

PETITIONER:
BALADIN RAM

Vs.

RESPONDENT:
COMMISSIONER OF INCOME-TAX, U.P.

DATE OF JUDGMENT:
21/08/1968

BENCH:
GROVER, A.N.
BENCH:
GROVER, A.N.
SHAH, J.C.
RAMASWAMI, V.

CITATION:
1969 AIR 351 1969 SCR (1) 800

ACT:
Indian Income-tax Act, 1922, s. 2(1) and 34(1)(a)-
Assessment of income escaping assessment-Applicability of s.
34(1)(a)-Deposits assessed as representing income from
undisclosed sources-Previous year for.

HEADNOTE:

The assessee-a Hindu undivided family (--) was assessed in 1944-45 for the income of its previous year ending October 30, 1943. The income shown in the return was from iron foundry business and property, and income from these sources only was taken into account in the original assessment. The assessee through a son of the karta was also a partner in the firm Raj Narain Durga Prasad. The accounting year of the firm ended on April 1, 1944 and the assessee's return, did not show any income as share of profit in the firm nor was mention made in the return of the existence of the partnership. In December, 1943 the assessee along with Raj Narain Durga Prasad started a joint venture of supplying Sarpat and bamboo to the Government. Between the commencement of the joint venture and February 18, 1944, the assessee made investments in the Sarpat and bamboo business to the tune of Rs. 27,000 (as found by the Tribunal).. The Income-tax Officer, when he discovered the assessee's connection with the firm Rajnarain Durga Prasad gave a notice under s. 34 of the Indian Income-tax Act, 1922 and made in 1952 a revised assessment for 1944-45, assessment year, in which he added the income of the assessee as found in the books of the firm to the income already assessed. Later, he discovered the assessee's investments in the Sarpat and bamboo business and in 1954 he made another revised assessment for the assessment year 1944-45 treating the said investments as representing income from undisclosed sources. The assessee challenged both the assessments on the ground that s. 34(1)(a) was not attracted. The assessee's plea was rejected by the Appellate Assistant Commissioner and the Tribunal. The High Court in 'reference also held against the assessee who by special leave appealed to this Court. The contentions on behalf of the appellant were; (i) As regards income from firm Rajnarain Durga Prasad it was submitted

that the accounting year of that firm ended on April 1, 1944 which was well after the close of the assessee's previous year which ended on October 28, 1943. Neither the income of the firm, nor the share of assessee had been determined till then, and it was not possible for the assessee to show the said income in the return for 1944-45. Moreover the full facts came to the knowledge of the Income-tax Officer when the assessment for the next assessment year was made. Therefore s. 34(1)(a) was not attracted. (ii) As regards investments in the Sarpat and bamboo business the assessee submitted that the business itself commenced in December, 1943 and having regard to the definition of previous year' in s. 2(11) as it existed at the relevant time, the income from this source could not be shown as income of his previous year which ended on October 28, 1943. The income from this source was duly disclosed to the Income-tax Officer and was actually assessed in 1945-46. Therefore in the case of the 1954 revised assessment also 's. 34(1)(a) was not attracted.

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HELD: (i) The High Court had rightly observed in dealing with the 1952 assessment that there was no finding of the appellate tribunal that the share of income from the firm was not known at the time when the return was filed. In view of the admitted fact that the return filed by the assessee did not disclose the fact of partnership in the firm Raj Narain Durga Prasad it was no longer open to the assessee to urge that s. 34(1)(a) was not attracted, particularly when the burden lay upon the assessee to show that the Income-tax Officer was aware of the income received from the firm. [804 G-H]

(ii) It is now well-settled that the only way in which income from undisclosed sources can be taxed is to take it as the income of the relevant financial year. Therefore the investments made by the assessee in Sarpat and bamboo business between December, 1943 and February, 1944 were rightly taxed by the Income-tax Officer in the year 1944-45. The disclosure of the investments by assessee in the proceedings for 1945-46 cannot be treated as a disclosure for the purpose of assessment year 1944-45. The plea that the revised assessment made in 1954 was not covered by s. 34(1)(a) could not therefore be accepted. [806 B-C]

Section 68 of the Indian Income-tax Act, 1961 which provides that amounts credited in the account books of the assessee and not satisfactorily explained by him should be treated as income of the 'previous year', does not alter the position under the old Act. Even under the new Act the position, except where the credits are found in the assessee's account books, is probably not different from that laid down in the cases under the old Act. [806 D-F]

Commissioner of Income-tax, Bihar and Orissa v. P. Darolia & Sons, 27 I.T.R. 515 and Bishan Dutt v. Commissioner of Income-tax, U.P. & V.P. 39 I.T.R. 534, applied.

Jethmal v. Commissioner of Income-tax, 49 I.T.R. 633, approved.

P.R. Mukherjee v. Commissioner of Income-tax, West Bengal. 30 I.T.R. 535. referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 663 and 664 of 1966.

Appeals by special leave from the judgment, and order dated January 2, 1964 of the Allahabad High Court in I.T.

Reference No. 244 of 1959.

S.C. Manchanda and J.P. Goyal, for the appellant (in both the appeals).

D. Narsaraju, T. A. Ramachandran and 8. P. Nayar, for the respondent (in both the appeals).

The Judgment of the Court was delivered by

Grover, J. In these appeals by special leave the facts may be stated: The assessee at the material time was a Hindu Undivided Family. The relevant assessment year is 1944-45 corresponding to the accounting year ending on Diwala Samvat 2,000 (October 28, 1943). On February 20, 1945 the Income

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tax Officer made an assessment on a total income of Rs. 26,800 odd which comprised income from the share in the business of Kasi Iron Foundry and the income from the property. This order was revised under s. 34 of the Indian Income tax Act, 1922 hereinafter called the Act. In the revised assessment order the total income of the assessee was computed at Rs. 71,731. In this amount a sum of Rs. 40,000 was included as income from undisclosed sources. This assessment was challenged before the Appellate Tribunal and was set aside on the ground that there had not been proper service of a notice under s. 34. A fresh notice under s. 34 was issued in October 1951. On October 16, 1952 a revised assessment order was passed and the total income of the assessee was computed at Rs. 85,817 which included a sum of Rs. 49,696 as income from undisclosed sources. On March 31, 1953 the Income tax Officer served on the assessee another notice under s. 34 in respect of the same assessment year 1944-45. On March 18, 1954 a revised assessment was made in which was included a sum of Rs. 32,000 as the assessee's income from undisclosed sources, being the alleged investment of the assessee in the Satpat and bamboo business prior to February 18, 1944. The total income of the assessee was computed at Rs. '1,17,817. The income from undisclosed source which came to be included in this computation amounted to Rs. 81,696. The assessee filed appeals against the assessment order dated October 16, 1952 contending inter alia that there had been no escapement of any income and that in any case the first revised assessment dated October 16, 1952 was barred by time under s. 34(1)(b) of the Act as the provisions of s. 34(1)(a) did not apply. The second revised assessment was challenged on the ground, inter alia, that the Income tax Officer had no jurisdiction to issue the notice under s. 34 as the material facts necessary for making the assessment were fully and truly disclosed to the Income tax Officer during the assessment proceedings for the year 1945-46. That appeal was also dismissed. Thereafter the assessee filed two appeals before the Income Tax Appellate Tribunal. Before the tribunal it was contended by the assessee that the first revised assessment dated October 16, 1952 was barred by limitation and that the period of limitation was four years under s. 34(1)(b) and not eight years under s. 34(1)(a). The second revised assessment was challenged on the ground that the Income tax Officer had no jurisdiction to issue a notice and make assessment under s. 34. It was argued that the investment, expenditure and the profits earned from the business of Sarpat and bamboo had been duly shown. As regards the first revised assessment the tribunal held that the income of the assessee from the firm Rajnarain Durga Prasad had escaped assessment by failure on the part of the assessee to disclose fully and truly all the facts necessary for making the assessment and that the provisions of

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s. 34(1)(a) were attracted and therefore the period of limitation was eight years and not four years. With regard to the second revised assessment it was urged that all the materials necessary for making the assessment were before the Income tax Officer and by issuing a notice under s. 34 the Income tax Officer had changed his opinion and a mere change of opinion did not authorise the Income tax Officer to take recourse to s. 34. The tribunal disposed of the argument with regard to the second revised assessment in the following words:

"The Income tax Officer who made the assessment for 1945-46 might have had all the accounts of the business in Satpat and bamboos before him and might have known the investments made by the assessee in that business;. The question for consideration is whether the Income tax Officer had reason to believe that by the failure on the part of the assessee to fully and truly disclose all the material facts necessary for the making of the assessment for the year 1944-45, income had escaped assessment. Surely, even if the Income tax Officer had known that the investment made by the assessee in that business were his revenue income, he could not have proceeded u/s 34 because the income could not have been assessed in the assessment year 1945-46. It could be assessed in the assessment year 1944-45. The income appearing by way of deposits in the Sarpat business could be assessed only as income from some undisclosed source and the previous year for income from undisposed source for which the assessee had not elected any previous year would be the financial year. The investments were made in the financial year relevant for the assessment year 1944-45 and were not made in the financial year relevant for the assessment year 1945-46. The Income tax Officer had, therefore, no choice but to resort to section 34 of the Act."

The tribunal, however, found as is apparent from its 'order dated March 21, 1957 that the unexplained investment which was really the income of the assessee from undisclosed source was Rs. 27,875 instead of Rs. 32,000. The tribunal called for a report on certain other matters with which we are not concerned and which were disposed of by subsequent order dated August 31, 1958. On a petition filed under s. 66(1) of the Act the tribunal referred the following question to the High Court for decision:

"Whether. on the facts and in the circumstances of the case the revised assessments under section 34 dated 16-10-1952 and 18-3-1954 are legal and valid".

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As regards the first revised assessment the High Court was of the view that even if the provisions of s. 34(1)(b) were to apply the assessment could not be said to be barred by time nor could it be said to be barred under s. 34(1)(a) as the assessee had failed to show that the income tax Officer was aware that the assessee had received income from its share in the firm. The question was consequently answered in the affirmative so far as the assessment order dated October 16, 1952 was concerned. The assessment order of

March 18, 1954 was challenged before the High Court on the ground that there was no default on the part of the assessee attracting applicability of s. 34(1)(a). It was noticed by the High Court that although the Income tax Officer had, during the proceedings for the assessment year 1945-46, made an enquiry about the investments in Sarpat and bamboo business no action had been taken in those assessment proceedings against the assessee but it could not be presumed that he had accepted the explanation of the assessee. Having held that the investment represented income from undisclosed source he was bound to treat it as income which accrued in December 1943 when it was invested, being the income during the financial year 1943-44 and therefore it had to be taxed in the assessment year 1944-45. The question referred was answered in the affirmative with regard to the assessment order of March 18, as well.

The argument of Mr. S.C. Manchanda in respect of the assessment made in October 1952 is that there was no failure on the part of the assessee to disclose material facts. It is submitted that the share income of the assessee's son from the firm Raj Narain Durga Prasad could not be shown in the assessee's return as the accounting period of that firm closed on April 1, 1944 which was well after the close of the previous year of the assessee which ended on October 28, 1943. It is said that neither the income of the firm nor the share of the assessee's son had been determined till then and it was not possible for the assessee to show the said income in his return. Moreover the Income tax Officer had knowledge of the assessee's interest in the firm Ramnarain Durga Prasad on May 12, 1947 when the assessment for the year 1945-46 was made. Thus the escapement, if any, has not resulted from any default or omission on the part of the assessee. The High Court had disposed of this contention by observing that there was no finding in the order of the appellate tribunal that the share of the income from the said firm was not known at the time when the return was filed. It was admitted that the return filed by the assessee did not disclose that the assessee enjoyed income from his share in that firm. It was no longer open to the assessee to press this contention particularly when the burden lay upon him to show that the Income tax Officer was aware that the assessee received income from his share in that firm. Mr. Manchanda has not been able to persuade us

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to take a different view in the matter. The real challenge on behalf of the assessee before us has been to the amount which was included as income from undisclosed source in the revised assessment order made in March 1954 being the capital which had been invested in the business of Sarpat and bamboos. This amount, as found by the tribunal, came to Rs. 27,000 odd and had been invested in partnership with Ram Narain Durga Prasad for the business of the supply of Sarpat and bamboo. to the Government, the investment having been made between December 8, 1943 and February 17, 1944. According to Mr. Manchanda no income from the aforesaid business could be shown in the return for the year 1944-45 because the business itself had been commenced after the close of the relevant previous year which ended on October 28, 1943. For the assessment year 1945-46, however, a sum of Rs. 1640 was assessed as the assessee's income in this joint venture. During the course of the assessment proceedings for the year 1945-46 the assessee is stated to have filed an affidavit before the Income tax Officer giving details in respect of the Sarpat and bamboo business. Mr.

Manchanda has invited our attention to the definition of "previous year" as contained in s. 2(11) of the Act at the relevant period and has pointed out that the Sarpat and bamboo business did not fall within the year up to which accounts had been made i.e. October 28, 1943. It was verily impossible, says Mr. Manchanda, to have shown in the return any amount relating to Sarpat and bamboo business. The method to be adopted in such a situation has now been settled by a long course of decisions. In Commissioner of Income tax, Bihar & Orissa v. P. Darolia & Sons⁽¹⁾ the facts were that for the assessment year 1947-48 the accounting year of the assessee was the Diwali year corresponding to November 4, 1945 to October 24, 1946. The Income tax Officer rejected the books of the assessee and ascertained his income from the business at an estimate for that year. He also added to this estimate certain cash credits in its account books entered on the 22nd and 27th of November, 1945, as secret profits from undisclosed sources which dates were after the end of the accounting year. It was found that the amount included as secret profits from undisclosed source was not from the business of the assessee but from separate sources and no account was maintained by the assessee in respect of the amount nor had it exercised any option as regards the previous year with respect to that source. It was held that in the aforesaid circumstances the previous year of the assessee in respect of its undisclosed source of income was the financial year ending on March 31, 1946. In Bishan Dutt v. Commissioner of Income tax U.P. & V.P.⁽²⁾ the previous year of the assessee for the assessment year 1945-46 in respect of his cloth business was July 4, 1943 to June 26, 1944. In the account books of that busi-

(1) 27 I.T.R. 515.
534.

(2) 39 I.T.R.

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ness for that period a sum of Rs. 9,800 appeared as credit in the suspense account on September 2, 1943. The Income tax Officer, in the absence of a satisfactory explanation, held this amount to be income from undisclosed source. The view expressed by the High Court was that there being nothing to show that any accounts in respect of the undisclosed source of income existed or were maintained or that the assessee exercised any option under s. 2(11)(i)(a) in respect of such accounts, the only course open to the department was to tax his income from undisclosed source on the basis of the financial year being the previous year. On that basis the amount could be taxed only for the assessment year 1944-45 and not for the assessment year 1945-46. On similar facts the Calcutta High Court expressed the same view in Jethmal v. Commissioner of Income Tax⁽¹⁾. By now it appears to be well settled and no decision even of a High Court has been cited to the contrary that in such circumstances the only possible way in which such undisclosed income can be assessed or reassessed is to make the assessment during the ordinary financial year.

Mr. Manchanda has called our attention to s. 68 of Income tax Act, 1961 according to which where any sum is found credited in the books an assessee maintained for any previous year and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Income tax Officer, satisfactory the sum so credited may be charged to income tax as the income of the assessee of that previous year. It is, however, obvious that even under the provisions embodied

under the new Act it is only when any amount is found credited in the books of an assessee that the section will apply. On the other hand if the undisclosed income was found to be from some unknown source or the amount represents some concealed income which is not credited in his books the position would probably not be different from what was laid down in the various cases decided when the Act was in force.

The last argument of Mr. Manchanda is that in order to attract the applicability of s. 34(1)(a) of the Act the omission or the failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment must be found to be wilful and deliberate. In support of his submission he has relied on P.R. Mukherjee v. Commissioner of Income tax, West Bengal(2) in which it was observed that a person cannot be said to have omitted or failed to disclose something when, of such thing, he has no knowledge and that a similar implication is carried by the word "disclose" because one cannot be expected to disclose a thing unless it is a matter which he know or knows of. It is altogether unnecessary to decide whether this view is sustainable

(1) 49 I.T.R. 633.

(2) 30 I.T.R.

535.

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or not. At any rate, in the present case, the assessee had failed to show that he did not know and was not aware of the true position in respect of the sum of Rs. 27,000 odd which was invested in the Sarpat and bamboo business.

For all these reasons the appeals fail and are dismissed with costs.

G.C.

Appeals dismissed.

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