1959

May 8.

THE COMMISSIONER OF INCOME-TAX, BOMBAY

v.

RANCHHODDAS KARSONDAS, BOMBAY

(S. R. DAS, C. J., N. H. BHAGWATI, and M. HIDAYATULLAH, JJ.)

Income-tax—Return showing income below minimum taxable—Whether a good return—Income-tax Officer ignoring such return and issuing notice to assessee to file return—Assessment made within one year of notice but beyond four years of the end of the assessment year—Validity of—Indian Income-tax Act, 1922 (XI of 1922), ss. 22 and 34.

A public notice under s. 22(1) of the Income-tax Act, 1922 was published on May 1, 1945, requiring every person whose total income exceeded the maximum amount which was not chargeable to income-tax to file returns for the assessment year 1945-46. On January 5, 1950, the assessee submitted a voluntary return showing an income of Rs. 1,935 for the assessment year 1945-46 and added a footnote to the return that his wife had sold her old ornaments and deposited a sum of Rs. 59,026 with the Assar Syndicate in which he was a partner. The Income-tax Officer, who had discovered these credits while examining the accounts of the Assar Syndicate, ignored the voluntary return, and, on February 27, 1950, issued a notice under s. 34(1) of the Act calling upon the assessee to submit his return. On March 14, 1950, the assessee submitted an identical return. The Income-tax Officer made the assessment on February 26, 1951, and included the sum of Rs. 59,026 in the total income of the assessee. The assessee contended that the assessment was invalid as it was completed more than four years after the end of the assessment year in violation of s. 34(1)(b). The appellant contended that the voluntary return was no return as it did not disclose any taxable income and the assessment was valid under the proviso to s. 34(3) of the Act, having been made within one year of the notice issued under s. 34(1).

Held, that the assessment was invalid. The voluntary return filed by the assessee, even though it did not disclose any taxable income, was a good return and could not be ignored. As such no question arose under s. 34(1) of income escaping assessment and the Income-tax Officer was not justified in issuing the notice under s. 34(1). The proviso to s. 34(3) was applicable only when there was a proper notice issued under s. 34(1) and the appellant could not take advantage of the time allowed by this proviso. The assessment was clearly made beyond four years of the end of the assessment year 1945-46 and was time barred.

Harakchand Makanji & Co. v. *Commissioner of Income-tax*, (1948) 16 I.T.R. 119; *All India Groundnut Syndicate Ltd.* v.

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Commissioner of Agricultural Income-tax v. *Sultan Ali Gharami* (1951) 20 I.T.R. 432; *B. K. Das & Co.* v. *Commissioner of Income-tax*, (1956) 30 I.T.R. 439 and *Commissioner of Income-tax* v. *Govindlal Dutta* (1957) 33 I.T.R. 630, disapproved.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 281 of 1955.

Appeal from the judgment and order dated March 18, 1954, of the Bombay High Court in Income-tax Reference No. 35 of 1953.

K. N. Rajagopal Sastri and *D. Gupta*, for the appellant.

R. J. Kolah and *Ram Ditta Mal*, for the respondent.

1959. May 8. The Judgment of the Court was delivered by

Hidayatullah J.

HIDAYATULLAH J.—This appeal on a certificate of fitness granted by the High Court of Judicature at Bombay has been filed by the Commissioner of Income-tax, Bombay against Ranchhoddas Karsondas of Bombay (hereinafter referred to, as the assessee) under s. 66A of the Indian Income-tax Act.

The facts leading up to this appeal are as follows: For the assessment year 1945-46, a public notice under s. 22(1) of the Income-tax Act (hereinafter called the Act) was issued, requiring every person whose total income during the previous year exceeded the maximum amount which was not chargeable to income-tax to furnish, within such period not being less than sixty days as might be specified in the notice, a return of his income in the prescribed form and verified in the prescribed manner. This notice was published on or about May 1, 1945. The assessee did not make a return of his income. The Income-tax Officer, while examining the books of account of a partnership called the "Assar Syndicate" of which the assessee was a partner, found that in the account year corresponding to the assessment year 1945-46, there were six cash credits aggregating to Rs. 59,026 in the name of the assessee's wife. Before, however, the Income-tax

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Officer could take any action, the assessee submitted a "voluntary" return on January 5, 1950 of his income for the accounting year 1944-45 (assessment year 1945-46) showing a total net income of Rs. 1,935. He added a footnote to the return to the following effect:

"My wife has sold her old ornaments and deposited the sum of Rs. 59,026 in the firm of Assar Syndicate in which I am a partner."

The Income-tax Officer did not act on this return, but on February 27, 1950 he issued a notice purporting to be under s. 34 of the Act calling upon the assessee to submit his return. This notice was served on the assessee on March 3, 1950, and in answer thereto, the assessee submitted a similar return on March 14, 1950 showing the same income and adding the same footnote. The Income-tax Officer then issued and served upon the assessee notices under ss. 22(4) and 23(2) of the Act asking him to produce his books of account and to tender any evidence he cared to lead. It appears from the record that these notices were complied with, but on February 26, 1951 the Income-tax Officer included the sum of Rs. 59,026 in the total income of the assessee and assessed him on it for the assessment year 1945-46.

The assessee appealed, in turn, to the Appellate Assistant Commissioner and the Income-tax Appellate Tribunal. His contentions were three, viz., that the amount of Rs. 59,026 could not and should not have been included in his income, that the amended s. 34 of the Act had no retrospective effect, and that the assessment completed on February 26, 1951 was invalid, inasmuch as it was completed four years after the end of the relevant assessment year. Both the Appellate Assistant Commissioner as well as the Tribunal rejected his contentions, but the Tribunal on being moved by him, raised and referred two questions of law under s. 66(1) of the Act to the High Court of Judicature, Bombay, for its decision. These questions were:

"(1) Whether the notice issued under Section 34 of the Act by the Income-tax Officer on 27-2-1950,

after the assessee had filed a voluntary return was valid in law?

(2) Whether the assessment made on 26-2-1951 is valid in law?"

This reference was heard by the High Court on March 18, 1954, and by a judgment delivered on the same day, Chagla, C.J., and Tendolkar, J., answered both the questions in the negative. Before the High Court, it was again contended by the assessee that since he had submitted a return under s. 22(3) of the Act on January 5, 1950, the assessment, if any, had to be completed before March 31, 1950, as required by s. 34(3) of the Act. He also contended that he was entitled under s. 22(3) to make a "voluntary" return on the date he did, and with a voluntary return before the Income-tax Officer, there was no scope for the issuance of a notice under s. 34. The High Court upheld the contentions of the assessee, and gave its opinion that the Department ought to have issued a notice under s. 22(2) within the assessment year, and if no return was made within the time fixed by the notice, the Department should have proceeded under s. 23(4) to a 'best judgment' assessment. The other alternative for the Department was to issue a notice under s. 34 of the Act, if the period for sending a notice under s. 22(2) had expired. But it could not issue a notice under s. 34 after a return was already made before it, and the benefit of the extended period of limitation for assessment available under the first proviso to sub-s. (3) of s. 34 of one year from the service of the notice under sub-s. (1) of that section was not available in this case. The High Court granted a certificate of fitness, and hence this appeal.

The arguments which were urged before the High Court were all raised in this Court by the parties. The case of the Department was supplemented by an argument that, inasmuch as the assessee had suppressed his income or given incorrect particulars thereof, the period during which action under s. 34 could be taken was the extended one of 8 years.

In the arguments before us, our attention was drawn to a cleavage of opinion between the Bombay High

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Court on the one hand and the Calcutta High Court on the other. While the Bombay High Court seems to be of the view that a "voluntary" return showing a non-taxable income is still a good return for all purposes under the Act, the Calcutta High Court is of the view that what s. 22(1) of the Act requires is a return of taxable income and not a return of income, which shows a loss or is below the taxable limit. It appears that at one time the Calcutta High Court also entertained the view that such a return was no return at all, but it was explained later that this meant that the return was ineffective for the purposes of s. 22(1) of the Act, though it might be a "return" being in the prescribed form. The Bombay High Court also entertains the view that the assessment proceedings commence with the issue of a public notice, and that s. 34 of the Act cannot apply, where in answer to the public notice a return is made whether of taxable income or not. The view of the Calcutta High Court is that assessment proceedings commence either with a notice under s. 22(2) of the Act or with the filing of a return showing taxable income.

We are not here concerned with the quantum but only with the legality of the assessment. The side issue whether, in point of fact, the cash credits in the name of the wife represented the income of the husband does not survive for decision. Thus, the only question is whether the notice issued under s. 34 of the Act on February 27, 1950 (after the assessee filed his "voluntary" return on January 5, 1950) and the assessment thereon, were valid in law. Section 34(3) of the Act provides that no assessment except the assessment within cl. (a) of sub-s. (1) thereof or under s. 23 to which cl. (c) of sub-s. (1) of s. 28 applies, shall be made after the expiry of four years from the end of the year in which income, profits or gains were first assessable. A proviso, however, allows one year from the date of the service of the notice for the completion of the assessment. It reads, omitting matters not relevant here :—

> "... where a notice under sub-section (1) has been issued within the time therein limited, the assessment or reassessment to be made in pursuance of such

notice may be made before the expiry of one year from the date of the service of the notice even if such period exceeds the period of . . . four years . . . ."

It is, therefore, quite clear that the extra period is available only if a notice under sub-s. (1) of s. 34 has been issued within the time therein limited. This takes us to s. 34(1).

Section 34(1), omitting parts not relevant, reads :—

"(1) If . . .

(a) the Income-tax Officer has reason to believe that by reason of the omission or failure on the part of an assessee to make a return of his income under section 22, for any year....., 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 ...

* * *

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 . . . and may proceed to assess such income . . ."

It would appear from this that if the return filed on January 5, 1950, was a return of income, there was no failure or omission on the part of the assessee, so as to bring the matter within s. 34(1)(a) of the Act, and sub-s. (3) of s. 34 would then apply to the case limiting the period to four years. In that event, the assessment should have been completed on or before March 31, 1950. But if the return made by the assessee was no return at all, then the conditions under the first sub-section of s. 34 obtained, and the assessment could be completed within one year of the date of service of the notice (March 3, 1950), i.e. on or before March 2, 1951. In that event, the assessment would be valid. The validity of the return in this context is tied to the validity of the notice and also *vice versa*.

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Section 22 of the Act (omitting the parts not relevant) may now be quoted:

"(1) The Income-tax Officer shall, on or before the 1st day of May, in each year, give notice, by publication in the press..., requiring every person whose total income during the previous year exceeded the maximum amount which is not chargeable to income-tax to furnish, within such period not being less than sixty days... a return..., setting forth... his total income and total world income during that year:

* * *

(2) In the case of any person whose total income is, in the Income-tax Officer's opinion, of such an amount as to render such person liable to income-tax, the Income-tax Officer may serve a notice upon him requiring him to furnish, within such period, not being less than thirty days... a return ... setting forth ... his total income and total world income during the previous year:

* * *

(3) If any person has not furnished a return within the time allowed by or under sub-section (1) or sub-section (2), or having furnished a return under either of those sub-sections, discovers any omission or wrong statement therein, he may furnish a return or a revised return, as the case may be at any time before the assessment is made."

It will be seen from this, that, as the Bombay High Court correctly pointed out, there is a time limit provided in sub-ss. (1) and (2) and the failure or omission occurs when that period passes, but sub-s (3) allows a *locus poenitentiae* before the assessment is actually made. There is no dispute that a return could be filed in this case, late though it was. The controversy centres round the fact that the return, when it was filed, disclosed an income which was below the maximum not chargeable to tax, and the question is whether in such an event the Income-tax Officer was precluded from issuing a notice under s. 34 of the Act. There has been in the past a well-marked difference of opinion between the Bombay and the Calcutta High

Courts, the leading cases in Bombay being *Harakchand Makanji & Co.* v. *Commissioner of Income-tax* (1), *All India Groundnut Syndicate Ltd.* v. *Commissioner of Income-tax* (2) and the decision under appeal here, while the Calcutta view is to be found in *Commissioner of Agricultural Income-tax* v. *Sultan Ali Gharami* (3), *R. K. Das & Co.* v. *Commissioner of Income-tax* (4) and *Commissioner of Income-tax* v. *Govindlal Dutta* (5). To these may be added *P. S. Rama Iyer* v. *Commissioner of Income-tax* (6), in which the Madras High Court has accepted the Bombay view.

No useful purpose will be served in discussing these cases in detail. In some of them, the point need not have been taken up for decision, though it was. We shall refer very briefly to the two rival views and the grounds on which they are rested, and in doing so, we begin with the Calcutta decisions. In *Sultan Ali Gharami's case* (3), a notice under s. 24(1) of the Bengal Agricultural Income-tax Act (corresponding to s. 22(1) of the Act) was issued. No return was filed. Three years later, a notice under s. 24(2) of that Act (corresponding to s. 22(2) of the Act) was served, and a return showing an income below the taxable minimum was filed. The contention was that without a notice under s. 24(2) within the assessment year or a notice under s. 38(1) (corresponding to s. 34 (1) of the Act) the 'best judgment' assessment was bad. The contention further was that the return could be taken to be under s. 24(1) or s. 24(3). Chakravarti, J. (as he then was) and Das Gupta, J., held that a person who had no assessable income was not placed under a duty to file a return, that the return whether filed under s. 24(1) or s. 24(3) which had failed to show an assessable income could not possibly be 'treated' as a return under s. 24(1) or even s. 24(3) when filed in answer to a notice under s. 24(2). They further observed at p. 442 :

> "A return under section on 24(1) is a return filed by a person who decides for himself that he had an assessable income in the previous year and by filing

(1) (1948) 16 I. T. R. 119.
(2) (1954) 25 I. T. R. 90
(3) (1951) 20 I. T. R. 432
(4) (1956) 30 I. T. R. 439
(5) (1957) 33 I. T. R. 630
(6) (1957) 32 I. T. R. 458

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the return he offers that income for assessment. A person who had no assessable income in the previous year is placed under no duty by a notice under section 24(1) to furnish a return and a person who thinks, rightly or wrongly, that he had no assessable income will furnish none. A return under section 24(1), whether filed within the time allowed under the section or filed subsequently under the provisions of section 24(3), will therefore show an assessable income... A return which showed no assessable income, could not possibly be 'treated' as a return filed under section 24(1) or a return called for under that section but filed under section 24(3), when in fact it was filed in response to a notice under section 24(2)."

The opinion here expressed was criticised in the judgment under appeal, and in the next case, *R. K. Das & Co* v. *Commissioner of Income-tax* (1), the Calcutta High Court (Chakravarti, C.J., and Sarkar, J.) explained what was really meant. It is not necessary to refer to the facts of that case. This is what Chakravarti, C.J., observed at p. 449:

> " 'It should be remembered', I observed 'that the return in the present case is being sought to be treated as a return under section 24(1), belatedly filed.' And then I went on to say that a return under section 24(1) would only be filed by a person who thought that he had a taxable income and therefore a return showing an income below the taxable limit could not be held, on a construction thereof, to be a return under section 24(1) and consequently the return in the case we were then considering could not be treated as such a return filed under section 24(3). To say that, was not to say that even a return filed in compliance with a notice under section 22(2), if filed belatedly under section 22(3) could not be a return showing an income below the taxable limit."

This left the matter somewhat ambiguous as to what was really meant, and in *Commissioner of Income-tax* v. *Govindlal Dutta* (2), Chakravarti, C. J., and Guha, J.,

(1) (1956) 30 I.T.R. 439. (2) (1957) 33 I.T.R. 630.

again explained the true import of the law laid down. They referred to s. 22(1) of the Act as it stood prior to the amendment of 1953, and observed that under that section a person was required to file a return only if his total income during the preceding year exceeded the maximum amount which was not chargeable to tax. The return contemplated was thus only a return of income and not a return of loss and not even a return of income, but a return of taxable income. Not only had a person no duty but he had even no right to file a return voluntarily, if he had suffered a loss, to 'report' that loss. The learned Judges concluded that it was a complete mistake to think that s. 22(3) provided for the filing of a voluntary return showing loss, at any time, before assessment. That section, they opined, contemplated the filing of a return of taxable income, and a return not showing such income was not a return at all in law.

The Calcutta view, as shown above, really proceeds upon the wording of s. 22(1). It lays down that the public notice requires only persons having an income above the taxable limit to make a return. A person who has no such income need not make a return, and if he does make a return, it is not a return which need be considered, being not a return in law.

It is a little difficult to understand how the existence of a return can be ignored, once it has been filed. A return showing income below the taxable limit can be made even in answer to a notice under s. 22(2). The notice under s. 22(1) requires in a general way what a notice under s. 22(2) requires of an individual. If a return of income below the taxable limit is a good return in answer to a notice under s. 22(2), there is no reason to think that a return of a similar kind in answer to a public notice is no return at all. The conclusion does not follow from the words of s. 22(1). No doubt, under that sub-section only those persons are required to make a return, whose income is above taxable limits, but a person may legitimately consider himself entitled to certain deductions and allowances, and yet file a return to be on the safe side. He may show his income and the

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deductions and allowances he claims. But it may be that on a correct processing his income may be found to be above the exempted limit. No doubt, it is futile for a person not liable to tax to rush in with a return, but the return in law is not a mere scrap of paper. It is a return, such as the assessee considers, represents his true income.

We are unable (and we say this with due respect) to accept the view adumbrated in the Calcutta cases. The contrary view is expressed by the Bombay High Court in the earlier case of *Harakchand Makanji & Co.* v. *Commissioner of Income-tax* (1) and in the judgment under appeal. That view was accepted by the Madras High Court in *P. S. Rama Iyer* v. *Commissioner of Income-tax* (2) and also, in our opinion, is the sounder view of the two. In the earlier of the two Bombay cases, Chagla, C. J., and Tendolkar, J., held (as stated in the head note):

> "Notice under section 34 is only necessary if at the end of the assessment year no return has been made by the assessee, and the authorities wished to proceed under section 22(2), but where the assessee himself chooses voluntarily to make a return, no question can arise under section 34 of assessment escaping, and therefore there is no necessity to serve any notice under section 34."

This represents the law applicable to the facts as they are to be found in this case. In the assessment year no return of income was filed, nor was any notice served under s. 22(2). There was, however, the general notice under s. 22(1). A return in answer to that notice could be filed under s. 22(3) before assessment, and for this there is no limit of time. It was filed on January 5, 1950. There was nothing to prevent the Income-tax Officer from taking up the return and proceeding to assess the income of the assessee. It was open to him, if there was sufficient justification for it, to hold that the amount noted in the footnote was really the assessee's income, in which case an assessable income would have been found and the tax could be charged thereon. If the Income-tax Officer had acted on that return and assessed the assessee

(1) (1948) 16 I.T.R. 119. (2) (1957) 32 I. T. R. 458.

before March 31, 1950, the assessment would have been valid. He chose to ignore the return, and served on the assessee a notice under s. 34(1). This notice was improper, because with the return already filed there was neither an omission nor a failure on the part of the assessee, nor was there any question of assessment 'escaping'. The notice under s. 34(1) was, therefore, invalid and the consequent assessment equally so. We accordingly agree with the judgment under appeal.

Before leaving this case, we may refer to two other arguments, which were raised. Mr. Rajagopala Sastri pointed out that an assessee might file the 'voluntary' return on the last day showing income less than the taxable limit, and the Department would, in that case, be driven to complete the assessment proceedings within a few hours or lose the right to send a notice under s. 34(1). An argument *ab inconvenienti* is not a decisive argument. The Income-tax Officer could have avoided the result by issuing a notice under s. 23(2) and not remaining inactive until the period was about to expire. Further, all laws of limitation lead to some inconvenience and hard cases. The remedy is for the legislature to amend the law suitably. The Courts can administer the laws as they find them, and they are seldom required to be astute to defeat the law of limitation. This argument is thus no answer to the clear meaning and implications of the Act.

The other argument was that the return was not a true one, and fell within the mischief of cl. (c) of sub-s.(1) of s. 28, and that, therefore, the period during which action could be taken was the extended one of 8 years. The short answer to that is that this was not a part of the Department's case at any prior stage, and cannot be allowed to be raised now.

In our opinion, the answers given by the High Court of Bombay were correct in all the circumstances of this case.

The appeal thus fails, and is dismissed with costs.

Appeal dismissed.