

(1965) 12 MAD CK 0024

Madras High Court

Case No: Tax Case No. 175 of 1963 (Ref. No. 49 of 1963)

Hussain Bhai and Others

APPELLANT

Vs

Commissioner of Income Tax,
Madras

RESPONDENT

Date of Decision: Dec. 1, 1965

Acts Referred:

- Constitution of India, 1950 - Article 226
- Income Tax Act, 1922 - Section 24(1), 34(1), 43(1)

Citation: AIR 1967 Mad 38 : (1966) 62 ITR 456

Hon'ble Judges: Veeraswami, J; Kunhamed Kutti, J

Bench: Division Bench

Judgement

This Judgment has been overruled by : Hussain Bhai and Others Vs. Commissioner of Income Tax, Madras, AIR 1971 SC 1256 :

(1971) 80 ITR 477 : (1971) 2 SCC 17 : (1971) SCR 390 Supp

Veeraswami, J.

This reference raises question of limitation in respect of action taken by the Revenue under S. 34(1)(a) of the Income Tax

Act 1922. The assessment for the assessment year 1948-49 was originally made on 30-9-1948, on a total income of one A.B. Fazallali. He died

on 1-8-1954, leaving his widow and three sons as his heirs and legal representatives. There was a deposit of Rs. 40,000 in the Bank of India,

Palanpur, North Gujarat by the assessee which was investigated by the Revenue. This amount had not been included in the return. On 9-2-1957,

notice under S. 34(1)(a) of the Act was issued to one Hussain Bhai Abdullabhai, a son by the first wife of Fazallali. He filed a return on 9-3-1957

showing this amount in the D section. The validity of this notice was challenged in this court by W.P. 231 of 1957 under Art. 226 of the

Constitution. Since no stay of further proceedings in assessment was granted, the assessment was completed on 15-3-1957, under S. 34(1)(a).

On 15-3-1958, the writ petition was dismissed on the ground that the petitioner had an alternative remedy. In the meantime he had filed an appeal

on 15-4-1957 which was allowed on 24-4-1958 on the ground that the notice issued under S. 34(1)(a) was invalid because it had been served

only on one of the four legal representatives of the deceased assessee. Thereafter on 9-7-1958 a fresh notice under S. 24(1)(a) was served on all

his legal representatives and the assessment was completed on 14-12-1960. The assessing officer took the view that a sum of Rs. 40,000 was

chargeable to tax.

(2) It may be seen that the fresh notice issued under S. 43(1)(a) was beyond eight years from the assessment years 1948-49. The appellate

Assistant Commissioner on appeal by the legal representatives held that the notice was out of time and allowed the appeal. The department took

the matter before the Tribunal which was of the view that the notice was in time under the second proviso to sub-section(3) of S. 34. At the

instance of the legal representatives, this reference is made to us under S. 66(1) of the question:

Whether the present proceedings initiated u/s 34(1)(a) of the act against the assesseees are valid in law?"" We are clearly of the opinion that the

second proviso to S. 34(3) will be inapplicable. There was no direction or finding in the order of the Appellate Assistant Commissioner D/- 24-4-

58 as would attract that proviso. A finding for the purpose of that proviso should be one on a point at issue in the assessment proceedings or in the

appeal: Income Tax Officer, A-Ward, Sitapur Vs. Murlidhar Bhagwandas, Lakhimpur Kheri, . In that sense there was no finding given by the

Appellate Assistant Commissioner in his order dated 24-4-1958. The second proviso being put aside, fresh notice learned counsel for the

assesseees contends that fresh notice served under S. 34(1)(a) beyond eight years of the assessment order is barred by time. That will be so but for

any other saving provision.

(3) For the Revenue the contention is that Section 4 of Central Act I of 1959 saved the fresh notice from the bar of limitation. On the other hand,

for the assesseees it is said that this proviso does not have that effect. We have to solve this controversy on a construction of S. 4. That section

reads :-

No notice issued under clause (a) of sub section(1) of section 34 of the principle Act at any time before the commencement of this Act and no

assessment, re-assessment or settlement made or other proceeding taken in consequence of such notice shall be called in question in any court,

tribunal or other authority merely on the ground that at the time the notice was issued or at that time the assessment or reassessment was made, the

time within which such notice should have been issued or the assessment or re-assessment should have been made under that section as in force

before its amendment by clause (a) of S. 18 of the Finance Act, 1956 had expired".

Prior to 1956, Section 34(1)(a) as it stood from 1948 provided for limitation of eight years computed from the assessment year in question for

taking action thereunder. By the Finance Act 1958, the time limit was removed from the main provision of Section 34(1)(a) but reiterated in the

proviso thereto with this exception that where the income that escaped was one lakh and more there would be no limitation. Section 4 of Act 1 of

1959 saves not merely a notice issued under S. 34(1)(a) but also an assessment and re-assessment or settlement made or other proceeding taken

in consequence of such notice. The saving of those things is limited to the bar of limitation and does not touch upon the other factors relating to

notices, assessment or re-assessments. The first part of the section apparently covers any notice issued before the commencement of the Act, that

is to say, before 12-3-1959 and "such notice" in the latter part of the section must obviously relate the notices prior to 12-3-1959. Such notices,

as section says, shall not be questioned in any court of law on the ground that the time within which they should have been issued under S. 34(I)(a)

as in force before its amendment by clause (a) of S. 18 of the Finance Act 1956 had expired.

(4) But it is contended for the assesseees that the latter part of the section confined the saving only to notices which were issued prior to the Finance

Act 1956 and it will not cover notice issued, or in this case, subsequent to that date, We are unable to accept this construction of the section. It

seems to us that to adopt that construction will involve inconsistency between the earlier and latter parts of the section. When the section begins by

making reference to notices issued before the commencement of the Act, that is to say, 12-3-1959 and when the latter part of the section says that

such notices shall not be called in question, there is no reason to think that the latter part confines the saying only to notices issued prior to 12-3-

1956. The Finance Act 1956 in effect made no change to the period of limitation applicable to a notice u/s 34(1)(a) in cases where the escapement

of income fell below one lakh of rupees. Even after the Finance Act, 1956 the period of limitation continued to be eight years, though this was

covered by the proviso to Section 34(1)(a). We are therefore of the view that the section covers also notices issued between 1956 and 1959.

(5) It is settled by the majority judgment in S.C. Prashar, Income Tax Officer, Market Ward, Bombay and Another Vs. Vasantsen Dwarkadas

and Others, , that Sec. 4 of Act I of 1959 has retrospective effect. As to the scope of the section in relation to the period between 1956 and

1959, the majority opinion in that case supports the view we have taken of the section Das J. observed:

It further appears to me that both sub section(4) of Section 34 and Section 4 of the Amending Act of 1959 are meant to deal with only those

cases where action is taken under S. 34 as amended in 1956, but where the eight years" time limit had already expired and the original

assessment(if any) had become final prior to the amendment of Section 34 in 1956"". The effect of this observation appears to be, as we

understand it, that Sec. 4 validated notices issued between 1956 and 1959 and did not cover notices issued prior to 1956. That is the effect of His

Lordship"s observation, is made clear from the following observations:

the last part of Section 4 shows in my opinion its true intent, namely that what is intended is to validate post-1956 action, that is action taken u/s

34 as amended by Section 18 of the Finance Act 1956"".

Kapur J. was of a similar view;

The notices to which Section 4 applies and which are validated are those that were issued between the periods mentioned in that Act i.e. before the Amending Act 1959 and after the Finance Act 1956 in spite of the expiry of the eight years period before the amendment by the Finance Act of 1956"".

The view of Hidayatullah J. is stated thus:-

By the validating Section 4 of the 1959 Act, any notice issued before 1959 could not be challenged even if under the 1948 Act, they would be out of time"".

It follows that Section 4 of Act I of 1959 saves the notice under S. 34(1)(a) issued on 9-7-1958 from the bar of limitation.

(6) the question referred to us is answered against the assesseees with costs. Counsel"s fee Rs. 250/-.

(7) Answer accordingly.