
V.D.M.R.M.M.R.M. Muthiah Chettiar Vs Commissioner of Income Tax, Madras

Civil Appeal No"s. 1457-1459 of 1968

Court: Supreme Court of India

Date of Decision: Feb. 14, 1969

Acts Referred:

Income Tax Act, 1922 " Section 16(3), 2(15), 34, 34(1), 4(1)

Citation: AIR 1970 SC 10 : (1969) 74 ITR 183 : (1969) 1 SCC 675 : (1969) 3 SCR 715

Hon'ble Judges: V. Ramaswami, J; J. C. Shah, J; A. N. Grover, J

Bench: Full Bench

Advocate: M.C. Chagla and T.A.Ramachandran, for the Appellant; M.C. Chagla and T.A.Ramachandran, for the Respondent

Final Decision: Dismissed

Judgement

1. Ramanathan Chettiar his son Muthiah Chettiar called hereinafter for the sake of brevity, Muthiah-and Ramanathan, Annamalai and Alagappan,

sons of Muthiah, constituted a Hindu undivided family. The family owned a 3/5th share in M.R.M.S. Firm, Seramban in Malaya. The firm was

assessed under the Indian income tax Act, 1922, in the status of a firm resident within the taxable territories. On September 16, 1950, Muthiah

separated from the family taking his 1/5th share in the M.R.M.S. Firm. On April 13, 1951 the status of the family became completely disrupted and

the three sons of Muthiah took in equal shares the remaining 2/5th share-the grandfather Ramanathan taking no share in the M.R.M.S. Firm.

2. For the assessment year 1952-53 Muthiah submitted a return of his income as an individual and stated under the head business income ""Kindly

ascertain his (assessee"s) share of profit and remittances from the income tax officer, Second Additional Circle -I, Karaikudi, in F. 6098-m/1952-

53"". In Part III of the return Muthiah supplied the following information about his partners:

Name and address of the firm Name of each partner including Share

assessee

Messrs. R.R.M.S. Firm .. 1. Assessee (Muthiah Chettiar) 60/303

Seramban, F.M.S. 2. V.D.M.R.M. M.R.M.M.

Ramanathan Chettiar (minor). 40/303

3. V.D. M. R.M. M. R.M. M.

Alagappan Chettiar (minor). 40/303

4. V.D.M.R.M. M.R.M.M.

Annamalai Chettiar (minor) 40/303

5. C.P.R. 60/303

6. M.S.S. 60/303

7. Charity 3/303

For the assessment year 1953-54 in column 3 in Section B of the return Muthiah stated: ""Kindly ascertain the remittances from the income tax

Officer, Fifth Additional, Karaikudi in F. 6098-m"", and at p. 3 of the return in column 3 of Section F it was stated:

Assessee has 60/303 share in Messrs. MRMS Joint Seramban, (Malaya). Kindly ascertain share of profit or loss from the income tax Officer,

Fifth Additional. Karaikudi in F. 6098.

In Part III of the return he set out the names of the partners as were mentioned in the return for 1952-53. Against the names, of Ramanathan

Chettiar, Alagappan Chettiar and Annamalai Chettiar it was not disclosed that they were minOrs.

3. For the assessment year 1954-55 at the foot of page 1 of the return Muthiah stated:

The assessee has a remittance of Rs. 6,188-12-0 from R.R.M.S. Firm, Seramban. His share of income may be taken from the firm's file.""

and in Part III the names of seven partners as mentioned in 1952-53 return were set-out--Ramanathan, Alagappan, Annamalai were not shown as

minOrs.

4. Ramanathan, Alagappan and Annamalai-the three minor sons of Muthiah represented by their mother and guardian also filed returns of their

respective income for the years 1952-53, 1953-54 and 1954-55 and disclosed therein their shares in the profit from the 2/5th share in the

M.R.M.S. Firm.

5. For the assessment years 1952-53, 1953-54 and 1954-55 the income tax officer completed the assessments separately on the firm on Muthiah

as an individual and on the three minors represented by their mother and guardian. Muthiah was assessed in respect of his share in the income of

the firm and from other sources. In his returns Muthiah had not disclosed the share received by his minor sons and the income tax Officer did not in

making the assessments include shares of the minor's from the firm u/s 16(3)(a)(ii) of the Indian income tax Act, 1922. The income tax Officer

issued notices of reassessment to Muthiah u/s 34(1)(a) of the income tax Act, 1922 for the years 1952-53 and 1953-54 and u/s 34(1)(b) for the

year 1954-55. Muthiah filed returns under protest declaring the same income as originally assessed. In the view of the income tax Officer Muthiah

had not furnished in Part HI Clause (c) of the return full facts regarding the other parties and in column 2 he had merely disclosed that Ramanathan,

Alagappap and Annamalai were minors: that ""information was not full in the sense that he had not stated that they were minors sons"" of Muthiah.

Accordingly the income tax Officer held that the income of the sons of Muthiah which should have been included u/s 16(3)(a)(ii) of the income tax

Act had escaped assessment in Muthiah's hands and he brought that income to tax.

6. The Appellate Assistant Commissioner confirmed the order made by the income tax Officer. In appeal to the Tribunal it was contended by

Muthiah that he had fully and truly disclosed all the particulars he was required to disclose in the returns of his income for the three years in

question, and ""Section 34(a)(a) had no application to the assessment years 1952-53 and 1953-54 and for 1954-55 the re-opening was based

only on a change of opinion"". Muthiah also contended that Section 40 of the income tax Act was mandatory and since the income tax Officer had

made separate-assessments on the minors represented by their mother, no further assessment u/s 16(3) could be made, the two sections being

mutually exclusive.

7. The Tribunal observed that for the first two years Section 34(1)(a) applied, that in respect of the year 1954-55 there was no change of opinion

but the assessment was made on information received within the meaning of Section 34(1)(b) of the income tax Act and that separate assessment

of the minors did not stop the income tax Officer from assessing the income received by the minor sons in the hands of Muthiah. The Appellate

Tribunal accordingly confirmed the order of the Appellate Assistant Commissioner.

8. At the instance of Muthiah the following questions were referred to the High Court of Madras:

(i) Whether on the facts and in the circumstances of the case, the re-assessment made on the asses-see u/s 34 of the Act is valid in law for 1952-

53 to 1954-55 ?

(ii) Whether on the facts and in the circumstances of the case, the inclusion of the share income of the minor in the hands of the assessee by

invoking the provisions of Section 16(3) of the Act is valid in law notwithstanding that an assessment is made on the minor represented by his

guardian ?

The answer to the second question must, in view of the recent judgment of this Court in 284436 , be in the affirmative.

9. In considering the first question it is necessary to refer to certain provisions of the income tax Act, 1922. By Section 3 the total income of the

previous year of every individual, Hindu undivided family, company and local authority, and of every firm and other association of persons or the

partners of the firm or the members of the association individually was charged to tax for that year in accordance with, and subject to the

provisions of the act at any rate or rates prescribed by the Finance Act. ""Total income"" was defined in Section 2(15) as meaning ""total amount of

income, profits and gains referred to in Sub-section (1) of Section 4 computed in the manner laid down in this Act."" Section 4(1) set out the

method of computation of total income: it enacted:

(1) Subject to the provisions of this Act, the total income of any previous year of any person includes all income, profits and gains from whatever

source derived which-

(a) are received or are deemed to be received in the taxable territories in such year by or on behalf of such person, or

(b) if such person is resident in the taxable territories during such year,-

(i) accrue or arise or are deemed to accrue or arise to him in the taxable territories during such year, or

Section 22 by Sub-section (1) required the income tax Officer to give notice by publication in the press in the prescribed manner, requiring every

person whose total income during the previous year exceeds the maximum exempt from tax, to furnish a return in the prescribed form setting forth

his total income. Sub-section (2) authorised the income tax Officer to serve a notice upon a person whose income in the opinion of the income tax

Officer exceeded the minimum free from tax. Section 23 dealt with the assessment. It conferred power upon the income tax Officer to assess the

total income of the assessee and to determine the sum payable by him on the basis of such return, submitted by him. Rule 19 framed u/s 59 of the

income tax Act, 1922, required the assessee to make a return in the form prescribed thereunder, and in Form A applicable to an individual or a

Hindu undivided family or an association of persons there was no clause which required disclosure of income of any person other than the income

of the assessee, which was liable to be included in his total income. The Act and the Rules accordingly imposed no obligation upon the assessee to

disclose to the income tax Officer in his return information relating to income of any other person by law taxable in his hands.

10. But Section 16 Sub-section (3) provided that in computing the total income of any individual for the purpose of assessment there shall be

included the classes of income mentioned in Sub-clause (a) and (b). Sub-section (3)(a)(ii) in-so-far as it is material, provided:

In computing the total income of any individual for the purpose of assessment, there shall be included-

(a) so much of the income of a wife or minor child of such individual as arises directly or indirectly-

(i)

(ii) from the admission of the minor to the benefits of partnership in a firm of which such individual is a partner;

The assessee was bound to disclose u/s 22(5) the names and addresses of his partners, if any, engaged in business, profession or vocation together

with the location and style of the principal place and branches thereof and the extent of the shares of all such partners in the profits of the business,

profession or vocation and any branches thereof, but the assessee was not required in making a return to disclose that any income was received by

his wife or minor child admitted to the benefits of partnership of a firm of which he was a partner.

11. Counsel for the Commissioner contended that in the forms of returns prescribed in the ""Notes of Guidance"" for drawing up the return were

printed, and thereby the assessee was informed that he had to disclose the income received by his wife and minor children from a firm of which the

assessee was a partner. Counsel has however not placed before the Court the forms of return in vogue in the relevant year of assessment. In the

Income Tax Manual published under the authority of the Central Government in 1945 under Sub-clause (3) printed at p. 185 the assessee is

advised to include the return under the appropriate head certain classes of income which are liable to be included in the assessment of an individual

u/s 16, and income liable to be taxed Under Sections 41D, 44E and 44F. This instruction was repeated in the Manual Parts II and III at pp. 344

and 345 in the 10th Edition published in 1950. But in the 11th Edition of the Manual published in 1954 no such instructions were printed. About

the date on which the instructions were deleted Counsel for the Commissioner was unable to give any information. Assuming that there were

instructions printed in the Forms of return in the relevant years, in the absence of any head under which the income of the wife or minor child of a

partner whose wife or a minor child was a partner in the same firm, could be shown by not showing that income the tax-payer cannot be deemed

to have failed or omitted to disclose fully and truly all material facts necessary for his assessment. Section 16(3) imposes an obligation upon the

income tax Officer to compute the total income of any individual for the purpose of assessment by including the items of income set out in Sub-

clause (a)(i) to (iv) and (b), but thereby no obligation is imposed upon the tax-payer to disclose the income liable to be included in his assessment

u/s 16(3). For failing or omitting to disclose that income proceedings for reassessment cannot therefore be commenced u/s 34(1)(a). Section 22(5)

required the assessee to furnish particulars Of the names and shares of his partners, but imposes no obligation to mention or set out the income of

the nature mentioned in Section 16(3). In the relevant years there was no head in the form under which income liable to be assessed to tax u/s

16(3)(a) and (b) could be disclosed.

12. We are in the circumstances unable to agree with the High Court that Section 34 imposed an obligation upon the assessee to disclose all

income includible in his assessment by reason of Section 16(3)(a)(ii). Section 34(1)(a) sets out the conditions in which the power may be

exercised: it did not give rise to an obligation to disclose information which enabled the income tax Officer to exercise the power u/s 16(3)(a)(ii),

nor had the use of the expression ""necessary for his assessment"" in Section 34(1)(a) that effect.

13. The High Court did not consider the question whether in the year 1954-55 the notice u/s 34(1)(b) was properly issued against Muthiah. The

Tribunal in their judgment observed:

There is no basis for the argument that the income tax Officer had only changed his opinion and reopened the assessment.

We agree with that view. The order of re-assessment was made well within four years from the date of the last day of the year of assessment

1954-55. The notice was therefore competently issued by the income tax Officer.

14. The order passed by the High Court, in so far as it relates to the years 1952-53 and 1953-54 is set aside and the answer in the negative is

recorded. For the year 1954-55 the answer recorded by the High Court is confirmed. There will be no order as to costs throughout.