COMMISSIONER OF INCOME-TAX, NEW DELHI

v.

RAO THAKUR NARAYAN SINGH

October 30, 1964

(K. SUBBA RAO, J. C. SHAH AND S. M. SIKRI JJ.)

Income-tax Act, 1922 (11 *of* 1922), *s.* 34(1)—*Two items of income escaped assessment taxed subsequently—Tribunal considered taxability of only one item—By mistake set aside the entire order in respect of both items—No rectification of mistake—Whether fresh notice under s.* 34(1) *valid.*

The Income-tax Officer issued a notice to the assessee under s. 34 on the ground that two items of the assessee's income, namely forest income and interest income, were not included in the original assessment for the year 1942-43. In response the assessee filed a return fully disclosing his interest income but raised the plea that his forest income was not taxable. The Income-tax Officer however, assessed both items to tax. On appeal, the Appellate Tribunal in its order dated April 25, 1961, although dealing only with the forest income and holding that the Income-tax Officer had no jurisdiction to initiate proceedings under s. 34 in respect of such income, by inadvertence or by mistake, set aside the entire order of re-assessment both in respect of forest income, as well as the interest income. The Department did not take any steps to rectify the mistake under s. 35 or to have the question of illegality referred to the High Court. Having allowed the order of the Tribunal to become final, the Income-tax Officer initiated fresh proceedings under s. 34 in respect of the interest income and made a revised assessment order which included this income. The Appellate Tribunal confirmed the assessment but the High Court, on a reference to it under s. 66(1), took the view that fresh proceedings under s. 24 could not be taken for the reason, *inter alia*, that the Tribunal's order dated April 25, 1949 had become final.

HELD : The Tribunal had committed a mistake in setting aside the re-assessment order in respect of interest income also, but the income-tax Officer did not resort to the obvious remedy of having the mistake rectified as provided for under s. 35 and allowed the Tribunal's order dated April 25, 1949 to become final. He could not in the circumstances, reopen the assessment by initiating proceedings under s. 34, as otherwise there would be an unrestricted power of review in the hands of the Income-tax Officer to go behind the findings of a hierarchy of Tribunals and Courts. [995 E-F; 996 F-H]

C.I.T. Bombay and Aden v. *Khemchand Ramdas*, (1938)6 I.T.R. 414 and *C.I.T. West Punjab* v. *The Tribune Trust, Lahore*, (1948)16 I.T.R. 214, referred to.

R. K. Das & Co. v. *C.I.T., West Bengal*, (1956)30 I.T.R. 439 and *C.I.T., Bihar & Orissa* v. *Maharaja Pratapsingh Bahadur of Gidhaur*, (1961) 41 I.T.R. 421, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 954 of 1963.

On appeal from the judgment and decree dated March 9, 1964, of the Allahabad High Court in Income-tax Miscellaneous Case No. 143 of 1954.

A *K. N. Rajagopala Sastri, R. H. Dhebar* and *R. N. Sachthey*, for the appellant.

A. V. Viswanatha Sastri, Z. S. Meeratwal, B. P. Singh and *Naunit Lal*, for the respondent.

The Judgment of the Court was delivered by

B

Subba Rao J. This appeal by special leave is directed against the order of a Division Bench of the High Court of Judicature at Allahabad holding that the Income-tax Officer, in the circumstances of the case, went wrong in initiating proceedings under s. 34(1) of the Indian Income-tax Act, 1922, hereinafter C called the Act, in respect of the assessment year 1942-43.

The facts may briefly be stated. The assessee was a holder of an impartible estate in the district of Ajmer. On March 25, 1944, the Income-tax Officer assessed him to income-tax for the year 1942-43. On April 5, 1945, on the ground that two items D of the assessee's income, namely, syar (forest) income and interest income, were not included in the original assessment, a notice under s. 34 of the Act was issued to him. In response to the said notice, the assessee filed a return wherein he disclosed fully and completely the particulars of his interest income, but raised the plea that his forest income was not taxable. The E Income-tax Officer, by his order dated July 12, 1945, made a revised assessment including both the incomes. The respondent eventually took the matter on appeal to the Income-tax Appellate Tribunal, which, by its order dated April 25, 1949, held that the Income-tax Officer had no jurisdiction to initiate proceedings F under s. 34 of the Act in respect of the forest income on the ground that the Income-tax Officer had knowledge that the assessee had such income when he made the original assessment. Though the Tribunal only dealt with the question of forest income, by inadvertence or by mistake, it set aside the entire order of re-assessment dated July 12, 1945, made by the Income-tax Officer G and restored the original order passed by him. The Income-tax Department did not take any steps to rectify the mistake under s. 35 of the Act or make any attempt to have the question of the illegality referred to the High Court. Having allowed the order to become final, on January 3, 1950, the Income-tax Officer after obtaining the sanction of the Commissioner initiated proceedings H under s. 34 of the Act with respect to the interest income. On January 19, 1950, the Income-tax Officer issued to the assessee a fresh notice under the said section. On September 25, 1950, a

revised assessment order was made in regard to the assessment year 1942-43 in which the respondent's interest income was also included. On appeal, the Appellate Assistant Commissioner confirmed the said order. On further appeal, the Income-tax Appellate Tribunal held that since the assessee had failed to disclose his interest income in the return filed by him under s. 22(2) of the Act in connection with the original assessment the said income had escaped assessment and, therefore, the provisions of s. 34(1)(a) of the Act were attracted. On application filed by the assessee, the Tribunal referred the following question to the High Court under s. 66(1) of the Act:

> "Whether on the facts and in the circumstances of this case the provisions of s. 34(1) were applicable in respect of the assessment year 1942-43 on 19th January, 1950, when the notice under that provision was issued for the purpose of assessing the escaped interest income."

The High Court came to the conclusion that the Tribunal in its order dated April 25, 1949, committed a clear error in setting aside the assessment of tax on the interest income without going into the correctness of the imposition of tax thereon, but that order had become final; it further held that the said order did not invalidate the entire proceedings taken under s. 34 of the Act and, therefore, the Income-tax Officer could not take proceedings afresh under s. 34 of the Act. In the result the High Court answered the question in the negative. Hence the appeal.

Mr. Rajagopala Sastri, learned counsel for the Revenue, contended that the interest income had escaped assessment and, therefore, the Income-tax Officer was competent to initiate proceedings under s. 34(1)(a) of the Act for assessing the same.

Mr. Viswanatha Sastri, learned counsel for the respondent, on the other hand, argued that the assessment made by the Income-tax Officer pursuant to the notice issued under s. 34 of the Act was in its entirety set aside by the Tribunal on the ground that there was no "discovery" within the meaning of s. 34 of the Act and that that order had become final and, therefore, the Income-tax Officer could not initiate fresh proceedings under that section on the principle of *res judicata*.

To appreciate the contentions of the parties it is necessary to notice the scope of the order of the Tribunal dated April 25, 1949. Before the Appellate Tribunal it was contended on behalf of the assessee that the Income-tax Officer who issued the said notice had

A no definite information which led to the discovery that the said income had escaped assessment within the meaning of the said section. Adverting to the said argument the Tribunal observed :

> "We do not agree with the contention of the department that the Income-tax Officer who made the
> B original assessment did not apply his mind to this fact, as there is no evidence to show that at the material time such income was considered taxable by the Department. Ordinarily one would expect that when an Income-tax Officer makes the assessment he does according to law and on the facts as produced before
> C him. If the fact is before him he refused to take it into account thinking that it was immaterial or even inadvertently takes no notice of it, it cannot be said that the Income-tax Officer came in possession of a definite information within the meaning of s. 34. We are, therefore,
> D of the opinion that proceedings under s. 34 could not be initiated against the assessee for the four assessment years under reference. The orders passed by the Income-tax Officer in respect of these four years are therefore set aside and the original orders under s. 23(3) are restored."

E We have extracted the order *in extenso* as the argument really turns upon the scope of the said order. The Appellate Tribunal in considering the validity of the notice under s. 34 of the Act only discussed the question of the escape of the syar income: it did not advert to the interest income at all. It came to the con-
F clusion, having regard to the fact that the Income-tax Officer at the time he made the original assessment had knowledge of the existence of the syar income, that the Income-tax Officer did not come into possession of definite information within the meaning of s. 34 of the Act. Though the finding was arrived at on the basis of the syar income alone the Tribunal set aside the entire order
G of re-assessment and restored the original order of assessment made by the Income-tax Officer under s. 23(3) of the Act. The legal effect of the order was that the re-assessment of the entire income, including the syar income and interest income, was set aside on the ground that the Income-tax Officer did not come into possession of definite information leading to a "discovery" and,
H therefore, he could not initiate proceedings under s. 34 of the Act. It is true that the Tribunal had committed a mistake in setting aside the re-assessment order in respect of the interest income

also; but, so long as that order stands, it comprehends both the incomes. A

The Income-tax Officer did not take any further proceedings by way of reference to the High Court on any question of law arising out of the order of the Tribunal; nor did he take any proceedings under s. 35 of the Act to have the order corrected on the ground of mistake. With the result the order has become final. B

The question, therefore, is not whether the order of the Tribunal in so far as it related to the interest income was made by inadvertence or under a mistake, but whether the Income-tax Officer could initiate proceedings over again under s. 34 of the Act in derogation of the finding given by the Tribunal that the Income-tax Officer did not "discover" that the income had escaped assessment. C

The Income-tax Act is a self-contained one. It creates a hierarchy of tribunals with original, appellate and revisional jurisdictions. Section 31 gives, *inter alia*, right of appeal against some orders of the Income-tax Officer to the Appellate Assistant Commissioner; section 33 provides for a further appeal to the Income-tax Appellate Tribunal; and sub-s. (6) of s. 33 says that save as provided in s. 66 orders passed by the Appellate Tribunal on appeal shall be final. Section 66 provides for reference to the High Court on a question of law; and s. 66-A provides for appeals in certain cases to the Supreme Court. It is clear from the said provisions that the order of the Tribunal made within its jurisdiction, subject to the provisions of s. 66 of the Act, is final. Therefore, the decision of the Tribunal in respect of the subject-matter under appeal before it is final and cannot be reopened by the assessee or the Department. D E F

The Judicial Committee in *Commissioner of Income-tax, Bombay & Aden* v. *Khemchand Ramdas*(1) succinctly stated the legal position thus : G

> "But it is not true that after a final assessment under those sections (ss. 23 and 29) has been made, the Income-tax Officer can go on making fresh computations and issuing fresh notices of demand to the end of all time..... But when once a final assessment is arrived at, it cannot in Their Lordships' opinion be re-opened except in the circumstances detailed in H

(1) (1938) 6 I.T.R. 414, 424, 426.

A Sections 34 and 35 of the Act.....and within the time limited by those sections."

Later on the same idea is restated thus :

"In Their Lordships opinion the provisions of the two sections are exhaustive, and prescribe the only B circumstances in which and the only time within which such fresh assessments can be made and fresh notices of demand can be issued."

The Judicial Committee again in *Commissioner of Income-tax, West Punjab* v. *The Tribune Trust, Lahore*(1), after noticing the C relevant sections of the Act, re-affirmed the same position and held that assessments once made would be valid and effective until they were set aside in the manner prescribed by the Act and that, if not so set aside, they were final. If so, it follows that the order of the Tribunal on the said question, namely, that the whole order of re-assessment under s. 34 of the Act was invalid as there was D no "discovery" that the relevant income escaped assessment, had become final.

The only two sections that enable the Income-tax Officer to re-open final assessments are ss. 34 and 35. If the Appellate Tribunal committed a mistake, under s. 35 it can be rectified within four years from the date of the order. In the present case E it was a clear case of mistake, for the Tribunal set aside the order of re-assessment in respect of the interest income, though its validity to that extent was not disputed. But, for one reason or other, the Revenue did not resort to the obvious remedy and allowed the mistake to remain uncorrected. In these circumstan- F ces, can s. 34 of the Act be resorted to ? Learned counsel for the Revenue says that s. 34(1)(a), as amended in 1948, confers such a power on the Income-tax Officer. The material part of s. 34, before amendment, read:

"(1) If in consequence of definite information which has come into his possession the Income-tax Officer G discovers that income, profits or gains chargeable to income-tax have escaped assessment in any year....."

Section 34(1)(a), as amended in 1948, reads :

"If the Income-tax Officer has reason to believe that by reason of the omission or failure on the part of an H assessee.....to disclose fully and truly all material facts necessary for his assessment for that year,

(1) (1948) 16 I.T.R. 214.

income, profits or gains chargeable to income-tax have escaped assessment for that year..... .....he may in cases falling under clause (a) at any time.....serve on the assessee a notice....."

It is said that the words "has reason to believe that by reason of the omission or failure on the part of an assessee to disclose fully and truly all material facts necessary for his assessment for that year, income profits or gains chargeable to income-tax have escaped assessment" are more comprehensive than the words "the Income-tax Officer discovers that income etc., have escaped assessment in any year" and, therefore, though there was a finding by the Tribunal that the Income-tax Officer did not "discover" that there was escape of assessment, the Income-tax Officer under the amended s. 34 can initiate proceedings in spite of that finding. We cannot accept this argument. It could not have been the intention of the Legislature by amending the section to enable the Income-tax Officer to re-open final decisions made against the Revenue in respect of questions that directly arose for decision in earlier proceedings. The Tribunal held in the earlier proceedings that the Income-tax Officer knew all the facts at the time he made the original assessment in regard to the income he later on sought to tax. The said finding necessarily implies that the Income-tax Officer had no reason to believe that because of the assessee's failure to disclose the facts income has escaped assessment. The earlier finding is comprehensive enough to negative "any such reason" on the part of the Income-tax Officer. That finding is binding on him. He could not on the same facts re-open the proceedings on the ground that he had new information. If he did so, it would be a clear attempt to circumvent the said order, which had become final. We are not concerned in this appeal with a case where the Income-tax Officer got new information which he did not have at the time when the Tribunal made the order. The finding of the Tribunal is, therefore, binding on the Income-tax Officer and he cannot, in the circumstances of the case, reopen the assessment and initiate proceedings over again. If that was not the legal position, we would be placing an unrestricted power of review in the hands of an Income-tax Officer to go behind the findings given by a hierarchy of tribunals and even those of the High Court and the Supreme Court with his changing moods.

The decisions cited by the learned counsel for the Revenue do not countenance such a contention. Chakraverti C.J., in

A *R. K. Das & Co.* v. *Commissioner of Income-tax, West Bengal*(1), speaking for the Division Bench, only decided that the Income-tax Officer could not make a re-assessment unless he issued the prescribed notice and issued it in a valid form. As the notice under s. 34 of the Act issued therein was held to be bad inasmuch as the Income-tax Officer did not take the sanction of the B Commissioner, the learned Chief Justice held that the returns filed pursuant to such notice was also bad. We are not here concerned with that aspect of the case. The judgment of this Court in *Commissioner of Income-tax, Bihar & Orissa* v. *Maharaja Pratapsingh Bahadur of Gidhaur*(2) held that, as the earlier notice issued under s. 34(1) of the Act without the sanction of the Com- C missioner was bad, the entire proceedings for re-assessment were illegal. There was an observation at the end of the judgment to the effect that "there was time enough for fresh notices to have been issued, and we fail to see why the old notices were not recalled and fresh ones issued". The point now raised before us, *viz.*, how far and to what extent a final order made in earlier D proceedings under s. 34 of the Act would be binding on the Income-tax Officer in subsequent proceedings under the said section was neither raised nor decided in that case.

The said decisions, therefore, have no bearing on the question raised before us.

E For the foregoing reasons we hold that the answer given by the High Court to the question referred to it is correct.

In the result, the appeal fails and is dismissed with costs.

Appeal dismissed.

(1) (1956) 30 I.T.R. 439.
(2) [1961] 2 S.C.R. 760.