Dr. Surmukh Singh Uppal Vs Commissioner of Income Tax

Income-tax Reference No. 1 of 1976

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Sept. 30, 1982

Acts Referred:
Income Tax Act, 1922 â€" Section 34, 34(1), 4(1), 4A

Citation: (1983) 144 ITR 191

Hon'ble Judges: Surinder Singh, J; Prem Chand Jain, J

Bench: Division Bench

Advocate: G.C. Sharma, E.D. Helms and S.S. Mahajan, for the Appellant; D.N. Awasthi and B.K. Jhingan, for the Respondent

Judgement

Prem Chand Jain, J.
The assessee, late Dr. Surmukh Singh Uppal, son of late S. Narain Singh Uppal, was originally assessed to tax for the

assessment year 1946-47, on a total income of Rs. 31,444. Later on, it came to the notice of the ITO that during the relevant accounting period,

the assessee had made huge investments by way of fixed deposits in banks, purchase of agricultural land, purchase of house properly, etc., which

was not disclosed at the time of the earlier assessment. Action u/s 34 of the Indian I.T. Act, 1922 (hereinafter referred to as ""the Act"") was taken

by the ITO. In the course of the reassessment proceedings, the ITO required the assessee to explain and prove the nature and source of various

deposits and investments made by the assessee during the relevant accounting period. After examining the evidence produced by the assessee, the

ITO included a sum of Rs. 3,58,314 as income from undisclosed sources. The ITO in the reassessment proceedings held the status of the assessee

as ""Resident but not ordinarily resident"", as against the status of ""non-resident"" assigned in the original assessment proceedings and further included

a sum of Rs. 40,000 which was brought by the assessee at the time of his arrival in India from Africa in January, 1946, under the provisions of

Section 4(1)(b)(iii) of the Act. The ITO completed the assessment on a total income of Rs. 4,17,464.

2. Dissatisfied with the order of the ITO, the assessee preferred an appeal. One of the points agitated was that the status of the assessee could not

be changed from ""non-resident"" to ""resident but not ordinarily resident"", The AAC on a consideration of the matter on this point, found that the

status of the assessee could not be changed from ""nonresident ""to"" resident but not ordinarily resident"". Consequently, the addition of Rs. 40,000

was deleted. Aggrieved by the aforesaid finding of the AAC, the Department filed an appeal before the Income Tax Appellate Tribunal, On review

of the whole matter, the Tribunal held that the correct residential status of the assessee was ""resident but not ordinarily resident"", with the result that

the addition of an amount of Rs. 40,000 was restored.

3. Aggrieved with the view taken by the Tribunal, the assessee filed an application u/s 256(1) of the I.T. Act, 1961, requiring the Tribunal to refer

to the High Court certain questions of law, which arise out of its order. Finding merit in the application, the Tribunal has referred the following

questions for our opinion :

(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the residential status of the assessee u/s

4A of the Indian Income Tax Act, 1922, was ""resident but not ordinarily resident"" ?

(2) Whether, on the facts and in the circumstances of the case, the finding of the Tribunal that the sum of Rs. 40,000 brought by the assessee from

East Africa in January, 1946, was assessable in the assessment year 1946-47 u/s 4(1)(b)(iii) of the Indian Income Tax Act, 1922, is legally

correct?

4. It was contended by Mr. Sharma, learned counsel for the assesses, that proceedings u/s 34 of the Act could be initiated only if there was

escapement of income, that in the instant case the provisions of Section 34 are not attracted as there is no escapement of income ; that for finding

out the status of an assessee the provisions of Section 34 could not be pressed into service ; that in the reassessment proceedings what is first

sought to be determined is the status of an assessee; that there has been no failure on the part of the assessee to disclose any material facts as a

result of which there may have been an escapement of income and that in the instant case, the ITO had no jurisdiction to initiate reassessment

proceedings against the assessee. According to the learned counsel, what was required of the assessee was to disclose material facts and it was for

the ITO to draw an inference on the basis of those material facts and if a wrong inference was drawn by the ITO, then no proceedings could be

initiated u/s 34 of the Act.

5. On the other hand, Mr. Awasthy, learned counsel for the Revenue, very forcefully contended that the assessee had intentionally withheld the

material facts and had not disclosed them fully and truly inasmuch as he did not correctly give his status as ""resident but not ordinarily resident"" ;

that it was within the knowledge of the assessee that he was not a ""non-resident"", that under the law, the assessee was required to state correctly,

whether he was a resident and ordinarily resident, or resident but not ordinarily resident, or non-resident, that intentionally with a view to escape

assessment he wrongly described himself as nonresident, and that, in the circumstances of the case, the ITO had jurisdiction to initiate proceedings

u/s 34 of the Act.

6. After giving my thoughtful consideration to the entire matter, I find sufficient merit in the contention of the learned counsel for the Revenue. The

original assessment in the case of the assessee for 1946-47, relevant to the accounting period ending on 31st March, 1946, was made on a total

income of Rs. 31,444. Later on, it came to the notice of the ITO that during the relevant period the assessee had made huge investments by way of

fixed deposits in banks, purchase of agricultural land, purchase of house property, etc., which were not disclosed at the time of the original

assessment. In other words, as the assessee had failed to disclose fully and truly all material facts, action u/s 34 of the Act, after obtaining the

approval of the Commissioner, was initiated. As to what is the nature or duty of an assessee to disclose fully and truly all material facts, we have

the judgment of the Supreme Court in Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, , wherein

the following observations were made (p. 200):

There can be no doubt that the duty of disclosing all the primary facts relevant to the decision of the question before the assessing authority lies on

the assessee. To meet the possible contention that when some account books or other evidence has been produced, there is no duty on the

assessee to disclose further facts, which on due diligence, the Income Tax Officer might have discovered, the Legislature has put in the

Explanation, which has been set out above. In view of the Explanation, it will not be open to the assessee to say, for example--"I have produced

the account books and the documents : You, the assessing officer, examine them, and find out the facts necessary for your purpose : My duty is

done with disclosing these account books and the documents". His omission to bring to the assessing authority"s attention those particular items in

the account books, or the particular portions of the documents, which are relevant, will amount to "omission to disclose fully and truly all material

facts necessary for his assessment". Nor will he be able to contend successfully that by disclosing certain evidence, he should be deemed to have

disclosed other evidence, which might have been discovered by the assessing authority if he had pursued investigation on the basis of what has

been disclosed. The Explanation to the section gives a quietus to all such contentions and the position remains that so far as primary facts are

concerned, it is the assessee''s duty to disclose all of them--including particular entries in account books, particular portions of documents, and

documents and other evidence which could have been discovered by the assessing authority, from the documents and other evidence disclosed.....

The position, therefore, is that if there were in fact some reasonable grounds for thinking that there had been any non-disclosure as regards any

primary fact, which could have a material bearing on the question of ''underassessment'', that would be sufficient to give jurisdiction to the Income

Tax Officer to issue the notices u/s 34. Whether these grounds were adequate or not for arriving at the conclusion that there was a nondisclosure

of material facts would not be open for the court''s investigation. In other words, all that is necessary to give this special jurisdiction is that the

Income Tax Officer had when he assumed jurisdiction some prima facie grounds for thinking that there had been some non-disclosure of material

facts.

Clearly, it is the duty of the assessee who wants the court to hold that jurisdiction was lacking, to establish that the Income Tax Officer had no

material at all before him for believing that there had been such non-disclosure.

7. Keeping in view the aforesaid observations, if the facts of the present case are seen, then it becomes crystal clear that the assessee did not

disclose at the time of the original assessment that he had made huge investments in banks and in the purchase of other assets. It is true that the

assessee came to India in January, 1946, from Africa and his affairs were being looked after by his authorised agent and father, late S, Narain

Singh, At the same time, it was the duty of the assessee to bring to the notice of the ITO the various fixed deposits and other investments which

were made in the name of the assessee during the relevant accounting period. If correct facts had been disclosed at the time of the original

assessment, the ITO would have certainly enquired into the nature and source of the various deposits and investments made by the assessee during

the relevant accounting period. The assessee had purchased a couple of houses during the years 1944-45. Soon after the arrival in February,

1946, he had purchased another property known as ''''Rani Ki Haveli'''' jointly with his father and brother. He also purchased agricultural land

immediately after his arrival in India. The assessee had already taken retirement from the service of the Kenya Govt. on medical grounds and had

no intention of going back to that country. Thus, there was no justification on the part of the assessee to have disclosed his residential status as a

non-resident. If all these facts had been disclosed, then certainly the ITO would have even scrutinised the status of the petitioner. When true facts

were not disclosed, there was no occasion for the ITO to disbelieve the assertion of the assessee about his status as non-resident. Moreover, the

description of status is a material fact, because if the same is not truly disclosed, then it can result in escapement of income. The real test is whether

there has been escapement of income as a result of non-disclosure of a material fact. If so, then action u/s 34 of the Act is protected. There is a

case of the Supreme Court in Income Tax Officer, A-ward, Lucknow Vs. Bachulal Kapoor, , wherein the ITO had initiated proceedings u/s 34 of

the Act on the ground that the assessment on the saying of the assessee had been made on an individual, when it should have been made as the

income of an HUF. On challenge, the action of the ITO was upheld. The relevant observations read as under (p. 79):

In the counter-affidavit filed by the Income Tax Officer in the High Court, it was stated that he had reason to believe, in consequence of

information in his possession, that income, profits or gains chargeable to Income Tax had escaped assessment. His information was that,

notwithstanding the compromise decree, the members of the family were living together, had joint mess and the business was run by the

respondent. In short, the case of the Revenue was that the compromise was a make-believe one and the family in fact continued to be a joint

Hindu family. If the case of the Revenue was true--on which we do not express any opinion--and the fact of the continuance of the joint Hindu

family was kept back from the knowledge of the Income Tax Officer, it would be a clear case of the said family escaping assessment during the

relevant year. If that be so, Section 34(1) would immediately be attracted and the notice issued would be good.

8. Reference may also be made to a recent judgment of the Calcutta High Court in Rajinder Mohan Bhandari Vs. Income Tax Officer and Others,

, wherein it has been observed thus (p. 409):

Counsel for the assessee contended that, on the facts, it cannot be said that the income has escaped assessment. It was argued that income had

been assessed in the hands of the Hindu undivided family. The selfsame income is being sought to be assessed in the hands of the individual.

Therefore, it was argued that it could not be urged that income had escaped assessment in terms of Clause (a) of Section 147 of the Income Tax

Act. It was secondly urged that escapement, if there has been any, that was by reason of not the omission or failure on the part of the assessee to

make a return in this case or to disclose fully or truly the material or relevant facts. Escapement, if any, was due to the failure of the Income Tax

Officer to determine the correct status at the time of assessment. It was submitted that the status was a factor which might be and should have been

determined in the assessment proceedings. In aid of this submission, reliance had been placed on the decisions in the case of Gordon Woodroffe

and Co. Ltd., London Vs. Income Tax Officer, Madras., in the case of Estate of the Late A.M.K.M. Karuppan Chettiar Vs. Commissioner of

Income Tax, Madras, , in the case of Sheo Nath Singh Vs. Appellate Assistant Commissioner of Income Tax, Calcutta, , in the case of Mahabir

Prasad Poddar Vs. Income Tax Officer, ""B"" Ward and Others, and in the case of Anil Kumar Roy Chowdhury and Others Vs. Commissioner of

Income Tax, West Bengal-II, . I am unable to accept this contention. If the individual income really belonged to the individual, the income of that

individual has escaped assessment and furthermore that individual has failed to file any return which it was his duty to file. The fact that the income

might have been assessed in the hands of a different entity about whom more information is now available does not detract from the decision that

the income has escaped assessment, furthermore, as it is evident that the income if it properly belonged to any individual would have been

subjected to tax, portion of which might have earned the benefit of exemption in the case of Hindu undivided family because the exemption limits of

a Hindu undivided family are a little higher for the purpose, if the income has been assessed wrongly at the hands of an assessable unit to which it

did not belong, that does not prevent from properly assessing in the hands of a unit to which it belonged by process of reopening u/s 148 of the

Income Tax Act, 1961.

9. Mr. Sharma, learned counsel for the assessee, had invited our attention to the judgments in Dwarka Dass and Brothers Vs. Income Tax Officer

and Another, , Sujir Ganesh Nayak and Co. Vs. Income Tax Officer, A Ward, Quilon, , R. DALMIA Vs. Income Tax OFFICER, NEW

DELHI, AND ANOTHER., , Gordon Woodroffe and Co. Ltd., London Vs. Income Tax Officer, Madras., In our view, all these judgments have

no applicability to the facts of the case in hand and are distinguishable. There is no similarity of the facts of these cases with the facts of the case in

hand.

10. In this view of the matter, on the facts found and in the circumstances of the case, there can be no escape from the conclusion that the assessee

failed to disclose fully and truly material facts at the time of the original assessment; that the case in hand is not one of drawing inference only on the

basis of all the facts fully and truly disclosed by the assessee and that the question of status could certainly be determined in reassessment

proceedings if on account of the non-disclosure of the facts fully and truly, there has been escapement of income.

11. This brings us to question No. 2, In the view we have taken on question No. 1, the answer to this question has to be against the assessee as in

the event of his being a ""resident but not ordinarily resident"" the sum of Rs. 40,000 brought by him from East Africa in January, 1946 was

assessable in the assessment year 1946-47. The Tribunal has dealt with this matter thus :

Now, in the present case, the assessee did not disclose at the time of original assessment, that he had made huge investments in banks and in the

purchase of other assets. It is true that the assessee came to India in January, 1946, from Africa and his affairs were being looked after by his

authorised agent and father, late Sardar Narain Singh. At the same time, it was the duty of the assessee to bring to the notice of the Income Tax

Officer about the various fixed deposits and other investments which were made in the name of the assessee during the relevant accounting period.

Further, we find that the assessee came to India in January, 1946, while his original assessment was completed by the Income Tax Officer, Special

Circle, on 16th December, 1948, i.e., after a period of nearly three years of the arrival of the assessee in India. Even at this stage, when the

assessee had already taken retirement from the service of the Kenya Government on medical grounds and had no intention of going back to that

country, the residential status was disclosed as "non-resident". If correct facts had been disclosed at the time of the original assessment, the

Income Tax Officer would have certainly enquired into the nature and source of the various deposits and investment made by the assessee during

the relevant accounting period and would have also examined the question of the chargeability of tax of a sum of Rs. 40,000 brought by the

assessee to India in January, 1946.

12. The aforesaid observations of the Tribunal justify the conclusion of the Tribunal that a sum of Rs. 40,000 was assessable.

13. At this stage another argument of Mr. Sharina may also be noticed that any event or material not existing up to the date of previous assessment

could not be taken into consideration at the time of reassessment proceedings and that as certain events and material which came into existence

after the closing of the accounting period, had been taken into consideration, the order of reassessment was bad. This contention of the learned

counsel is liable to be rejected on the short ground that the conclusion of the Tribunal has also been arrived at on the basis of the events existing

during the accounting period, as is evident from the following observations :

We find from the records that even if facts at the close of the accounting period are considered as has been pleaded by the learned counsel of the

assessee, it was apparent that the assessee had no intention of leaving India after arriving in January, 1946. The Income Tax Officer found that the

assessee had already purchased a couple of residential houses during the year 1944-45, at Majitha Road, Amritsar, one in the name of his son and

another in his own name. The purchase of the house property clearly indicated the assessee"s intention to stay in India. Then, soon after the arrival,

i.e., in February, 1946, he purchased another property known as ""Rani-Ki-Haveli"" jointly with his father and brother. He also purchased

agricultural land immediately after his arrival in India. Before the assessee came to India himself, his sons had already reached India and one of

them Shri Bhupal Singh had already set up business known as Chheharta Button Factory in partnership with his cousins. The assessee had

liquidated the bulk of his investments in Africa and brought cash with him. All these facts clearly indicated that after arriving in India in January,

1946, the assessee had no intention to return and in fact he did not go back to Africa. Thus, the Income Tax Officer has given detailed reasons for

coming to the conclusion that the residential status of the assessee was "resident but not ordinarily resident" in the reassessment proceedings even

on the basis of the facts as existed at the close of the accounting period.

14. In view of the aforesaid discussion, both the questions are answered in favour of the Revenue and against the assessee. In the circumstances of

the case, we make no order as to costs.

Surinder Singh, J.

15. I agree.