

**THE VICE INCOME-TAX OFFICER, CITY CIRCLE II-A, A
BANGALORE**

v.

K.Y. PILLAIAH & SONS

July 18, 1967

[J. C. SHAH, S. M. SIKRI AND V. RAMASWAMI, JJ.]

Mysore Income-tax Act of 1923, s. 34—Notice served within 4 years of the close of assessment year—Completion of assessment proceeding—Time limit for.

The Income-tax Officer, Bangalore commenced a proceeding under s. 34 of the Mysore Income-tax Act for re-assessment of the income of the respondents for the assessment year 1949-50 and served a notice in that behalf in March 1951, on the respondents. The Income-tax Officer determined the total income of the respondents in May 1954, but the order was set aside by the Appellate Assistant Commissioner in November 1961 and the Income-tax Officer was directed to make a fresh inquiry. When the Income-tax Officer commenced inquiry, the respondents applied to the High Court for a writ of prohibition and the High Court passed an order restraining the Income-tax Officer on the ground that the assessment proceeding was barred because of the expiry of the period of limitation.

In appeal to this Court,

Held: The High Court was in error, because, though the Appellate Assistant Commissioner vacated the Income-tax Officer's assessment order of 1954 and remanded the case for further inquiry, the Appellate Assistant Commissioner did not set aside the notice of March 1951 served on the respondents. If a proper notice was served within the period provided by the section (four years from the close of the assessment year) the proceeding could be completed even after the expiry of four years for the Act prescribes no period for completion of the proceeding. [8E-G]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2177 of 1966.

Appeal by special leave from the judgment and order dated July 12, 1963 of the Mysore High Court in Writ Petition No. 1076 of 1962.

Veda Vyasa, R. Ganapathy Iyer, R. N. Sachthey and S. P. Nayar, for the appellant.

R. Gopalakrishnan, for the respondent.

The Judgment of the Court was delivered by

Shah, J.—The respondents—a Hindu undivided family—were assessed for the assessment year 1949-50 to tax under s. 23 of the Mysore Income-tax Act on a total income of Rs. 10,100/-. The Second Additional Income-tax Officer (Urban Circle), Bangalore, commenced a proceeding under s. 34 of the Mysore Income-tax Act for re-assessment of the income of the respondents for the

- A assessment year 1949-50, and served a notice in that behalf on March 6, 1951. On May 21, 1954 the Income-tax Officer determined the respondents' total income at Rs. 75.957/-. In appeal against the order, the Appellate Assistant Commissioner of Income-tax, 'A' Range, Bangalore, by order dated November 4, 1961, set aside the order and directed the Income-tax Officer to make a fresh assessment after making inquiries on certain matters specified in the order.

At the request of the respondents under s. 66(2) of the Mysore Income-tax Act, the Commissioner of Income-tax, Mysore, referred the following questions to the High Court of Mysore:

- C "1. On the facts and in the circumstances of the assessee's case whether within the meaning of s. 34 of the Mysore Income-tax Act, if a notice under that section is issued within the prescribed period, whether the Income-tax Officer can proceed to assess or re-assess such escaped income after four years from the close of the assessment year?
- D 2. On the facts and in the circumstances of the case, whether the Appellate Assistant Commissioner of Income-tax is competent to set aside and give directions to the Income-tax Officer to re-do the assessment in the manner the Appellate Assistant Commissioner of Income-tax has done?"

- E At the hearing of the reference, the respondents did not press the first question, and the High Court answered the second question in the affirmative.

- F The Income-tax Officer commenced inquiry directed by the Appellate Assistant Commissioner. The respondents then applied to the High Court of Mysore for issue of a writ of prohibition restraining the Income-tax Officer from continuing the assessment proceeding for the year 1949-50 on the plea that the proceeding was because of expiry of the period of limitation barred. The High Court of Mysore upheld the contention of the respondents and allowed the petition. In the view of the High Court the provisions of s. 34 of the Mysore Income-tax Act were "more or less similar to Rule 34 of the Mysore Sales Tax Act, 1948. Hence the present case clearly comes within the rule laid down by this Court in *M/s K. S. Subbarayappa and Sons v. State of Mysore* [(1952) Mysore L. J. 234] which means that the present proceedings are barred". The Commissioner of Income-tax has appealed to this Court with special leave.

H The question arising in this appeal must, it is common ground, be determined in the light of the provisions of the Mysore Income-tax Act, 1923. Even after the merger of the State of Mysore with

the Union of India a proceeding for assessment of income-tax relating to the assessment year 1949-50 has to be heard and disposed of under the Mysore Act. Section 34 of the Mysore Income-tax Act reads as follows:— A

“If for any reason, profits or gains chargeable to income-tax have escaped assessment in any year, or have been assessed at too low a rate, the Income-tax Officer may, at any time within four years of the end of that year, serve on the person liable to pay tax on such income, profits or gains, or in the case of a company, on the principal officer thereof a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22, and may proceed to assess or re-assess such income, profits or gains and the provision of this Act shall, so far as may be, apply according as if the notice were a notice issued under that sub-section”. B
C

A proceeding for re-assessment under s. 34 of the Mysore Act may be commenced if two conditions co-exist: D

(i) that the profits and gains chargeable to income-tax have escaped assessment or have been assessed at too low a rate, and (ii) the notice is served within four years of the end of the year of assessment. But if a proper notice is served within the period provided by the section, the proceeding may be completed even after the expiry of four years from the close of the assessment year, for the Act prescribes no period for completion of the proceeding. E

A notice for re-assessment was in fact served on the respondents on March 6, 1951 under s. 34 of the Mysore Act. That notice was served within four years of the end of the year of assessment 1949-50, and the Income-tax Officer was of the view that the profits or gains chargeable to income-tax had escaped assessment in the year 1949-50. It is true that the Appellate Assistant Commissioner vacated the order of assessment dated May 21, 1954, but he did not set aside the notice served upon the respondents. He merely remanded the case for further inquiry to be made in the light of the directions given by him. It is difficult to appreciate the grounds on which it could be held that the proceeding for re-assessment to tax the income which had escaped assessment in the year 1949-50 commenced after due notice served on March 1951 was barred. The High Court was, in our judgment, plainly in error in holding that the proceeding for re-assessment was barred. F
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It must also be remembered that the respondents had under an order of the Commissioner obtained a reference on the first question set out hereinbefore. That question was not pressed before the High Court, and it must be deemed to have been answered H

- A** against the respondents. That question could not thereafter be re-agitated by the respondents in a petition for the issue of a writ under Art. 226 of the Constitution.

The appeal is allowed. The order passed by the High Court is set aside. The respondents will pay the costs of the Commissioner in this Court and in the High Court.

B

Appeal dismissed.

V.P.S.