UNION OF INDIA AND OTHERS

v.

M/S. RAI SINGH DEB SINGH BIST & ANR.

December 15, 1972

[K. S. HEGDE AND P. JAGANMOHAN REDDY, JJ.]

A

Indian Income Tax Act, 1922—*s.* 34(1)(*a*)—*To confer jurisdiction to issue notice,* 2 *conditions have to be satisfied* (*i*) *I.T.O. must have reason to believe that income had been underassessed* : (*ii*) *He must have reason to believe that either assessee has failed to make a return under s.* 22 *or he has omitted to disclose fully all material facts.*

B

The assessee in these appeals is an Hindu Undivided Family. The assessment years in question are ranged from 1942-43 to 1953-54. The assessee filed its returns for these years in time. The assessee's account books showed considerable cash credits in the name of some relations of the second respondent, the Karta of the H.U.F. The I.T.O. went into the genuineness of these cash credit entries. The contention of the assessee was substantially accepted either by the Appellate Assistant Commissioner or by the Revenue Appellate Tribunal. With regard to the assessment for the assessment years 1943-44 to 1949-50, the final assessment was made in pursuance of an agreement or settlement arrived between the assessee and the Deputy Director of Inspection (Investigation). Long after the assessments in question were finalised, the I.T.O. issued notices to the appellants under s. 34(1)(a) of the Indian Income Tax Act 1922, seeking to reopen the assessments already finalised. The assessee challenged the validity of these notices of the I.T.O. The High Court allowed the writ petitions and quashed the impugned notices.

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The assessee alleged that there was no relevant material before the I.T.O. before he issued the notices under s. 31(a) on the basis of which he could have reason to believe that any income had escaped assessment. In the writ petitions, the assessee called upon the I.T.O. to produce the report made by him to the Central Board of Revenue, as well as the order of the Central Board of Revenue thereon. Despite this prayer, neither the Union of India, nor the I.T.O. produced the report made by the I.T.O. to the Central Board of Revenue under s. 34(1)(a) nor the order of the Central Board of Revenue.

F

Dismissing the appeal,

HELD : (i) Before an I.T.O. can issue a statutory notice under s. 34(1)(a), he must have reason to believe that by reason of omission or failure on the part of an assessee to disclose fully and truly all material facts necessary for his assessment for the years in question, income, profits or gains chargeable to Income Tax have escaped assessment during those years. Further, before doing so, he must have recorded his reasons for acting under s. 34(1)(a) and the Central Board of Revenue must have been satisfied on those reasons that it is a fit case for the issue of the notice. The recording of the reasons in support of the belief formed by the I.T.O. and the satisfaction of the Central Board of Revenue on the basis of the reasons recorded by the I.T.O. that it is a fit case for issue of notice under s. 34(1)(a) are extremely important circumstances to find out whether the I.T.O. has jurisdiction to proceed under s.34(1)(a). [104D]

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A *Calcutta Discount Co. Ltd.* v. *I.T.O. Company District* 1 *Calcutta and Others*, 41 I.T.R 191; *Chhugamal Rajpal* v. *S. P. Chalia & Ors.* 79 I.T.R. 603; *Sheonath Singh* v. *Appellate Assistant Commissioner of Income Tax, Central, Calcutta & Ors.*, 82 I.T.R. 1447 referred to.

(ii) In the present case, an affidavit was filed before the Court stating that the relevant records could not be traced from the file of the Central Board of Revenue. Assuming that the concerned records were missing B from the file of the Central Board of Revenue, the copy of the report made by the I.T.O. and the Order received by him, must have been in the file of the I.T.O. and reason was given for not producing those records. These circumstances give rise to an adverse inference that the records in question were not produced because they did not assist the department's case. Under the circumstances, it is not possible to come to the conclusion that the facts necessary to confer jurisdiction on the C I.T.O. to proceed under s. 34(1)(a) had been established. There is nothing to show on record that there was any relevant material before the I.T.O. before he issued the notices under s.34(1)(a). [105F]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 2392 to 2403 of 1969.

Appeals by certificate from the judgment and order dated D September 9, 1968 of the Delhi High Court at New Delhi in Civil Writs Nos. 67 to 78 of 1968.

S. C. Manchanda, B. B. Ahuja, S. P. Nayar and *R. N. Sachthey* for the appellants.

N. D. Karkhanis, Rameshwar Nath and *Seita Vaidialingam* E for the respondents.

The Judgment of the Court was delivered by

HEGDE, J. These appeals by certificate arise from several writ petitions filed by the H.U.F. M/s. Rai Singh Deb Singh Bist and its Karta Thakur Mohan Singh Bist, challenging the validity of F certain notices issued under s. 34(1)(a) of the Indian Income-tax Act, 1922 (in short the Act) by the Income-tax Officer, Central Circle I, Delhi. The High Court of Delhi allowed those writ petitions and quashed the impugned notices. Hence these appeals.

The assessee in these cases is an H.U.F. The assessment years G with which we are concerned in these appeals range from 1942-43 to 1953-54. The assessee filed its returns for these years in due time. The assessee's account-books showed considerable cash credits in the name of the brothers-in-law of the 2nd respondent, the Karta of the H.U.F. Those alleged creditors were living in Nepal. The account books also showed certain credit entries in H the name of Rana Anand Nar Singh, alleged to be in connection with expenses incurred by him for getting trees cut on behalf of the assessee. The assessee was a forest contractor. He had taken large tracts of forests for felling trees in Nepal. The Income-tax

Officer went into the genuineness of the cash credit entries standing in the name of the alleged creditors of the assessee as well as to the alleged amount due to one of them. The contention of the assessee was substantially accepted either by the Appellate Assistant Commissioner or by the Revenue Appellate Tribunal. With regard to the assessment for the assessment years 1943-44 to 1949-50, the final assessments were made in pursuance of an agreement or settlement arrived at between the assessee and the Deputy Director of Inspection (Investigation) New Delhi on October 18, 1954. Long after the assessments in question were finalised, the Income-tax Officer issued notices to the appellants under s. 34(1)(a) of the Act seeking to reopen the assessments already finalised. The validity of those notices is in issue.

Before an Income-tax Officer can issue a statutory notice under s. 34(1)(a), he must have reason to believe that by reason of omission or failure on the part of an assessee to disclose fully and truly all material facts necessary for his assessment for the years in question, income, profits or gains chargeable to income-tax have escaped assessment during those years. Further, before doing so, he must have recorded his reasons for acting under s. 34(1) (a) and the Central Board of Revenue must have been satisfied on those reasons that it is a fit case for the issue of the notice. The recording of the reasons in support of the belief formed by the Income-tax Officer and the satisfaction of the Central Board of Revenue on the basis of the reasons recorded by the Income-tax Officer that it is a fit case for issue of notice under s. 34(1)(a) are extremely important circumstances to find out whether the Income-tax Officer had jurisdiction to proceed under s. 34(1)(a).

In *Calcutta Discount Co. Ltd.* v. *Income-tax Officer, Companies District I. Calcutta and anr.*(1) this Court laid down (1) that to confer jurisdiction under s. 34 to issue notice in respect of assessments beyond the period of four years, but within a period of eight years, from the end of the relevant year, two conditions had to be satisfied. The first was that the Income-tax Officer must have reason to believe that income, profits or gains chargeable to income-tax had been under assessed. The second was that he must also have reason to believe that such "under-assessment" had occurred by reason of either (1) omission or failure on the part of an assessee to make a return of his income under section 22, or (2) omission or failure on the part of an assessee to disclose fully and truly all material facts necessary for his assessment for that year. Both these conditions are conditions precedent to be satisfied before the Income-tax Officer could have jurisdiction to issue a notice for the assessment or re-assessment beyond the period

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

A of four years but within the period of eight years from the end of the year in question.

In *Chhugamal Rajpal* v. *S. P. Chaliha and ors.*(1), this Court ruled that before an Income-tax Officer can be said to have had reason to believe that some income had escaped assessment, he B should have some relevant material before him from which he could have drawn the inference that income has escaped assessment. His vague feeling that there might have been some escape of income from assessment is not sufficient. This Court also took the view that the Central Board of Revenue before reaching its satisfaction that the case was a fit one to be proceeded under s. 34(1)(a) must C have examined the reasons given by the Income-tax Officer and arrived at its own conclusion; and that it is not permissible for it to act mechanically. The same view was again taken by this Court in *Sheo Nath Singh* v. *Appellate Assistant Commissioner of Income-tax (Central) Calcutta and ors.*(2).

D In the instant case, the assessee alleged in his writ petitions that there was no relevant material before the Income-tax Officer before he issued notices under s. 34(1)(a) on the basis of which he could have had reason to believe that any income had escaped assessment. In the writ petitions the assessee called upon the Income-tax Officer to produce the report made by him to the Central Board of Revenue as well as the order of the Central Board of E Revenue thereon. Despite this prayer, neither the Union of India nor the Income-tax Officer cared to produce the report made by the Income-tax Officer to the Central Board of Revenue under s. 34(1)(a) or the order of the Central Board of Revenue. Before the hearing of the writ petitions commenced, the assessee again applied to the Court to call upon the Union of India and the F Income-tax Officer to produce those documents. In response to that application, an affidavit was filed before the Court stating that the relevant records could not be traced from the file of the Central Board of Revenue. Assuming that the concerned records were missing from the file of the Central Board of Revenue, the copy of the report made by the Income-tax Officer and the order re- G ceived by him must have been in the file of the Income-tax Officer. No reason was given for not producing those records. These circumstances give rise to an adverse inference against the department. We are constrained to come to the conclusion that the records in question were not produced because they did not assist the department's case. Under these circumstances, it is not possible to come to the conclusion that the facts necessary to confer H jurisdiction on the Income-tax Officer to proceed under s. 34(1)(a) had been established.

(1) 79 I.T.R. 603.

(2) 82 I.T.R. 147.

All that was said on behalf of the department was that sometime in the year 1955, the assessee sold large tracts of land to two of his brothers-in-law for a sum of Rs. 47 lakhs but in reality that property was not worth that amount. We do not know whether there was any basis for this conclusion. As seen earlier the cash credit entries were brought to the notice of the Income-tax Officer before the relevant assessment orders were passed. He had an occasion to investigate into them. It is not necessary to go into this question more deeply in view of the fact that there is nothing to show that there was any relevant material before the Income-tax Officer before he issued the notices under s. 34(1)(a) to have reason to believe that as a result of the assessee's failure to state in its return truly and fully any fact, any income had escaped assessment.

A B C

In the result these appeals fail and they are dismissed with costs—one hearing fee.

S.C. *Appeals dismissed.*