Municipal Committee, Sirsa v. Kirpa Ram

Gurdev Singh, J.

Magistrate and, accordingly, he is not bound to comply with the requirements of section 264 of the Criminal Procedure Code relating to recording of evidence and judgment. Those cases would fall under section 263 of the Criminal Procedure Code, and it is the procedure laid down therein that has to be applied. As has been observed earlier, this section specifically lays down that in cases in which no appeal lies, the Magistrate need not record the evidence, and his final order may consist merely of his finding and the sentence. It is further provided in this section that it is only where conviction is recorded that a brief statement of reasons thereof will have to be given by the Magistrate and not if the trial ends in acquittal. In these circumstances, the recommendation of the learned Sessions Judge is not justified, and the order of the Magistrate acquitting the respondent cannot be interfered with as violative of the provisions of section 264 of the Criminal Procedure Code. I, accordingly, reject the reference and uphold the order of the Magistrate.

B.R.T.

FULL BENCH

Before Inder Dev Dua, Daya Krishan Mahajan, and J. S. Bedi, JJ.

MESSRS SHAHZADA NAND AND SONS AND OTHERS,—*Petitioners.*

versus

THE CENTRAL BOARD OF REVENUE AND OTHERS,—*Respondents.*

Civil Writ No. 801 of 1959.

1961

Sept., 8th

Income-tax Act (XI of 1922)—Section 34(1)(a) and Section 34(1-A)—Respective scope of—Notice with regard to escaped income for the year ending March 31, 1946—Whether falls under section 34(1)(a) or Section 34(1-A)—Interpretation of statutes—Rules of harmonious construction—Applicability of—Interpretation of taxing statutes—Rule as to, stated.

Held, that the period which sub-section (1-A) of section 34 of the Income-tax Act, 1922, has in view for the purposes of assessing escaped income is the period between September 1, 1939, and March 31, 1946, which appears to be the period covered by the Second World War. The Legislature seems apparently to be conscious of the provisions of section 34(1)(a) and the proviso to it, but has nevertheless made a special provision in the form of sub-section (1A) added in 1954. For the special cases so provided by the new provision an outside limit for issuing notices has also been fixed from which it is obvious that the Parliament desired the Tax-Authorities to act more promptly in the cases covered by the new provision. Considering the language and scope of the two sub-sections in question sub-section (1-A) *prima facie* appears to be an exception to the cases covered by sub-section (1)(a) and the notice for assessment of the escaped income for the year ending March 31, 1946, falls under sub-section (1-A) and the notice for that period issued after March 31, 1956, is barred by time.

Held, that it is a cardinal and elementary rule of statutory construction that if possible, within the ambit of reason, full force, meaning, significance and effect must be accorded to every word, clause, section and provision of a statute, so that no part of it becomes inoperative or superfluous or insignificant; this is desirable in the interest of harmony and consistency and to make the entire statutory scheme effectual.

Held, that the construction to be placed on taxing statutes does not involve any equity. These statutes have to be construed on their own plain meanings keeping in view that in cases of reasonable doubt the taxing statutes should be construed in favour of the citizen rather than the Revenue, for, imposition of tax must, according to our jurisprudence, be justified by a valid piece of legislation. Of course it is not permissible either to stretch the language unreasonably or to construe it in a needlessly narrow manner. A proper balance must be struck between the essential needs and desires for revenue of a modern welfare State on the one side, and, desirability that the citizen must know clearly his liability before he is called upon to contribute towards it on the other.

Case referred by the Hon'ble Mr. Justice Bishan Narain, on 18th December, 1959, to a Division Bench for decision of the important question of law involving in the case and the Division Bench consisting of Hon'ble Mr. Justice Bishan Narain and Hon'ble Mr. Justice Dua, again referred the case on 4th May, 1960, to a Full Bench. After deciding the question, the Full Bench consisting of Hon'ble Mr. Justice Dua, Hon'ble Mr. Justice Mahajan and Hon'ble Mr. Justice Bedi, sent the case back to the Single Bench, on 8th September, 1961, for disposal of the case.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ of certiorari *or any other writ or order, be issued quashing the illegal notice, dated 25th July, 1958, issued under section 34 and the proceedings taken in pursuance thereof.*

K. L. KAPUR AND V. C. MAHAJAN, ADVOCATES, for the Petitioners.

D. N. AWASTHY AND H. R. MAHAJAN, ADVOCATES, for the Respondents.

The Judgment of the Court was delivered by:—

Dua, J.

DUA, J.—The following question has been referred to the Full Bench for decision:—

> "Whether or not, in the circumstances of the present case, the notice under section 34 issued on 25th July, 1958, was barred by time ?"

This writ petition was initially heard by Bishan Narain J., who in a detailed judgment referred this question to a larger Bench after deciding some other points on the merits. The case was then placed before a Division Bench consisting of Bishan Narain J., and myself, but without any discussion it was considered that the question had better be decided by a still larger Bench, and it is as a result of the order of the Division Bench that the present Full Bench has been constituted.

The facts as stated in the writ petition are that Messrs Shahzada Nand and Sons (defunct Hindu undivided family), petitioner No. 1, used to be assessed as

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H.U.F. through Sahib Dyal, son of Shahzada Nand, petitioner No. 2, as its *Karta* until the assessment of 1945-46. By the end of March, 1945, according to the petition, the H.U.F. was dissolved completely after partition amongst its members consisting of petitioners Nos. 2 to 5. According to the allegations in the petition, a new firm described as Shahzada Nand and Sons (a partnership concern consisting of three brothers, Shri Chaman Lal, Shri Madan Gopal and Shri Harbans Lal, petitioners Nos. 3 to 5) took over the business of the Hindu undivided firm. This partnership firm, according to the petitioners, has been assessed to income-tax as a firm ever since 1946-47.

Sometime in 1951, the Income-tax Department started investigations into the financial affairs of Messrs Shahzada Nand and Sons, the Hindu undivided firm, which, according to the petitioners, had disrupted and been dissolved in March, 1945. The petitioners are stated to have given full information to the Department. After the enquiry lasting for several years the matter is stated to have been dropped as a result of the report of Shri G. R. Bahmat, Income-tax Officer, 'C' Ward, Amritsar. In the meantime Shri G. S. Basanti took over charge as Income-tax Officer, 'A' Ward, and the case of the Hindu undivided family, Messrs Shahzada Nand and Sons, petitioner No. 1, was transferred to his file. Shri Basanti, thereupon, issued notices under section 34, Income-Tax Act, to the petitioners. These notices, though purporting to be dated 26th March, 1954, were, according to the petition, in fact served on the petitioners on and after 3rd of April, 1954. This notice according to the petitioners' case, is barred by time. The proceedings, however, continued and on 29th of March, 1955, a sum of Rs. 3,62,000 was added to the original assessment of petitioner No. 1 for 1945-46 and a penalty notice for default under section 22(4) was also issued. Eliminating unnecessary facts for our purposes, according to the petition, an appeal was taken by the assessee to the Appellate Assistant Commissioner who, while annulling the assessment order of the Income-Tax Officer, 'A' Ward, Amritsar (respondent No. 3), made certain observations prejudicial to the petitioners

which, according to the petitioners, were not called for. Both the Revenue and the petitioners went up in appeal to the Income-Tax Appellate Tribunal which, while dismissing the appeal of the Department, allowed that of the assessee. This order is dated 20th December, 1956, and it is averred by the petitioners that this order finally decided the matter of assessment for 1945-46.

On 25th of July, 1958, the Income-Tax Officer, 'A' Ward (respondent No. 3) issued the impugned notice under section 34, Income-Tax Act, requiring the petitioners to file a return for the assessment year 1945-46. On 12th August, 1958, the petitioners moved the Central Board of Revenue (respondent No. 1) to recall this notice but this request was turned down on 22nd April, 1959, after repeated representations. It is next averred that the petitioners are not sure as to who has sanctioned the renewed proceedings under section 34 (Central Board of Revenue respondent No. 1 or the Commissioner of Income-Tax respondent No. 2) because certified copies of the order sanctioning fresh proceedings under section 34 and of the statements of the relevant Banks under section 20-A of the Act have not been supplied, though demanded by the petitioners; the ground for refusal being that they are confidential documents. The petitioners have then alleged that they cannot expect justice or fair treatment from the respondents with the result that they have no other alternative, but to approach this Court by means of a writ petition.

As the learned Single Judge has finally decided all the other points arising in the case, we are not called upon at this stage to pronounce upon their correctness or otherwise. I, however, cannot help observing that the procedure adopted by Bishan Narain J. cannot be considered satisfactory or even desirable. His decision on those points, unless set aside on appeal, is final; at the same time no Letters Patent Appeal would appear to be competent against the decisions of those points at this stage because the writ petition has not yet been finally disposed off. The position became rather bewildering when the learned counsel for the petitioners expressed his desire to question the

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correctness of the decisions on some of those points. In view, however, of the answer we propose to give to the question referred, it has not been necessary for us to express any considered opinion on the legality of the procedure adopted by the learned Single Judge, but it is apparent that such a procedure is likely at times to lead to an embarrassing and difficult situation before the Full Bench. It certainly places the party, against whom the learned Single Judge expresses his final opinion, in a highly unfair position. This matter may call for expression of a considered opinion on some other occasion. In the present case, however, we do not consider it necessary to pursue it any further.

Since the question referred is a pure question of law, it would hardly be profitable to refer to the written statement filed by the respondents or to the replication put in by the petitioners in reply to the written statement.

The learned counsel for the petitioners, to begin with, read out to us the order of the Appellate Tribunal dated 20th December, 1956, whereby the appeal of the Department was dismissed. It may be mentioned that the Appellate Assistant Commissioner had, by his order on the appeal filed by the assessee, held that the notice, which was served on the assessee on 3rd of April, 1954, was barred by limitation as time had expired on the 31st March, 1954. Following a decision of the Appellate Tribunal the Appellate Assistant Commissioner opined that the service of the notice should under the law have been effected within the prescribed time. So far the decision of the Appellate Tribunal was in favour of the assessee. It appears that the Parliament in 1956 amended section 34 of the Income-tax Act and omitted the time-limit of eight years from clause (a), sub-section (1) of section 34. Taking advantage of this amendment which, according to the Department is retrospective in its operation, the impugned notice was sent under section 34 of the Act to the assessee on 25th of July, 1958. On 8th of August, 1958, the assessee demanded copies of the recorded reasons and the sanction of the Board for the fresh notice, and it is one of the

grievances of the petitioners that those documents have not yet been supplied to them.

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The answer to the question referred really depends on the construction to be placed on section 34(1)(a) and on section 34 (1A) of the Income-Tax Act. It is, in the circumstances, necessary to reproduce section 34 in its entirety so that we may have a complete picture of the scheme of this section:—

[His Lordship read section 34 and continued:]

On behalf of the petitioners it is contended that the notice in question can only fall under section 34(1A). This provision, according to the counsel, specifically deals with the escaped assessment regarding income, profits or gains chargeable to income-tax for any year in respect of which the relevant previous year falls wholly or partly within the period beginning on 1st September, 1939, and ending on 31st March, 1946 and also if, the income, profits or gains, which had so escaped assessment, amount to or are likely to amount to one lakh of rupees or more. This sub-section, according to the argument, is a more specific provision and is therefore, an exception to the more general provision contained in sub-section (1)(a). The second proviso to sub-section (1A) expressly lays down that no such notice, as is contemplated by it, can be issued after the 31st day of March, 1956. Now if the impugned notice falls under sub-section (1A), then indisputably it is out of time and, therefore, wholly unauthorised and liable to be quashed. On behalf of the Department, however, it is very strenuously urged that the notice really falls within the ambit of section 34(1)(a). It is contended that sub-section (1)(a) in terms is broad and comprehensive enough to cover the case in hand. It is further urged that this sub-section deals with special cases where the income, profits or gains of an assessee chargeable to income-tax have escaped assessment and have been under-assessed or assessed at too low a rate etc., by reason of the omission or failure on the part of an assessee to make a return of his income under section 22. The counsel's contention is that sub-section (1)(a) deals with special cases and sub-section

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(1A) deals with more general cases and, therefore, sub-section (1)(a), being an exception, should be held to cover the case. Now these are the two rival contentions which call for scrutiny and determination.

It is unnecessary to notice certain decisions of the Supreme Court and of this Court which were cited on behalf of the petitioners in support of the proposition that the Courts must construe the various provisions of a statute harmoniously in order to ascertain the true legislative intent, for, this proposition is not disputed on behalf of the respondents. As a matter of fact, counsel for both the parties have based their respective submissions on the rule of harmonious construction, and each one of them has tried to find support from this rule for his own point of view. It is a cardinal and elementary rule of statutory construction that if possible, within the ambit of reason, full force, meaning, significance and effect must be accorded to every word, clause, section and provision of a statute, so that no part of it becomes inoperative or superfluous or insignificant; this is desirable in the interest of harmony and consistency and to make the entire statutory scheme effectual. On behalf of the Revenue stress was also laid on the argument that section 34 is procedural and not a taxing provision and, therefore, it should be construed in a way which should make it workable. The counsel for the assessee, on the other hand, contended that the provisions of section 34 in the instant case really determines the question of imposing a tax on the assessee and, therefore, in case of reasonable doubt the construction favourable to the assessee should be placed. It is further contended that the section would be equally workable if the notice in the present case is held to fall under sub-section (1A) and, therefore, barred by time. It is forcibly contended that workability of a taxing provision does not necessarily mean that it should always be so construed as to result in favour of the Revenue.

On behalf of the respondents some decisions of the Supreme Court were referred to, but, in my opinion, they are of no practical assistance in the present case because the question, which arises before us, did not arise there either directly or indirectly.

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An attempt was made by Shri Awasthy to refer to the objects and reasons of the amending Bill in pursuance of which section 34 of the Income-tax Act was amended in 1956. In my opinion, it is hardly permissible to refer to them in the instant case and indeed the learned counsel also failed to convince us as to how those reasons could give us any legitimate and helpful guidance in construing the two sub-sections in question.

After looking at the matter from all aspects put before us by the counsel for the parties, I am clearly of the view that sub-section (1A) of section 34 is the proper sub-section under which the impugned notice should be held to fall. The period which this sub-section has in view for the purposes of assessing escaped income is the period between 1st September, 1939 and 31st March, 1946. Under sub-section 1(a) the only limitation placed is that no notice can be issued for any year prior to the year ending 31st March, 1941; otherwise it is permissible to issue notice for any period subsequent to the date mentioned above. A further limitation is placed by clause (ii) of the first proviso in the form of the minimum income, profits or gains which may be considered to have escaped assessment, etc., being one lakh of rupees or more. For this class of cases there is no limitation, but for those in which the income, profits and gains that have escaped assessment are less than one lakh of rupees a notice must be issued within a period of eight years. In clause (iii) of the first proviso, it is further provided that the Central Board of Revenue where the escaped income is one lakh of rupees or more, and in other cases the Commissioner, if satisfied for reasons to be recorded, may declare a case to be fit for issuing such a notice. Sub-Section (1A), on the other hand, is confined to a very limited sphere. It only covers the period between 1st September, 1939, and 31st March, 1946, which appears to be the period covered by the Second World War. The Legislature seems apparently to be conscious of the provisions of section 34(1)(a) and, the proviso to it, but has nevertheless made a special provision in the form of sub-section (1A) added in 1954. For the special cases so provided by the new provision an outside limit for issuing notices has also

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been fixed from which it is obvious that the Parliament desired the Tax-Authorities to act more promptly in the cases covered by the new provision. Now considering the language and scope of the two sub-sections in question before us, sub-section (1A) would *prima facie* appear to be an exception to the cases covered by sub-section (1)(a), and if this be the correct view, then the notice in question cannot but be held to fall under sub-section (1A).

Mr. Awasthy suggested that sub-section 1(a) covers only those cases where the income has escaped assessment by reason of the omission or failure on the part of an assessee to make a return of his income under section 22 or to disclose fully and truly all material facts necessary for the assessment. It is contended that the present case falls within the letter of this sub-section. According to him, sub-section (1A) is intended to cover only those cases where no default has been committed by the assessee and the escapement from proper assessment is due to other circumstances and one illustration that he has suggested is where the Income-tax Officer under the existing view of the law passes an assessment order which under a later clarification by a higher tribunal like the Supreme Court or the High Court the assessee may be considered to have been under-assessed. Whether of not the case illustrated would fall under sub-section (1A), I feel disinclined, as at present advised, to hold that this is the only kind of case for which the Parliament took pains to modify section 34 by introducing sub-section (1A). For one thing on this hypothesis it is not easy to appreciate the reason for limiting the time, within which the notice must issue, to 31st March, 1956. I have not been able to find any cogent reason for enacting such a provision in 1954 and fixing the outside limit for issuing notices to the end of March, 1956; the learned counsel for the respondents has equally failed to point out any cogent and convincing reason.

The construction to be placed on taxing statutes does not involve any equity. These statutes have to be construed on their own plain meanings keeping in view that in cases of reasonable doubt the taxing statutes should be construed in favour of the citizen

rather than the Revenue, for, imposition of tax must, according to our jurisprudence, be justified by a valid piece of legislation. Of course it is not permissible either to stretch the language unreasonably or to construe it in a needlessly narrow manner. A proper balance must be struck between the essential needs and desires for revenue of a modern welfare State on the one side, and desirability that the citizen must know clearly his liability before he is called upon to contribute towards it on the other.

The argument of a workable construction of the statute in question advanced on behalf of the Revenue would appear to me really to emphasize the policy of law to ensure collection of taxes so that, if possible, taxing statutes should be so interpreted as to accomplish the result. On this premises statutes establishing procedure for collection of taxes are sometimes given liberal construction, as also legislation intended to prevent frauds upon the Revenue. But this argument does not appear to me to be of much assistance to the respondents in the case in hand. Section 34 in my view does not merely lay down a procedure for collecting a tax already imposed. In so far as the case in hand is concerned, this provision also deals with the determination of the assessees' liability to be taxed with the result that unless a case reasonably falls within its purview, the assessees cannot be lawfully taxed.

In view of the above discussion, in my opinion, the impunged notice, dated the 25th July, 1958, should be held to be barred by time and I would answer the question referred accordingly. The case will now go back to a learned Single Judge for disposing of the writ petition in accordance with law and in the light of the answer just given.

B.R.T.

REVISIONAL CIVIL

Before Prem Chand Pandit, J.

MESSRS GUJRALS Co.,—*Petitioner.*

versus

MESSRS M. A. MORRIS,—*Respondent.*

Civil Revision No. 627-D of 1957

1961

Sept. 13th

Stamp Act (I of 1899)—Section 3(c)—Foreign award directing a peron in India to pay a certain amount to a