

PETITIONER:
PANNALAL NANDLAL BHANDARI

Vs.

RESPONDENT:
THE COMMISSIONER OF INCOME-TAX, BOMBAY CITY, BOMBAY.

DATE OF JUDGMENT:
18/10/1960

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
DAS, S.K.
HIDAYATULLAH, M.

CITATION:
1961 AIR 446 1961 SCR (2) 35
CITATOR INFO :
RF 1962 SC 478 (9)

ACT:
Income-tax--General notice--Non-resident liability to submit
return--Period of Limitation--Indian Income Tax Act, 1922
(XI of 1922), s. 22(1) & (2), s.34(1)(a) & (b).

HEADNOTE:

The appellant, a non-resident for the purposes of the Indian Income-tax Act, did not submit returns of certain dividend income accruing to him within the taxable territory. The Income-tax Officer served upon him notices under S. 34 read with S. 22(2) of the Act for assessment of tax in respect of those years. The notices in question were issued within eight years from the end of the years of assessment and were within the period prescribed by s. 34(i)(a). The appellant contended that notices for assessment were governed by cl. (i)(b) of S. 34 and not by cl. (i)(a), even though the appellant had not made a return of his income for the years in question as a general notice under s. 22(1) did not give rise to a liability to submit a return and his inaction did not amount to omission or failure to submit a return as he was a non-resident, and the assessment proceedings were barred by limitation.

Held, that the expression "every person " in s. 22 (1) of the Indian Income-tax Act, 1922, includes all persons who are liable to pay tax and non-residents are not exempted from liability to submit a return pursuant to the general notice thereunder.

Once a notice is given by publication in the prescribed manner under s. 22(i), every person whether resident or non-resident whose income exceeds the maximum amount exempt from tax is obliged to submit a return and if he does not do so,

36
it will be deemed that there was omission on his part to make a return within the meaning of S. 34(i)(a) of the Indian Income tax Act. Section 34(1)(b) applied only to those cases where there was no omission or failure to make a return of the income or to make a full and true disclosure of facts material to the assessment.

In the instant case the proceedings for assessment were pro-

perly commenced within the period of limitation prescribed by s. 34(1)(a).

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 408 of 1957. Appeal by Special Leave from the Judgment and Order dated the 28th September, 1955, of the former Bombay High Court in Income-tax Reference No. 5 of 1955.

Sanat P. Mehta, S. N. Andley, J. B. Dadachanji, Rameshwar Nath and P. L. Vohra, for the appellant.

A. N. Kripal, R. H. Dhebar and D. Gupta, for the respondent.

1960. October 18. The Judgment of the Court was delivered by

SHAH J.-To the appellant who was a non-resident for the purposes of the Indian Income Tax Act, 1922, had accrued in the assessment years 1943-44, 1944-45, 1946-47 and 1947-48 certain dividend income within the taxable territory of British India, but the appellant did not submit returns of his income for those assessment years. In exercise of his powers under s. 34 of the Indian Income Tax Act, 1922, the Income Tax Officer, Bombay City, served upon the appellant notices under s. 34 read with s. 22(2) of the Act for assessment of tax in respect of those years. The notice for the year 1943-44 was served on the appellant on March 27, 1952, for the year 1944-45 on February 16, 1953, for the year 1946-47 on April 4, 1951 and for the year 1947-48 on April 2, 1952. The Income Tax Officer completed the assessments in respect of the years 1943-44, 1944-45 and 1947-48 on May 6, 1953 and for the year 1946-47 on March 19, 1952. The orders of assessment were confirmed by the Appellate Assistant Commissioner and by the Income Tax Appellate Tribunal. At the instance of

37
the appellant, the Income Tax Appellate Tribunal drew up a statement of the case under s. 66(1) of the Income Tax Act and submitted to the High Court of Judicature at Bombay the following two questions:

(1). Whether the notices issued under s. 22(2) of the Act read with s. 34 of the Act for the assessment years 1943-44, 1944-45, 1946-47 and 1947-48 were served after the period of limitation prescribed by s. 34 of the Act?

(2) If the answer to Question No. 1 is in the affirmative, whether the assessments for the years in question were invalid in law?

The High Court answered the first question in the negative and observed that on that answer, the second question "did not arise". With special leave under Art. 136 of the Constitution, this appeal is preferred by the appellant against the order of the High Court.

The only question which falls to be determined in this appeal is whether the proceedings for assessment were commenced within the period of limitation prescribed for serving notice of assessment under s. 34(1)(a) of the Act. At the material time, by s. 34 (1)(a), the Income Tax Officer was invested with power amongst others to serve at any time within eight years from the end of any year of assessment notice of assessment if he had reason to believe that income, profits or gains had escaped assessment by reason of omission or failure on the part of the assessee to make a return of his income under s. 22 for that year, or to disclose fully and truly all material facts necessary for his assessment of that year. In those cases where the

Income Tax Officer had in consequence of information in his possession reason to believe that income, profits or gains had escaped assessment even though there was no omission or failure as mentioned in el. (a), he could under cl. (b) within four years from the end of the year of assessment serve a notice of assessment. Admittedly, the notices issued by the Income Tax Officer for the years in question were issued within eight years from the end of the years of assessment and if el. (1)(a) of s. 34 applied, the assessment was not barred by the law of limitation.

38

But the appellant contended that the notices for assessment were, even though he had not made a return of his income for the years in question, governed not by cl. (1)(a) of s. 34, but by cl. (1)(b) of s. 34. He contended that being a resident outside the taxable territory in the years of assessment, a general notice under s. 22(1) did not give rise to a liability to submit a return, and his inaction did not amount to omission or failure to submit a return, inviting the applicability of s. 34(1)(a). He submitted that omission or failure to make a return can only arise qua a non-resident, if no return is filed after service of an individual notice under s. 22(2). In other words, the plea is that a notice under s. 22(1) imposes an obligation upon persons resident within the taxable territory and not upon non-residents, and support for this argument is sought to be obtained from s. 1 sub-s. (2) which extended the Income Tax Act at the material time to British India.

The expression "every person whose total income during the previous year exceeded the maximum amount which is not chargeable to income-tax" in s. 22(1) includes all persons who are liable to pay tax and there is nothing in the section or in its context which exempts non-residents from liability to submit a return pursuant to a notice thereunder. The fact that a non-resident assessee may not come to know of the general notice issued under s. 22(1) is not a ground for not giving effect to the plain words used in the section. In terms, the clause read with r. 18 requires every person who has taxable income to submit his return, and if he fails to do so, under s. 34 of the Act the Income Tax Officer may commence proceedings for assessment within the period prescribed by cl. (1)(a). Section 34(1)(b) applies only to those cases where there is no omission or failure to make a return of the income or to make a full and true disclosure of facts material to the assessment. To the appellant though non-resident income had admittedly accrued in the taxable territory and that income exceeded the maximum amount not chargeable to income-tax., The appellant not having submitted a return in pursuance of the notice issued under s. 22(1) the Income Tax

39

Officer was competent under s. 34(1)(a) to issue notice at any time within eight years of the end of the year of assessment for assessing him to tax. Once a notice is given by publication in the press and in the prescribed manner under s. 22(1), every person whose Th. income exceeds the maximum amount exempt from tax is obliged to submit a return and if he does not do so, it will be deemed that there was omission on his part to make a return within the meaning of s. 34(1)(a). There is no warrant for the submission that s. 22(1) applies to residents only and that an obligation to make a return on the part of a nonresident can only arise if a notice under sub-s. (2) is served. Under sub-s. (2) it is open to the Income Tax Officer to serve a special notice upon any person requiring him to furnish a return in the

prescribed form, but that provision does not derogate from the liability arising under sub-s. (1) to submit a return. The Income Tax Act extends by s. 1(2) to the taxable territory and not beyond; but within that territory, the Income Tax Officer has power to tax income which accrues, arises or is received, and that is not disputed by the appellant. If power to tax be granted, it is difficult to appreciate the ground on which the plea that the general provision imposing liability upon persons receiving taxable income is subject to an unexpressed limitation that it is to apply only to residents and not to non-residents. The submission that a person liable to pay tax but resident outside the taxable territory must be served with a special notice under s. 22(2) before his inaction in the matter of making a return may be deemed omission within the meaning of s. 34(1) is without force. There is no such express provision made by the statute and none can be implied from the context.

The High Court was therefore right in holding that the proceedings for assessment were properly commenced within the period of limitation prescribed by s. 34(1)(a) from the close of the year of assessment. The appeal fails and is dismissed with costs.

Appeal dismissed.

40