L Pitamber Prasad in Re.

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Court : Allahabad

Decided On : Feb-16-1942

Reported in : [1942]10ITR370(All)

Appellant : L Pitamber Prasad in Re.

Judgement :

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The facts giving rise to this reference under Section 66 (3) of the Indian Income-tax Act, 1922, may be briefly stated :-

The assessee, Lala Pitamber Prasad, was assessed for the assessment year 1934-35 on the 28th May 1935 on a total income of Rs. 4,534. When the assessment proceedings for the year 1935-36 were going on the Income-tax Officer discovered that the assessees income from speculation business had partially escaped assessment during the year 1934-35. A notice under Section 34 read with Section 22 (2) of the Act was accordingly sent to the assessee and was served on him on the 15th of August 1935. The notice runs as follows :-

'Whereas I have reason to believe that your income from business which has been assessed in the financial year ending the 31st March 1935. (a) has partially escaped assessment, and I, therefore, propose (b) to assess the said income that has escaped assessment. I hereby require you to deliver to me..... a return in the attached form of you income from all sources which was assessable in the said

year ending the 31st March 1935'.

The assessee took some adjournments, but on the 3rd of January 1936 he filed a printed return form duly verified and duly signed but he did not set forth the total income of the previous year which was assessable in the assessment year 1934-35. In the space provided for filling in the income from different sources the petitioner put down the words : 'No income escaped assessment. Noticed issued is barred by time.'

The Income-tax Officer did not treat this as a proper compliance with the terms of the notice under Section 34/22 (2) and no notice under Section 23 (2) was issued. On the 27th of January 1936 the assessee was assessed under Section 34 read with Section 22 (2). The total income determined was Rs. 10,932, but this was subsequently reduced to Rs. 10,922. It also appears that a notice under Section 22 (4) was also served on the assessee and he was required to produce accounts for Sambat year 1990. It also appears that a notice under Section 22 (4) was also served on the assessee and he was required to produce accounts for Sambat year 1990 had been stolen. It was said that Pitamber had gone to Delhi and had taken those accounts with him and they were stolen from the train. This statment was not believed and the Income-tax Officer was of the opinion that the non-production of accounts was deliberate and it was done so because a considerable portion of his income from 9speculation had been concealed. The Income-tax Officer in his judgment said, 'This default is the additional ground for framing assessment under Section 23 (4).'

There was no appeal against the assessment order, presumably because no appeal is provided by the Act against an assessment under Section 23 (4) and presumably because the assessee was satisfied that a default had been committed by him in the non-production of account books and an appeal would not be admitted.

The assessee then presented an application under Section 27 for cancellation of the assessment, but this application was rejected by the Income-tax Officer on the 16th of May 1936.

Their was an appeal to the Commissioner and that appeal was also dismissed.

Then there was an application to the Commissioner for action under section 33 and for reference to this Court under Section 66 (2) of the Act. No relief was granted to the assessee under Section 33 and as far as Section 66 (2) of the Act was concerned the Commissioner was of the opinion that no question of law arose out of the order of the Assistant Commissioner. The question that the assessee wanted to be referred to this Court was in these terms :-'Whether the return submitted is a valid one in the terms of the Income-tax Act and as such the assessment made under Section 23 (4) is illegal?

After the refusal of the Commissioner the assessee moved the Court under Section 66 (3) of the Act and a Bench of this Court was of the opinion that certain question of law arose and that they ought to be referred to this Court with a statement of the case. The questions that were formulated by that Bench were taken from the application of the assessee to this Court and they were : ' (1) Whether the return submitted by the assessee was valid return required by law?

(2) If the return was not a valid return whether, in view of the notice under Section 34, there was sufficient cause for not making the return required by law?

(3) Whether on facts found there was a sufficient compliance in law with the notices sent under Section 34 and 22?

(4) Whether a notice under Section 23 (2) was necessary and was the assessment under Section 23 (4) illegal?

(5) Whether Section 34 was applicable to the facts of the case? ' The learned Commissioner while referring the above question of law and preparing a statement of the case has raised a preliminary question which is to the effect that the assessee is not entitled to raise at the stage of Section 66 (3) proceedings question of law which were not included in his application under Section 66 (2) before the Commissioner and had invited us to give on this preliminary question. We have heard learned counsel for the assessee and the learned Advocate-General on this point but we think that for the purpose of the present reference it is

not necessary to give a considered reply to this question The five question that have been referred to us on the application of the assessee are in our view involved within the ambit of the all embracing question 'Whether the return submitted is a valid one in the terms of the Income-tax Act, and as such, the assessment made under Section 23 (4) is illegal, ' and that was the question that the assessee wanted the commissioner to to refer to this Court under Section 66 (2).

We now proceed to answer the questions one by one. As regards the first question from what we have stated before, it is clear that for the assessment year 1934-35 a duly signed and verified return was filed by the assessee in the first instance. His total income mentioned i that return and the various columns were duly filled in. No point has been taken by the Department as to the invalidity of the former return. Later when a notice under Section 34 read with Section 22 of the Act was issued, it would undoubtedly have been better if the assessee recopied the return that he had filed in the original instance, and if he was of the opinion that no income had escaped assessment and if he was issued, it would undoubtedly have been better if the assessee recopied the return that he had filed in the original instance, and if he was of the opinion that no income had escaped assessment might have made a note to that effect as well but we cannot hold the return submitted by the assessee on the 3rd of January 1936 as an invalid return. The printed return form that was sent to him was sent back by the assessee on the aforesaid date duly signed and duly verified. In the cage meant for showing the total income the word nil was entered and that the notice issued was barred by time. The obvious intention of the assessee was to proclaim that he had already filed a return giving all the particulars of his income and that no other income had been derived by the assessee which could be said to have escaped assessment so far as the assessment year 1934-35 was concerned. The Income-tax Officer did not draw the attention of the assessee to the fact that technically the return filed by the assessee was not correct and that whether any income had escaped assessment or not the assessee again ought to have filled in the particulars of the total income that were required of him by the notice As a matter of fact, when he proceeded to re-assess the assessee the default that he emphasised in this connection was not that the return was not a valid return inasmuch as the particular of the income has

escaped assessment as would be shown later and as the assessee had not declared that income this default had to be taken as a ground for framing the assessment under Section 23 (4). it is only at a later stage, namely in the proceedings under Section27 that the Income-tax Officer and the Income-tax Assistant Commissioner make a point of the fact that the return was not full and detailed as it ought to have been. The Act is a highly technical one, and Income-tax Officers would be well advised in future, when they send a notice under Section 34 read with Section 22 of the Act to emphasise the fact that a return duly setting forth the total income is required and a mere reference to the former return would not be treated as valid. Our answer to the first question is that in the peculiar circumstances of the present case the return submitted by the assessee was a valid return and we answer the question in the affirmative

The second question does not really arise, but we may say that we have answered the first question in the way which we have answered it in view of the notice under Section 34 and the question might be formally answered in the affirmative.

The third question is repetition of the first and second questions, and we also answer that in the affirmative with this reservation that when Section 22 is mentioned in this question it is to be taken that out answer is only in connection with the notice under Section 22 (2) and not under Section 22 (4).

As regards the fourth question we are of the opinion that in the peculiar circumstances of this case a notice under Section 23 (2) was not necessary and the assessment under Section 23 (4) was not illegal. In an earlier portion of our judgment we have said that there was default by the assessee-a default which merited an assessment under Section 23 (4). He was served with a notice under Section 22 (4) and he was required to produce the account books for the Sambat year 1990. He failed to produce his account books and the story that was put forward on his behalf was believed neither by the Income-tax Officer not by the Assistant Commissioner and we have to accept their findings on this point. It follows, therefore, that the assessment under Section 23 (4) was legal and we answer the fourth question in the negative.

As regards the fifth question the income-tax authorities are of the view that some income escaped assessment and therefore notice under Section 34 was called for the and was applicable to the facts of the case. We agree with them and we answer this fifth question in the affirmative.

The assessee must pay the costs of this reference, and we fix the fee of the leaned Advocate-General at Rs 200. Let a copy of our judgment under the seal of the court and the signature of the Registrar be sent to the commissioner of income-tax.

Reference answered accordingly.