K. S. Firm Vs. Commissioner of Income-tax, Madras.

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Court : Chennai

Decided On : Sep-03-1964

Reported in : [1965]55ITR29(Mad)

Appeal No. : Tax Case No. 126 of 1960 (Reference No. 44 of 1960)

Appellant : K. S. Firm

Respondent : Commissioner of Income-tax, Madras.

Judgement :

The judgment of the court was delivered by

RAMACHANDRA IYER C.J. - This consolidated reference relates to the assessment of K. S. Firm at Penang, its partners, the divided members of a joint Hindu family, being residents in India. The assessment now in question concerns the years 1948-49, 1949-50 and 1950-51. The year of account was the Tamil calendar year ending on 12th April, preceding the year of assessment. Somasundaram, Adappa, Nachiappa and Vairanvan were members of an undivided Hindu family, who were assessed up to and inclusive or the year 1947-48 as such. When the assessment for the years 1948-49 to 1950-51 was taken up, the assessee pleaded that the members of the family had entered into a partial partition with respect to their business at Penang, which, after such partition, was said to have been continued as a partnership concern amongst themselves. This case, if made out, would entitle the family to have the income therefrom excluded from the computation of its total income, the firm alone being liable to be taxed thereon. The Income-tax Officer did not accept that case of partition. He did not also make any protective assessment of the firm in case it were to be ultimately found that there was a partition so far as the business was concerned. His order formed the subject-matter of an appeal, where the Appellate Assistant Commissioner set aside the assessment and directed the Income-tax Officer to enquire afresh in order to ascertain whether there had really been a partition with respect to the business, as pleaded by the members of the family, and whether, after such partition, the business was run as a partnership concern by them. During the course of his order the Appellate Assistant Commissioner observed :

'If the business is found to have been separate from the family assets and it belonged to a firm, the income from that business should be assessed in the hands of the firm.'

After reman, the assessment of the family came up for consideration before the Income-tax Officer for a fresh enquiry. It was at that time that the present assessee, namely, K. S. Firm, Penang, filed on January 28, 1957, returns showing the profits of the Penang business. In the enquiry that was conducted with respect to the assessment of the Hindu undivided family, the Income-tax Officer was satisfied that

the partial partition pleaded had been made out. He, therefore, reassessed the family, excluding the profits from the Penang business from the computation of its income. This was on January 6, 1959. Simultaneously with it, he completed the assessment of the K. S. Firm, overruling the objection of the assessee that such assessment could not be made by reason of the bar of limitation. The Income-tax Officers view was that the assessment of the firm being in pursuance of the direction of the Appellate Assistant Commissioner, it would be saved by the second proviso to section 34(3) of the Act. An appeal from that order met with no success. Dealing with the objection that the assessments were invalid by reason of there having been no notice under section 34 of the Act, the Appellate Assistant Commissioner expressed the view that no such notice was necessary, inasmuch as voluntary returns had been filed by the assessee. On further appeal, the Tribunal sustained the assessment on the ground that the second proviso to section 34(3) would apply to this case. Later the Tribunal referred under section 66(1) the following question for the opinion of this court :

'Whether the assessment under section 23(3) for the assessment years 1948-49, 1949-50 and 1950-51 are valid ?'

From what we have stated above, it will be evident that the assessee, namely, K. S. Firm at Penang, did not file a return of its income in accordance with the provisions of section 22 till January 28, 1957. Therefore when the returns for the three years were filed, more than four years had elapsed after the expity of the year of assessment. Secondly, although the order of the Appellate Assistant Commissioner in the assessment proceedings relating to the Hindu undivided family - that was made on August 9, 1953 - clearly indicated that the profits of the Penang business were to be excluded from the income of the family and that it should be assessed in the hands of the firm, no proceedings were initiated by the Income-tax Officer under the provisions of section 34 as against the firm.

The Tribunal appears to have been under the impression that the second proviso to section 34(3) would enable the department to make the assessment even if there had been no proceedings initiated under section 34. We are, however, unable to sustain that view. The second proviso to section 34(3) merely removes the time-limit fixed by section 34(1) (a) and 1(b). It cannot take away the other requirements of section 34 for bringing to assessment escaped income. The second proviso to section 34(3) itself postulates the initiation of proceedings under section 34(1). It will, therefore, have no application where there had been no proceedings taken under that section.

It is now well-settled that the notice prescribed by section 34 is not a mere procedural requirement, but it forms the foundation of the jurisdiction of the Income-tax Officer to take proceedings in respect of income which had escaped assessment. In other words, if no notice had been issued under section 34(1) in respect of an escaped income on the assessee, the proceedings for reassessment would be completely invalid. In the present case there being no notice under section 34(1) in respect of the income received by the assessee firm during the years in question, the assessment will have be regarded as invalid.

As we have pointed out earlier, the Appellate Assistant Commissioner sustained the assessment on a different ground altogether, i.e., on the basis of the voluntary returns made by the firm on January 28, 1957. But we are unable to uphold that basis as correct for the reason that such of the voluntary returns had been made more than four years after the expiry of the year of assessment. The mere filing of a return

cannot mean that the person filing the same is liable to assessment. It has to be seen whether the return has been validly filed and that the assessee is liable to tax. In Commissioner of Income-tax v. Ranchoddas Karsondas, the Supreme Court held that where in respect of any year a return had been voluntarily submitted before assessment, the Income-tax Officer could not ignore the return and proceed to issue a notice of reassessment under section 34, as if the income had escaped assessment. That is relied on as supporting the view that, whatever a return is field, the Income-tax Officer would have jurisdiction to assess. But the Supreme Court in that case was dealing with a case where there was a valid return, which was field in time. This had been made clear by the decision of this court, to which one of us was a party, in Santhosha Nadar v. First Additional Income-tax Officer, that a return filed four year of assessment should be regarded as not one in existence under law. It was observed :

'Section 22(3), it should be remembered, permits a return to be filed at any time before the assessment is made, even if no return was filed in response either to the general notice under section 22(1), or any individual notice under section 22(2). The learned counsel for the department urged that section 22(3) carried its own limitation. In our opinion has submission was correct that what section 22(3) permitted the assessee was to file his return at any time before the assessment could be lawfully made. The normal period of limitation, barring the exceptions for which section 34(3) provides, for making an assessment being four years, the contention of the learned counsel for the department was that the return filed after a period of four years could not lead to any lawful assessment, and it should, therefore, be treated as non est in law. We agree that the principle laid down in Commissioner of Income-tax v. Ranchhoddas Karsondas cannot be extend to a case where the return for an assessment year is filed by the assessee after the period of four years from the end of the assessment year.'

It will follow from the above, that the returns made for the assessment years in question by the assessee-firm on January 28, 1957, could not be regarded as valid returns for the purpose of assessing the assessee to tax on the basis of such returns. We, therefore, answer the question in the negative and in favour of the assessee. The assessee will be entitled to its costs. Counsels fee Rs. 250.

Question answered in favour of the assessee.