which he has reached, a proceeding under s. 34(1)(a) will not lie merely on the ground that the Income-tax Officer has raised an inference which he may later regard as erroneous.

The assessee had disclosed his books of account and evidence from which material facts could be discovered. It was for the Income-tax Officer to raise the necessary inference and if he did not do so the income which has escaped assessment cannot be brought to tax under s. 34(1)(a). [413 C]

Calcutta Discount Co. Ltd. v. *Income-tax Officer, Companies District I, Calcutta & Anr.* 41 I.T.R. 191, 200, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 649 of 1967.

A Appeal by special leave from the order dated May 4, 1966 of the Calcutta High Court in Income-tax Reference No. 114 of 1965.

Jagadish Swarup, Solicitor-General, Ram Panjwani, R. N. Sachthey and *B. D. Sharma,* for the appellant.

B *C. K. Daphtary, B. P. Maheshwari* and *K. R. Khaitan,* for the respondent.

The Judgment of the Court was delivered by

Shah, C.J. Burlop Dealers Ltd.—hereinafter referred to as C 'the assessee'—is a limited company. For the assessment year 1949-50 the assessee submitted a profit and loss account disclosing in the relevant year of account Rs. 1,75,875/- as profit in a joint venture from H. Manory Ltd. and claimed that Rs. 87,937/- being half the profit earned from H. Manory Ltd. was paid to Ratiram Tansukhrai under a partnership agreement. The D assessee stated that on June 5, 1948, it had entered into an agreement with H. Manory Ltd. to do business in plywood chests and in consideration of financing the business the assessee was to receive 50% of the profits of the business. The assessee claimed that it had entered into an agreement on October 7. 1948, with Ratiram Tansukhrai for financing the transactions E of H. Manory Ltd. in the joint venture, and had agreed to pay to Ratiram Tansukhrai 50% of the profit earned by it from the business with H. Manory Ltd.

The Incometax Officer accepted the return filed by the assessee and included in computing the total income for the assessment year 1949-50 Rs. 87,937/- only as the profit earned on the F joint venture with H. Manory Ltd. In the assessment year 1950-51 the assessee field a return also accompanied by a profit and loss account disclosing a total profit of Rs. 1,62,155/- in the relevant account ear received from H. Manory Ltd., and claimed that it had transferred Rs. 81,077/- to the account of Ratiram Tansukhrai as his share. The Income-tax G Officer on examination of the transactions brought the entire amount of Rs. 1,62,155/- to tax holding that the alleged agreement of Octoer 1948 between the assessee and Ratiram Tansukhrai had merely been "got up as a device to reduce the profits, received from H. Manory Ltd.". This order was confirmed by the Appellate Assistant Commissioner and by the Income-tax H Appellate Tribunal. The Tribunal then stated a case under s. 66(1) of the Income-tax Act to the High Court of Calcutta. The High Court agreed with the view of the Tribunal and answered the question against the assessee.

In the meanwhile on May 13, 1955, the Income-tax Officer issued a notice under s. 34 to the assessee for the assessment year 1949-50 to re-open the assessment and to assess the amount of Rs. 87,937/- allowed in the assessment of income-tax as paid to Ratiram Tansukhrai. The assessee filed a return which did not include the amount paid to Ratiram Tansukhrai. The Income-tax Officer re-assessed the income under s. 34(1)(a) and added Rs. 87,937/- to the income returned by the assessee in the assessment year 1949-50. The Appellate Assistant Commissioner held that the Income-tax Officer was entitled to take action under s. 34(1)(a) of the Income-tax Act 1922 after the amendment in 1948, and to re-open the assessment if income had been under-assessed owing to the failure of the assessee to disclose fully and truly all material facts necessary for the assessment. He confirmed the order observing that the assessee had misled the Income-tax Officer into believing that there was a genuine arrangement with Ratiram Tansukhrai and had stated in the profit and loss account that the amount paid to Ratiram Tansukhrai was the share of the latter in the partnership, whereas no much share was payable to Ratiram Tansukhrai.

In appeal against the order of the Appellate Assistant Commissioner the Income-tax Appellate Tribunal held that the assessee had produced all the relevant accounts and documents necessary for completing the assessment, and the assessee was under no obligation to inform the Income-tax Officer about the true nature of the transactions. The tribunal on that view reversed the order of the Appellate Assistant Commisisoner and directed that the amount of Rs. 87,937/- be excluded from the total income of the assessee for the year 1949-50.

An application under s. 66(1) of the Indian Income-tax Act for stating a case to the High Court was rejected by the Tribunal. A petition to the High Court of Calcuttta under s. 66(2) for directing the Tribunal to submit a statement of the case was also rejected. The Commissioner has appealed to this Court.

Section 34(1) of the Indian Income-tax Act, 1922, as it stood in the assessment year 1949-50 provided :

"If—

(a) the Income-tax Officer has reason to elieve that by reason of the omission or failure on the part of an assessee to make a return of 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

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chargeable to income-tax have escaped assessment for that year, or have been under-assessed.

. . . . 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, or have been under-assessed.

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, ... 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 . . . ."

The Income-tax Officer had in consequence of information in his possession that the agreement with Ratiram Tansukhrai was a sham transaction reason to believe, that income chargeable to tax had escaped assessment. Such a case would appropriately fall under s. 34(1)(b). But the period prescribed for serving a notice under s. 34(1)(b) had elapsed. Under s. 34(1)(a) the Income-tax Officer had authority to serve a notice when he had reason to believe that by reason of omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the year, income chargeable to tax had escaped assessment. As observed by this Court in *Calcutta Discount Co. Ltd.* v. *Income-tax Officer, Companies District I, Calcutta and another*(1).

"The words used are "omission or failure to disclose fully and truly all material facts necessary for his assessment for that year". It postulates a duty on every assessee to disclose fully and truly all material facts necessary for his assessment. What facts are material and necessary for assessment will differ from case to case. In every assessment proceeding, the assessing authority will, for the purpose of computing or determining the proper tax due from an assessee, require to know all the facts which help him in coming to the correct conclusion. From the primary facts

(1) 41 I.T.R. 191, 200.

in his possession whether on disclosure by the assessee, or discovered by him on the basis of the facts disclose, or otherwise, the assessing authority has to draw inferences as regards certain other facts; and ultimately, from the primary facts and the further facts inferred from them, the authority has to draw the proper legal inferences, and ascertain on a correct interpretation of the taxing enactment, the proper tax leviable".

We are of the view that under s. 34(1)(a) if the assessee has disclosed primary facts relevant to the assessment, he is under no obligation to instruct the Income-tax Officer about the inference which the Income-tax Officer may raise from those facts. The terms of the Explanation to s. 34(1) also do not impose a more onerous obligation. Mere production of the books of account or other evidence from which material facts could with due diligence have been discovered does not necessarily amount to disclosure within the meaning of s. 34(1), but where on the evidence and the materials produced the Income-tax Officer could have reached a conclusion other than one which he has reached, a proceeding under s. 34(1)(a) will not lie merely on the ground that the Income-tax Officer has raised an inference which he may later regard as erroneous.

The assessee had disclosed his books of account and evidence from which material facts could be discovered: it was under no obligation to inform the Income-tax Officer about the possible inferences which may be raised against him. It was for the Income-tax Officer to raise such an inference and if he did not do so the income which has escaped assessment cannot be brought to lay under section 34(1)(a).

The appeal fails and is dismissed with costs.

K.B.N. *Appeal dismissed.*