

CIVIL MISCELLANEOUS

*Before, S. K. Kapur, J.*KANWAL TEJ SINGH,—*Petitioner.**versus*THE INCOME-TAX OFFICER, A-II DISTRICT AND ANOTHER
Respondents.

Civil Writ No. 14-D of 1965.

1965
February, 22nd. *Income-tax Act (XI of 1922)—Ss. 23(2), 28(1)(c) and 34(3)—
Limitation of four years for making assessment—When does not
apply.*

Held, that the Income-tax Officer is entitled to proceed with making enquiries and issuing notice under section 23(2) and he is to consider the question of limitation at the time of making the assessment order. If at the time of making the order, he finds that the assessee had concealed the particulars of his income or deliberately furnished inaccurate particulars of such income, then he would be entitled to make the assessment order without any bar of limitation under section 34(3) of the Act. If, on the other hand, the Income-tax Officer comes to the conclusion that there had been no such concealment as would attract the provisions of section 28(1)(c) he would not be entitled to make an assessment order after the expiry of 4 years from the end of the year in which the income, profits or gains were first assessable. Again where an assessment order has been made after the expiry of four years, it would be open to the assessee to establish in appeal, revision or reference as the case may be that since no delinquency contemplated by section 28(1)(c) had been established, the assessment order, made beyond four years, was without jurisdiction.

Held, that it is not quite correct to say that section 34(3) of the Income-tax Act, 1922, gives the power to the Income-tax Officer to extend the period of limitation at his sweet will and pleasure. Section 34(3) lays down a condition for the exercise of his jurisdiction if four years have expired and that condition is the applicability of section 28(1)(c). The legislature has in its wisdom decided that in cases of concealment there should be no period of limitation and the Courts cannot question the advisability of such decision.

Held, that to enable the Income-tax Officer to make assessment after the expiry of four years, it is not the requirement of section 34(3) that section 28(1)(c) should in terms apply. All that is necessary is that the assessment must be in a case where the assessee has either concealed his income or deliberately furnished inaccurate particulars of such income.

Held, that section 297(2)(g) of the Income-tax Act, 1961, does not affect the question of limitation under section 34(3) of the Indian Income-tax Act, 1922.

Petition under Article 226 of the Constitution of India praying that this Hon'ble Court may be pleased to grant :—

- (i) *Writ, order or direction in the nature of Mandamus or any other appropriate writ quashing the aforesaid notices dated 28th April, 1964, 2nd October, 1964 and 24th December, 1964, under section 23(2) of the Act.*
- (ii) *Writ, order or direction in the nature of Prohibition or any other appropriate writ prohibiting respondents and their successors in office from taking any steps or proceedings in pursuance to the said notices dated 28th April, 1964, 2nd October, 1964, and 24th December, 1964, or from making any assessment in response thereto.*
- (iii) *Writ, order or direction in the nature of mandamus or certiorari directing the refund of the aforesaid amount of tax of Rs. 18,825.37 nP.*
- (iv) *Any other appropriate writ, order, or, direction at this Hon'ble Court may deem fit and proper.*
- (v) *Cost of the petition may also be awarded.*

S. K. AIYER AND B. N. KIRPAL, ADVOCATES, for the Petitioner.

H. HARDY, ADVOCATE, for the Respondents.

ORDER

This petition under Article 226 of the Constitution has been filed by the petitioner with a prayer *inter alia* for quashing the notices, dated 28th April, 1964, 2nd October, 1964, and 24th December, 1964, issued to the petitioner under section 23(2) of the Indian Income-tax Act, 1922. The petitioner has also prayed for a writ in the nature of prohibition prohibiting the respondents from taking any steps in pursuance of the aforesaid notices or making any orders for assessment in pursuance thereof.

On 3rd of September, 1951, the petitioner's mother filed a voluntary return for the assessment year 1948-49, with the respondents. In the said return, she is alleged to

Kapur. J.

Kanwal, Tej
Singh
v.
The Income-tax
Officer, A-II
District,
and another

Kapur, J.

have indicated that she was a partner in a firm with annas 0-7-0 share. A notice under section 23(2) of the Income-tax Act, 1922 was issued on the 20th of December, 1951, on the basis of the aforesaid return and it is alleged that the said notice, which required the production of certain account-books, was complied with by the petitioner's mother. On that day there is a note in the order sheet pointing out that a credit of Rs. 50,000 appears in the books of the firm and notice under section 34 of the Act should be issued. No notice, however, was thereafter issued for about 3 years. On 11th November, 1954, for the first time a notice under section 34(1) (a) was issued to the petitioner's mother, who filed a return declaring net loss of Rs. 952. In part 'D' of the return she stated that she had borrowed Rs. 50,000 from one Manohar Singh of Jaipur and that the said amount did not belong to her. The Income-tax Officer overruled the objection about the validity of the said notice under section 34(1)(a). Assessment in pursuance of the aforesaid notice was completed on the 24th of March, 1955. Appeal to the Appellate Assistant Commissioner and the Tribunal having failed, the matter came up to this Court on a reference under section 66(1) of the Act. This Court held that the return filed by the petitioner's mother was a valid return and since the same remained undisposed of, initiation of re-assessment proceedings by a notice under section 34(1)(a) was without jurisdiction. The petitioner had in the meantime paid the amount of Rs. 18,825.37 nP. in pursuance of the assessment made under section 23 read with section 34(1)(a). Nothing happened till the 28th April, 1964, when the respondent Income-tax Officer issued a notice, dated the 28th April, 1964, under section 23(2) requiring the petitioner as legal heir of his mother (since deceased) to appear before him on the 6th of May, 1964. The petitioner wrote back to the Income-tax Officer pointing out that no proceedings could be taken in pursuance of the original return, dated the 3rd September, 1951, as the statutory limit of 4 years prescribed under section 34(3) of the said Act had expired. The respondent Income-tax Officer, however, issued another notice on the 2nd October, 1964 and then a third notice, dated the 24th December, 1964, under section 23(2) of the Act. By last-mentioned notice the petitioner was called upon to appear before the Income-tax Officer on 14th January, 1965. The petitioner then filed a writ petition which was admitted on the 18th January, 1965.

Mr. S. K. Aiyer, learned counsel for the petitioner submits that the time limit for making an order for assessment is 4 years from the end of the year in which the income, profits and gains were first assessable. According to the learned counsel the assessment year in question being 1948-49 (previous year being financial year 1947-48), no assessment could be made after March, 1953. He places strong reliance on a judgment of Allahabad High Court in *Ram Bilas-Kidar Nath and others v. Income-tax Officer* (1).

Kanwal Tej
Singh
v.
The Income-tax
Officer, A-II
District,
and another

Kapur, J.

Mr. H. D. Hardy, learned counsel for the respondents, on the other hand submits that there is no time limit for making the assessment as the assessee had concealed the particulars of his income and had deliberately furnished incorrect particulars of such income. Mr. Hardy further submits that in any case there is no bar in the Act to the Income-tax Officer issuing notice under section 23(2) and the bar arises only at the time of making an assessment. According to the learned counsel if at the time of making assessment the Income-tax Officer finds that the assessee had concealed the particulars of his income or deliberately furnished inaccurate particulars of such income, then the Income-tax Officer would be entitled to make the assessment without any limitation as to time for it would then be a case of an assessment under section 23 to which clause (c) of sub-section (1) of section 28 applies, as contemplated by section 34(3) of the Act. I am in agreement with the submission of the learned counsel for the respondents and in my view the Income-tax Officer is competent to make an order for assessment without any bar of limitation if he finds, at the time of making the assessment, that the assessee had concealed the particulars of his income or deliberately furnished inaccurate particulars of such income. The position would, therefore, be that the Income-tax Officer, is entitled to proceed with making enquiries and issuing notice under section 23(2) and he is to consider the question of limitation at the time of making the assessment order. If at the time of making the order, he finds that the assessee had concealed the particulars of his income or deliberately furnished inaccurate particulars of such income, then he would be entitled to make the assessment order without any bar of limitation under

(1) 54 I.T.R. 11.

Kanwal Tej
Singh
v.
The Income-tax
Officer, A-II
District,
and another

Kapur, J.

section 34(3) of the Act. If, on the other hand, the Income-tax Officer comes to the conclusion that there had been no such concealment as would attract the provisions of section 28(1)(c) he would not be entitled to make an assessment order after the expiry of 4 years from the end of the year in which the income, profits or gains were first assessable. Again where an assessment order has been made after the expiry of four years, it would be open to the assessee to establish in appeal, revision or reference as the case may be that since no delinquency contemplated by section 28(1)(c) had been established, the assessment order, made beyond four years, was without jurisdiction.

I most respectfully disagree with the view taken by S. C. Manchanda J., in the *Ram Bilas-Kidar Nath's case* mentioned above to the extent it takes a view contrary to what I have said above. In my humble opinion it is not quite correct to say, as observed by the learned Judge that section 34(3) gives the power to the Income-tax Officer to extend the period of limitation at his sweet will and pleasure. Section 34(3) lays down a condition for the exercise of his jurisdiction if four years have expired and that condition is the applicability of section 28(1)(c). The legislature has in its wisdom decided that in cases of concealment there should be no period of limitation and the Courts cannot question the advisability of such decision.

Another argument mentioned at the bar was that in view of section 297(2)(g) of the Income-tax Act, 1961, proceeding under section 28 cannot be taken with respect to the assessment year in question. Section 297(2)(g) provides that in a case where the assessment in respect of the year ending on 31st day of March, 1962, or any earlier year is completed on or after the 1st day of April, 1962, the penalty proceedings have to be initiated and penalty imposed under the 1961 Act. In the submission of the learned counsel, section 28(1)(c) is not applicable to this case because the assessment order has not yet been made and consequently the four years' limitation will apply. I do not agree. To enable the Income-tax Officer to make assessment after the expiry of four years, it is not the requirement of section 34(3) that section 28(1)(c) should in terms apply. All that is necessary is that the assessment must be in a case where the assessee has either concealed his income or deliberately furnished inaccurate

particulars of such income. Coming now to the question of refund of Rs. 18,825.37 nP. nothing has been said in the petition as to whether the Income-tax Officer has been approached for the refund of the amount or not. In my opinion it would not be appropriate in this case to issue a writ directing the refund of money unless the petitioner has first approached the authorities concerned for the refund. In the circumstances the petition stands dismissed but there will be no order as to costs.

Kanwal Tej
Singh
v.
The Income-tax
Officer, A-II
District,
and another
Kapur, J.

B.R.T.

APPELLATE CIVIL

Before Daya Krishan Mahajan and S. K. Kapur, JJ.

V. N. SARIN,—*Appellant.*

versus

MAJOR AJIT KUMAR POPLAI AND ANOTHER,—*Respondents.*

Second Appeal from the Order No. 235-D of 1963.

Delhi Rent Control Act. (LIX of 1958)—S. 14(6)—Partition of coparcenary property among the coparceners—Whether amounts to acquisition by transfer' by the co-parcener to whose share it falls—Such comparcener—Whether landlord qua the tenant.

1965
March, 1st.

Held, that the partition of coparcenary property among the coparceners does not amount to transfer of property or 'acquisition by transfer' within the meaning of section 14(6) of the Delhi Rent Control Act, 1958. In coparcenary property each one of the coparceners is an owner of the entire property. By partition, he does not acquire any new title to the property, but what he gets is a right to enjoy his share of the property in severalty. In other words, a joint tenancy is put an end to and either a tenancy in common is created or the joint tenants have a right in severalty to enjoy the property that falls to the share of each one of them. There is no question of a transfer of title. The joint owner was the owner of the property before partition and he remains the owner of the property after partition. The change is only brought about in his status. Therefore, it cannot be said that in fact, there is a transfer of property by partition. Moreover, even if it be assumed that partition amounts to a transfer, the requirements of section 14(6) are that the property is acquired by transfer and mere transfer will be of no consequence. Therefore, a further question arises whether a joint owner acquires property assuming that partition amounts to a