

A INCOME-TAX OFFICER, CALCUTTA & ORS.  
v.  
RADHESHYAM LADIA

APRIL 21, 1987

B [R.S. PATHAK, CJ AND RANGANATH MISRA, J.]

*Income Tax Act, 1961—Section 34(1)(a)—Assessee—Failure to disclose share income of wife and minor child—Whether there is failure to disclose fully and truly all material.*

C The respondent was assessed to income tax for assessment year 1960-61 under s. 23(3) of the Income Tax Act, 1922 and for the assessment years 1961-62 and 1962-63 under s. 143(3) of the Income Tax Act, 1961. The validity of the notices issued under s. 147(a) read with s. 148 of the Act of 1961 in respect of these three assessment years was challenged by the respondent under Act 226. Though the notices did not disclose any material to justify their issue, the Income Tax Officer in his return before the High Court stated that during the course of assessment for the year 1963-64 of the wife of the respondent, she contended having received valuable assets from the respondent between 11th December 1955 and 28th October, 1960 without adequate consideration in money or money's worth. The income from the said assets which should have been included in the return of the respondent was not included by him and that the capital gains arisen therefrom was also not included or disclosed by the respondent in his returns.

F A Learned Single Judge relying upon the decision of the Supreme Court in *V.D.M. RM. M.RM. Mathiah Chettiar v. Commissioner of Income-tax, Madras 74 ITR 183* quashed the notices. The appeal of the Revenue failed before the Division Bench.

Dismissing the appeal,

G HELD: By failure of the assessee to include the share income of his wife and minor child in his return, it cannot be deemed that he has failed to disclose fully and truly all material facts necessary for the assessment within the meaning of s. 34(1)(a) of the Indian Income Tax Act, 1961. [1107B]

H *V.D.M.RM. M.RM. Muthiah Chettiar v. Commissioner of Income-tax, Madras, 74 ITR 183; Malegaon Electricity Co. (P) Ltd. v.*

*Commissioner of Income-tax, Bombay, 78 ITR 466 and Commissioner of Income-tax, Kerala v. Smt. P.K. Kochammu Amma, Peroke, 125 ITR 624, followed.*

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1187 of 1974.

From the Judgment and Order dated 19.12.1973 of the Calcutta High Court in Appeal No. 131 of 1971.

S.C. Manchanda and Ms. A. Subhashini for the Appellants.

B.P. Maheshwari, S.P. Mittal and R.S. Rana for the Respondent.

The Judgment of the Court was delivered by

**RANGANATH MISRA, J.** This appeal by the Revenue is by certificate and is directed against the judgment of a Division Bench of the Calcutta High Court which upheld the decision of a single judge in a writ petition quashing the notices issued to the petitioner under section 147(a) of the Income Tax Act of 1961 in respect of assessment years 1960-61, 1961-62 and 1962-63.

Respondent was assessed to income-tax for the assessment year 1960-61 under section 23(3) of the Act of 1922 on 4.3.1961 and for the following two assessment years under section 143(3) of the Act of 1961 on 10th and 11th June, 1963, respectively. Notices under section 147(a) read with section 148 of the Act of 1961 were issued to the respondent in respect of these three assessment years whereupon he challenged the validity of those notices by filing an application under Article 226 of the Constitution. Though the notices did not disclose any material to justify their issue, the Income-tax Officer in his return to the *rule nisi* before the High Court stated:

“ . . . . The assessment for the year 1963-64 of Smt. Sushila Bala Devi Ladia, wife of the petitioner, was taken up by me. During the course of the said assessment, she contended having received valuable assets from the petitioner between 11th December, 1955 and 28th October, 1960, without adequate consideration in money or money's worth. It was contended on her behalf that she received over 1203 tolas of gold in jewellery on or about 11.12./1955 and

**A** Rs. 1,00,000 in cash on or about 28.10.1960. It was further  
 contended on her behalf that the said jewellery was sold  
 between the years 1959 and 1962. The income from the said  
 assets which should have been included in the return of the  
 petitioner was not so included by him. The capital gains  
 arising therefrom was also not included or disclosed by the  
**B** petitioner in his returns.”

On behalf of the assessee reliance was placed on the decision of this  
 Court in *V.D.M.R.M. M.R.M. Muthiah Chettiar v. Commissioner of  
 Income-tax, Madras*, 74 ITR 183 where with reference to failure of the  
 assessee to include the share income of his wife and minor child in a  
**C** firm, this Court held:-

“In considering the first question it is necessary to refer to  
 certain provisions of the Income-tax Act, 1922. By section  
 3 the total income of the previous year of every individual,  
**D** Hindu Undivided family, company and local authority, and  
 of every firm and other association of persons or the part-  
 ners of the firm or the members of the association individu-  
 ally 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. *Total income* was defined in  
**E** section 2(15) as meaning ‘total amount of income, profits  
 gains referred to in sub-section (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:

‘(1) subject to the provisions of this Act, a total  
**F** 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  
**G** person, or

(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  
**H** in the taxable territories during such year, or . . . . .’

Section 22 by sub-section (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 exceeded the maximum exempt from tax, to furnish a return in the prescribed form setting forth his total income. Sub-section (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. Rule 19 framed under section 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 the total income. The Act and 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 section 16 sub-section (3) provided in computing the total income of any individual for the purpose of assessment there shall be included the classes of income mentioned in clauses (a) and (b). Sub-section 3(a)(ii) insofar 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— . . . . .

(ii) From the admission of minor to the benefits of partnership in a firm of which such individual is a partner.'

The assessee was bound to disclose under section 22(5) the names and addresses of his partners, if any, engaged in business, profession or vocation together with the location and styled of the principal place and branches

**A** thereof and the extent of the shares of all such partners in the profits of the business, profession or vocation and 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.”

**B**

Upon this conclusion this Court therein held:

“For failing or omitting to disclose that income proceedings for reassessment cannot, therefore, be commenced under section 34(1)(a).”

**C**

Relying upon this decision the learned Single Judge quashed the notices. The Revenue appealed to the Division Bench but failed to obtain any relief in view of the said decision of this Court. The Division Bench also took note of the decision in the case of *Malegaon Electricity Co. (P) Ltd. v. Commissioner or Income-tax, Bombay*, 78

**D** ITR 466. Therein after referring to *Muthiah Chettiar* case (supra). Hedge, J. speaking for the Court, stated:

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“Hence, by not showing the income of his wife and minor children, the assessee cannot be deemed to have failed to disclose fully and truly all material facts necessary for his assessment within the meaning of section 34(1)(a) of the Act.”

**F**

It is appropriate to take note of a later decision of this Court in *Commissioner of Income-tax, Kerala v. Smt. P.K. Kochammu Amma, Peroke*, 125 ITR 624. That was of a two-Judge Bench. Reliance was sought to be placed on *Muthiah Chettiar's* case (supra). Dealing with the question of imposition of penalty under section 271(1)(c) of the 1961 Act, the Division Bench observed:

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“It is obvious that on this view the order imposing penalty on the assessee would have to be sustained but there is a decision of this Court in *V.D. M.R.M. M.R.M. Muthiah Chettiar v. Commissioner of Income-tax*, [1969] 74 ITR 183 (SC) which is binding upon us and where we find that a different view has been taken by a Bench of three Judges of this Court. It was held in this case that even if there were any printed instructions in the form of the return requiring the assessee to disclose the income received by his wife and

**H**

minor child from a firm of which the assessee was a partner. there was, in the absence in the return of any head under which the income of the wife or minor child could be shown, no obligation on the assessee to disclose this item of income, and the assessee could not be deemed to have failed or omitted to disclose fully and truly all material facts necessary for his assessment within the meaning of 34(1)(a) of the Indian Income Tax Act, 1922. With the greatest respect to the learned Judges who decided this case, we do not think, for reasons already discussed, that this decision lays down the correct law on the subject, and had it not been for the fact that since 1st April, 1972, the form of the return prescribed by rule 12 has been amended and since then, there is a separate column providing that 'income arising to spouse/minor child or any other person as referred to in Chapter V of the Act' should be shown separately under that column and consequently there is no longer any scope for arguing that the assessee is not bound to disclose such income in the return to be furnished by him, we would have referred the present case to a larger Bench. But we do not propose to do so since the question has now become academic in view of the amendment in the form of the return carried out with effect from 1st April, 1972. We would, therefore, follow this decision in *Muthian Chettiar's* case which being a decision of three Judges of this Court is binding upon us .....

We agree with what has been stated in *Kochammu Amm's* case and for the reasons indicated therein, we do not propose to refer this case to a larger bench. Following the law as laid down in the two cases reported in 74 ITR 183 and 78 ITR 466 we dismiss the appeal. There would be no order for costs throughout.

A.P.J.

Appeal dismissed.

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