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Court : Kerala

Decided On : Mar-30-1964

Reported in : [1966]61ITR1(Ker)

Appeal No. : Income-tax Referred Case No. 24 of 1963

Appellant : A.

Respondent : Thomas and Co. Ltd. V. Commissioner of Income-tax, Kerala.

Judgement :

M. S. MENON C.J. - This is a reference under section 66(1) of the Indian Income-tax Act, 1922. The question referred is :

'Whether, on the facts and in the circumstances of the case, the Income-tax Officer had jurisdiction to take proceedings under section 34 and make reassessments for 1954-55 and 1956-57 and whether the reassessments made by the Income-tax Officer are valid ?'

The accounting period for 1954-55 is the calendar year 1953, and the accounting period for 1956-57 is the calendar year 1955. The original order of the assessment for 1954-55 is dated December 31, 1954, and the original order for 1956-57 is dated June 26, 1957.

The Income-tax Officer treated the assessee as a dealer in shares. So did the Appellate Assistant Commissioner in the appeal filed by the assessee. The

Assessee then took up the matter before the Income-tax Appellate Tribunal, and the Tribunal confirmed the decision that the assessee should be assessed in respect of his transaction in shares as a dealer therein. It also said that the income of the assessee in respect of both the assessment years has been under-assessed, but did not direct any reassessment as there was no appeal by the department.

The Income-tax Officer then took up the matter under section 34(1)(b) of the Indian Income-tax Act, 1922, which says that if 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, or have been under assessed, or assessed at too low a rate, or have been made the subject of excessive relief under this Act, or that excessive loss or depreciation allowance has been computed' he may at any time within four years of the end of that year, 'serve on the assessee' or, if the assessee is a company, on the principal officer thereof 'a notice containing all or any of the requirements which may be included in a notice under sub-section(2) of section 22 and may proceed to assessee or reassess such income, profits or gains or recompute the loss or depreciation allowance; and the provisions of this Act shall, so far as many be, apply accordingly as if the notice were a notice issued under that sub-section'.

The only information in the possession of the Income-tax Officer for the action he has taken was the order of the Tribunal dismissing the appeals of the assessee in respect of the assessment years 1954-55 and 1956-57. In dismissing the appeal for 1954-55 the Tribunal said :

'The profit assessable for 1954-55 is Rs. 17,262 as against Rs. 15,886 determined by the Income-tax Officer. As this results in an enhancement, the profit is fixed at Rs. 15,886.'

As regards the assessment year 1956-57 it said :

'In the assessment year 1956-57, the profit is Rs. 1,07,211 as against Rs. 27,889 determined by the Income-tax Officer. Even after bringing down the loss of the preceding year as determined by us - Rs. 11,833 - the resultant position is an

enhancement and, therefore, the figure adopted by the Income-tax Officer has to be confirmed.'

The wording of section 34(1)(b) of the Indian Income-tax Act, 1922, makes it quite clear that all that is necessary to support action under that provision is that the Income-tax Officer should have, in consequences of information in his possession, reason to believe that income has escaped assessment or full assessment as the case may be. The question for determination is whether the statements of the Tribunal extracted above constitute such information or not. We entertain no doubt that they do.

The conclusion we have reached is supported by *Maharaj Kumar Kamal Singh v. Commissioner of Income-tax and Jawahar Lal Mani Ram v. Commissioner of Income-tax*. In the former case the Supreme Court pointed out that the two conditions that must be satisfied before the Income-tax Officer can act under section 34(1)(b) are :

(1) that he must have information which comes into his possession subsequent to the making original assessment order, and(2) that the information must lead to his belief that income chargeable to tax has escaped assessment, or has been under-assessed or assessed at too low rate, or has been made the subject of excessive relief; and held that a decision of the Privy Council was information within the meaning of section 34(1)(b) and that the said decision justified the belief of the Income-tax Officer that part of the appellants income had escaped assessment for the relevant year. In the latter case the Allahabad High Court said :

'... in this case we are only concerned with information coming to the Income-tax Officer from an extraneous source. The question merely is what external sources could be included in such sources from which information could be derived. We are clearly of the view that there is no justification in principle to confine the external source of information to information derived from a judgment of the Privy Council or the Supreme Court or a High Court. If information can be derived properly from those sources and such information will constitute information for the purposes of section 34, it is not possible to exclude similar information derived from other sources, namely, the Income-tax Appellate Tribunal or the Appellate

Assistant Commissioner. It might be said that the external sources should be such as cannot be characterised as departmental authorities, such as the Privy Council, the Supreme Court and the High Court, but we do not agree'.

It was suggested that the quantum of the income on which the assessment has been made is excessive and that we should go into that question. The question referred to us does not raise any such point for decision and we have, as a result, declined to consider this aspect of the case.

In the light of what is stated above the question referred has to be answered in the affirmative and against the assessee. We do so, but without any order as to costs.

A copy of this judgment under the seal of the High Court and the signature of the Registrar will be forwarded to the Appellate Tribunal as required by sub-section (5) of section 66 of the Indian Income-tax Act, 1922.

Questions answered in the affirmative.

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