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Commissioner of Income-tax, Madras
v.
Janabha Muhammad Hussain Nachiar Ammal

Sarkar, J.

[For the Judgment of Hidayatullah and Raghubar Dayal, JJ., see *S. C. Prashar, Income-tax Officer* v. *Vasantsen Dwarkadas*, ante p. 29.]

BY COURT : In accordance with the opinion of the Omajority, the appeal is allowed. The appellant will pay the costs of the respondent as was agreed to by the parties.

Appeal allowed.

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December, 12.

COMMISSIONER OF INCOME-TAX

v.

SARDAR LAKHMIR SINGH

(S. K. DAS, J. L. KAPUR, A. K. SARKAR, M. HIDAYATULLAH and RAGHUBAR DAYAL, JJ.)

Income-tax—Limitation—Assessment made after four years—If barred—Provision saving assessment in respect of some persons—If discriminatory—Indian Income-tax Act, 1922 (11 of 1922), s. 31, 34(3)—Indian Income-tax (Amendment) Act, 1953 (25 of 1953), ss. 18, 31—Constitution of India, Art. 14.

The assessee and his father filed separate returns for the year 1946-47 and the father also filed a return as Karta of the Hindu undivided family in which the income was declared as nil on the ground that the Hindu undivided family had ceased to exist. On March 15, 1951, the Income-tax Officer amalgamated the incomes of the assessee and his father and assessed them on the total income as the income of a Hindu undivided family but he did not make any assessment of the assessee as an individual. On appeal by the father the Appellate Assistant Commissioner, on March 20, 1953, held that there was no Hindu undivided family, set aside that assessment and directed a reassessment of the assessee and his father as individuals. Thereupon the Income-tax Officer, by order dated November 27, 1953, assessed the assessee as an individual.

The assessee contended that the assessment not having been made within four years of the year 1946-47 i. e. by March 31, 1951, was barred by s. 34(3) of the Income-tax Act, 1922, The Appellate Tribunal held that the assessment was not barred, but, at the instance of the assessee, it referred to the High Court the question whether the assessment was validly made. The High Court answered the reference in favour of the assessee. The appellant contended that the assessment was within time as it was saved by the second proviso to s. 34(3) as amended by the Amending Act, 1953 and that the assessment was validated by s. 31 of the Amending Act, 1953.

Held (*per* Das, Kapur and Sarkar, JJ., Hidayatullah and Dayal, JJ., *dissenting*) that the assessment not having been made within the time prescribed by s. 34(3), was barred.

S. C. Prashar, Income-tax Officer v. *Vasantsen Dwarkadas*, [1964] Vol. 1 S. C. R. 29, relied on.

Per Das and Kapur, JJ.—The second proviso to s. 34(3) which came into force on April 1, 1952, did not revive the power to assess which had become barred. Further, the appellant could not rely upon s. 31 of the Amending Act of 1953, as this question was not covered by the question referred to the High Court.

Per Sarkar, J.—The second proviso to s. 34(3) as amended in 1953, in so far as it affected persons other than assessees was void as violating Art. 14 of the Constitution. The proviso sought to save assessments in respect of assessees and those against whom assessments were made in consequence of orders made under s. 31 in the assessment cases of those assessees but not those of other tax evaders. The classification made was without any intelligible differentia having a rational connection with the object of the statute.

Per Hidayatullah and Dayal, JJ.—The assessments were valid and were saved by the second proviso to s. 34(3) as amended in 1953 and by s. 31 of the Amending Act of 1953. The Court was bound to take notice of s. 31 of the Amending Act of 1953 even though it was not mentioned in the order of reference and in the judgment of the High Court Section 31 of the Amending Act was clearly applicable to the case as admittedly the proceedings commenced after September 8, 1948. Further the second proviso to s. 34(3) as amended in 1953 was not discriminatory and did not offend Art. 14 of the Constitution. A law relating to tax evasion cannot lay down a

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uniform system applicable to all kinds of defaulters. The class which falls within this proviso for which there is no limit of time within which the assessment is to be made and the class which falls outside the proviso for which there is a limit of 4 years or 8 years, are two distinct classes. The different treatment arises under different circumstances.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 214 & 215 of 1958.

Appeals from the judgment and decree dated May 7, 1957 of the Patna High Court in M. J. C. No. 263 of 1956.

K. N. Rajagopal Sastri and *P. D. Menon*, for the Appellants.

S. P. Varma, for the Respondents.

1962. December 12. The following judgments were delivered. S. K. Das, J., J. L. Kapur, J., and A. K. Sarkar, J., delivered separate judgments. The Judgment of M. Hidayatullah and Raghubar Dayal, JJ., was delivered by Hidayatullah, J.

Das, J.

S. K. DAS, J.—The facts out of which these two appeals have arisen have been stated in the judgment of my learned brother Kapur, J., and as I am in full agreement with the conclusion reached by him, I need not re-state the facts.

The relevant assessment years were 1946-1947 and 1947-1948. The assessment orders were made on November 27, 1953. It is obvious that the assessments were not made within the time prescribed by sub-s. (3) of s. 34, the period being four years in this case. The Tribunal relied on the second proviso to sub-s. (3) of s. 34 as amended by the Amending Act of 1953 which came into force on April 1, 1952. For reasons which I have given in *S. C. Prashar, Income-tax Officer* v. *Vasantsen Dwarkadas* (1), in which judgment has been delivered to-day, the second proviso to

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sub-s. (3) of s. 34 does not revive a remedy which became barred before April 1, 1952, when the amended proviso came into force.

Next, the appellant relied on s. 31 of the Amending Act of 1953. I agree with my learned brother Kapur, J., that the question of law which was referred to the High Court does not take in the point now sought to be urged before us. Secondly, for reasons given by me in *S. C. Prashar, Income-tax Officer* v. *Vasantsen Dwarkadas* (1) I do not think that s. 31 saves the assessment.

I would accordingly dismiss the appeals with costs; one hearing fee.

Kapur, J.

KAPUR, J.—These are two appeals pursuant to a certificate granted by the High Court of Patna against the judgment and order of that Court in which the following question referred by the Income-tax Appellate Tribunal was answered in the negative and against the appellant :

> "Whether having regard to the return dated March 7, 1951, by Sardar Lakhmir Singh in his individual capacity and to the provisions of section 34 (3), the assessment made on him on November 27, 1953, is validly made ?"

The relevant years of assessment are 1946-47 and 1947-48 and the two appeals relate to these years respectively. The respondent is a son of S. Nechal Singh. Up to the assessment year 1943-44 the father and son were being assessed as a Hindu undivided family. For the assessment year 1944-45 a claim was made under s. 25A of the Income-tax Act, hereinafter referred to as the 'Act' and it was contended that the income of S. Nechal Singh and S. Lakhmir Singh should be separately assessed as their individual incomes. This claim was not accepted and the income was assessed as that of a Hindu undivided

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family with S. Nechal Singh as the Karta. For the assessment year 1945-46, S. Nechal Singh and S. Lakhmir Singh filed two separate returns and made a claim under s. 25A which was rejected and the father and son were assessed as Hindu undivided family but there was a protective assessment upon S. Lakhmir Singh as an individual. An appeal was taken to the Income-tax Appellate Tribunal which held that the income of S. Nechal Singh and S. Lakhmir Singh was not the income of a Hindu undivided family but their individual incomes. The Appellate Tribunal set aside the assessment of the Hindu undivided family. In its order dated October 15, 1952, the Appellate Tribunal said :

> "The assessment, is therefore, set aside and the Income-tax Officer is directed to make a fresh assessment according to law as from the return stage upon the correct persons on the sources of income belonging to them as found above".

For the assessment year 1946-47, three returns were filed (1) by respondent S. Lakhmir Singh on March 15, 1951, in regard to his separate income, (2) by S. Nechal Singh also in his individual capacity and the third under protest by S. Nechal Singh as the Karta of the Hindu undivided family. The latter return was dated June 20, 1950, and the total income in the return was declared as nil. On March 15, 1951, the Income-tax Officer assessed the total income of S. Nechal Singh and S. Lakhmir Singh as the income of the Hindu undivided family. On March 20, 1953, an appeal was taken against the assessment for the year 1946-47 and the Appellate Assistant Commissioner set aside the two orders of the Income-tax Officer in view of the order of the Income-tax Appellate Tribunal dated October 15, 1952, above referred to. On November 27, 1953, the Income-tax Officer made assessment upon respondent S. Lakhmir Singh in his individual capacity. An

appeal was taken against that assessment order to the Appellate Assistant Commissioner and the contention raised was that the order of assessment was barred under the provisions of the unamended s.34(3) of the Act. This contention was rejected and an appeal taken to the Appellate Tribunal was dismissed on September 6, 1955. The Tribunal held that under the amended proviso to s. 34(3) the Income-tax Officer was entitled to assess the income of the respondent even though he was not the appellant before the Appellate Assistant Commissioner and there is no limitatioa for such an assessment. At the instance of the respondent the question quoted above was stated to the High Court.

The High Court held that the Amending Act of 1953 does not apply to the facts of the present case and the order of assessment of the Income-tax Officer dated November 27, 1953, was barred under the provisions of the unamended s. 34(3) of the Act; that was because on April 1, 1952, when the Amending Act of 1953 came into force the power of the Income-tax Officer to assess the tax for 1946-47 had already become barred and a right had accrued in favour of the respondent before April 1, 1952.

In regard to the assessment of 1947-48 also for the same reasons the assessment was held to be illegal. Two appeals have been brought against those orders in regard to the two assessment orders and the appeals have been consolidated.

The argument on behalf of the appellant is that the Income-tax Officer made the assessment on November 27, 1953, in pursuance of the order of the Appellate Assistant Commissioner dated March 20, 1953, and as at the time when the Income-tax Officer completed the assessment the proviso to s. 34(3) had come into operation the Income-tax Officer could, in spite of the lapse of the period,

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reassess the respondent and the reassessment was therefore valid. The argument raised was really the same as that raised in *S. C. Prashar, Income-tax Officer* v. *Vasantsen Dwarkadas* (1), judgment in which case has been delivered today.

In the present case the period applicable was four years. In regard to the assessments for the years 1946-47 and 1947-48 the period of four years ended before April 1, 1952. For reasons given in *S.C. Prashar's* (1) case the assessment will be barred and in our opinion the High Court rightly held it so.

Another argument sought to be raised in support of the assessment order of the Income-tax Officer was based on s. 31 of the Amending Act 1953. It was submitted that under the first part of that section the assessment proceedings have been validated.

The relevant portion of s. 31 is as follows :—

> "For the removal of doubts it is hereby declared that the provisions of sub-sections (1), (2) and (3) of section 34 of the principal Act (the Indian Income-tax Act, 1922) shall apply and shall be deemed always to have applied to any assessment or reassessment for any year ending before the 1st day of April 1948 in any case where proceedings in respect of such assessment or reassessment were commenced under the said sub-sections after the 8th day of September 1948."

It was argued that the assessments are for the year ending before April 1, 1948 and the assessments were commenced under sub-ss. 1, 2 and 3 of s. 34 after September 8, 1948 and therefore sub-ss. 1, 2 and 3 must be deemed to have applied to the two assessments. In the first place no such question was raised

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before the High Court. It had only to answer the question which was referred to it as it was acting in its advisory jurisdiction; and it could not answer any other question. But it was, submitted that the form of the question itself is such that it takes in the applicability of s. 31 of the Amending Act of 1953. As we have said above this question was not referred to either in the High Court or in the Grounds of Appeal when the certificate was applied for nor in the appellant's Statement of Case. The form of the question also does not take in the applicability of s. 31 of the Amending Act 1953. The question refers firstly to the return filed by the respondent S. Lakhmir Singh dated March 7, 1951, and then to the provisions of s. 34 (3). It has no reference to the validity of the proceedings because of the commencement of the proceedings after September 8, 1948. The commencement of the proceedings in regard to assessment year 1946-47 has not been shown to be after September 8, 1948. No doubt the return was filed on March 15, 1951, but there is nothing to show what the date of the commencement of the proceedings was. If the appellant wanted to rely on s. 31 it was his duty to place all the effectual materials before the Appellate Tribunal on the basis of which a properly framed question could be referred and then answered by the High Court. On the material as it stands no question of the application of s. 31 of the Amending Act of 1953 arises nor is there a finding that the commencement of the proceedings was on March 7, 1951, when according to the question referred the return was filed. In this view of the matter the applicability of s. 31 of the Amending Act of 1953 is not available to the appellant.

The extent of jurisdiction of the High Court under s. 66 of the Act has been decided by this Court in *The New Jehangir Vakil Mills Ltd.* v. *Commissioner of Income-tax.* (1)

(1) [1960] 1 S.C.R. 249.

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For reasons given above the appeals fail and are dismissed with costs. One hearing fee.

SARKAR, J.—These appeals concern the two assessment years, 1946-47 and 1947-48. The question is whether the assessment orders in respect of these years which were both made on November 27, 1953, are valid under the second proviso to sub-s. (3) of s. 34 of the Income-tax Act, 1922 as that proviso stood after it was amended by s. 18 of the Income-tax (Amendment) Act, 1953.

The assessee is Lakhmir Singh, the respondent in these appeals. Up to the year 1943-44, the assessee formed a Hindu undivided family with his father Nechal Singh and his brothor Dhanbir Singh. For the year 1944-45, a claim was made under s. 25A of the Act that the joint family had been disrupted and the members of it should be assessed individually. This claim was rejected. For the next year 1945-46, the claim under s. 25A was repeated. This claim was again rejected and the assessment was made on the basis of a Hindu undivided family, but a protective assessment was made upon the assessee as an individual for the income which he had shown in the separate return filed by him. This time an appeal was filed against the rejection of the claim under s. 25A. While the aforesaid appeal was pending, the assessee and his father filed separate returns for the year 1946-47 and the father also filed a return as Karta of the Hindu undivided family in which the income was declared as nil on the ground that the Hindu undivided family did not exist since 1944-45. On March 15, 1951, the Income-tax Officer amalgamated the incomes of the assessee and his father; assessable in the year 1946-47, and assessed them on the total income as the income of a Hindu undivided family. He however did not make any protective assessment this time as he had done for the year 1945-46. The assessee's father as

the Karta of the Hindu undivided family appealed from the order of March 15, 1951.

On October 15, 1952, the Income-tax Appellate Tribunal allowed the assessee's appeal against assessment as a Hindu undivided family for the year 1945-46 and observed: "We, therefore, conclude that notwithstanding the erroneous description given by the appellant to himself in his returns before 1943-44 as Hindu Undivided Family, in which status he was accordingly assessed in the past on the income from property and business etc., which belonged either to him or to him and his partner and elder son Lakhmir Singh, the assessment made for the year 1945-46, in the status of a Hindu Undivided Family cannot be sustained. The assessment is, therefore, set aside and the Income-Tax Officer is directed to make a fresh assessment according to law as from the return stage upon the correct persons and the sources of income belonging to them as found above." In view of this order of the Tribunal, the assessee's appeal from the assessment order in respect of 1946-47 was also allowed by the Appellate Assistant Commissioner on March 20, 1953 and the assessment order of March 15, 1951 was set aside. The Appellate Assistant Commissioner's order said, "Heard the appellant. It having been decided that the assessment on the status of a H. U. F. is not sustainable the assessment is SET ASIDE for a re-assessment of sources involved on the correct persons and in the correct status according to Law."

The position with regard to the year 1947-48 was substantially the same. The assessee and his father had been assessed on their total income as members of a Hindu undivided family by an order of the Income-tax Officer dated March 24, 1952. The assessee's father as the Karta of the undivided family appealed from this order. The Appellate

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Assistant Commissioner allowed this appeal on March 21, 1953, and set aside the assessment order of March 24, 1952. He observed, "Heard Appellant. For the same reason as in 1946-47 the assessment is set aside for a re-assessment." It appears that for the year 1947-48 also the assessee and his father had filed separate returns and the father filed also a return as a Hindu undivided family declaring the income in the last mentioned return as nil. In this year also there does not appear to have been any protective assessment against the assessee individually.

Thereafter the Income-tax Officer proceeded to make the impugned orders of assessment of November 27, 1953, in respect of the years 1945-47 and 1947-48 on the returns which had been filed by the assessee in his individual capacity. The assessee appealed against the order of November 27, 1953, but the appeal was dismissed. Thereafter the assessee obtained an order from the Tribunal referring the following question in respect of the Tribunal's order dismissing his appeal against the assessment for the year 1946-47 for the decision of the High Court at Patna.

> "Whether having regard to the return dated 7th March, 1951, by Sardar Lakhmir Singh in his individual capacity and to the provisions of s. 34(3) the assessment made on him on the 27th November, 1953 is validly made".

A similar question was referred to the High Court under another order of the Tribunal in respect of the year 1947-48. The High Court answered the questions against the revenue authorities who have, therefore, come up in appeal against the decision of the High Court. That is why there are two appeals.

The assessee contends that the orders of assessment were not within time prescribed in s. 34(3) of

the Act. Under the substantive part of sub-s. (3) the orders of assessment should have been made within four years of the years 1946-47 and 1947-48, that is, by March 31 of 1951 and 1952 respectively but they were made on November 27, 1953. It is, therefore, not in dispute that if they were not protected by the second proviso to sub-s. (3) of s. 34 as amended by the amending Act, 1953 earlier mentioned, then the orders were not valid. The question is, were they so protected ? The second proviso is in these terms :

> "Provided further that nothing contained in this section limiting the time within which any action may be taken or any order, assessment or re-assessment may be made, shall apply to a re-assessment made under section 27 or to an assessment or re-assessment made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 31, section 33, section 33A, section 33B, section 66 or section 66A."

It is contended that under this proviso, the orders would be valid notwithstanding the provision in the substantive part of sub-s. (3). But it strikes me that this proviso offends Art. 14 of the Constitution and is, therefore, itself invalid. If that is so, of course, no question of its protecting the assessment orders made in this case arises.

Now, the proviso purports to make valid an assessment made beyond the period provided for it in the substantive part of sub-s. (3) where the assessment is made in consequence of an order under section 31 or certain other sections. Section 31 deals with an order in appeal made by an Appellate Assistant Commissioner. Now, in this case the orders of the Appellate Assistant Commissioner were passed

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under s. 31 on March 20 and 21, 1953. These orders I have earlier set out. It was in consequence of them that the disputed orders of assessment came to be passed. We are not concerned with the other sections mentioned in the proviso.

Now, the proviso in substance says that notwithstanding that an order of assessment is bad as having been made beyond the time prescribed in the substantive part of sub-s. (3) for making it, it would not be bad if "made on the assessee or any person in consequence of.....an order under section 31." The proviso, therefore, puts in a class the assessee and other persons against whom an order of assessment is made in consequence of an order under s. 31. It discriminates against these persons inasmuch as an order of assessment against them can be made at any time but in the case of other evaders of tax, an order must be made within the time prescribed in the substantive part of sub-s. (3). The assessee in the proviso is the assessee in the appeal from or in other proceedings in whose assessment an order under s. 31 or the other sections mentioned in the proviso, is made. It may be said—though I do not pronounce finally on the question now that such an assessee may be put in a separate class, for in his case, in his presence it has been found judicially that he has evaded tax. To that extent, he may be different from other evaders of tax and the differentia that distinguishes him may have a rational relation to the object of the Act, namely, prevention of evasion of tax and collection of tax that was due but had not been paid.

But the proviso puts in a class not only the assessee but other persons, namely, those against whom an order of assessment comes to be made in consequence of an order under s. 31 made in the assessment case of another person, that is, the assessee mentioned in the proviso. These persons obviously

are persons against whom the Appellate Assistant Commissioner making the order under s. 31 in an appeal arising out of the assessment case of another person, entertains a view that they have evaded payment of tax. Such another person was not a party to any proceeding under s. 31; he had no opportunity to show to the Appellate Commissioner that the view that he had entertained about him was unwarranted.

The question then arises, whether such other person can be put in a class as contrasted with other evaders of tax? It is not suggested and cannot be suggested, that there are no other evaders of tax except those who have been found to be such in proceedings under s. 31 and the other sections mentioned in the second proviso. I find no intelligible differentia between a person who has been found in a s. 31 proceeding to have evaded tax and other evaders of tax, which will have any rational relation to the object of the second proviso. It is true that there may have been some kind of evidence in the proceedings under s. 31 which may have satisfied the Appellate Commissioner that a person not before him had evaded tax. But then it is possible for the revenue authorities to be satisfied on equally good evidence otherwise than in the course of proceedings mentioned in the second proviso, that a person has evaded tax. I see no distinction between such a person and the person mentioned in the proviso. But such a person has the advantage of the bar of time against an assessment order concerning him as provided in the substantive part of sub-s. (3). This advantage is denied to the persons mentioned in the second proviso. It seems to me that the second proviso makes a hostile discrimination against persons mentioned in it and the classification made by it is without any intelligible differentia having a rational connection with the object of the statute. I think, therefore, that the second proviso to sub-s. (3) of

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s. 34, as amended by the amending Act of 1953, in so far as it affects persons other than assessees is void as violating Art. 14 of the Constitution It cannot validate the assessment orders in this case. As I have said before, it is not necessary in this case to say that the proviso is bad as making a hostile discrimination against the assessee mentioned in it and I do not do so. The respondent Lakhmir Singh was not the assessee in the s. 31 proceedings in consequence of which the assessment order against him was made. The assessee was his father as the Karta of a non-existent family. The proviso is invalid against the respondent Lakhmir Singh.

I would, therefore, dismiss the appeals.

For the Judgment of Hidayatullah and Raghubar Dayal, JJ., see *S.C. Prashar, Income-tax Officer* v. *Vasantsen Dwarkadas*, ante p. 29.

By Court : In accordance with the opinion of the majority, the appeals are dismissed with costs, one hearing fee.

Appeals dismissed.