# COMMISSIONER OF INCOME TAX, WEST BENGAL

*v.*

# BALKRISHAN MALHOTRA

*July* 28, 1971

[K. S. HEGDE AND A. N. GROVER, JJ.]

*Income-tax Act*, 1922, *s.* 34(3)—*'Assessment' meaning of—Whether assessment completed on day of computation of income by Income-tax Officer or when the tax due is computed.*

The original assessment of the assessee for the assessment year 1944-45 was made sometime before March 13, 1953. Subsequently after obtaining the sanction of the Commissioner of Income-tax, the Income-tax Officer reopened the assessment under s. 34(1)(a) of the Income-tax Act, 1922. On March 13, 1953 he issued a notice to the assessee under s. 34 read with s. 22(2) of the Act. After considering the objection of the assessee, the Income-tax Officer made an assessment order under s. 34 read with s. 23 (4) of the Act on March 8, 1954 in which he computed the income of the assessee. But on that day he did not determine the tax due from the assessee. He determined the tax and issued a notice under s. 28(3) in Form 30 only on March 31, 1954. The assessee contended that the assessment was barred under s. 34(3). The contention was rejected by the authorities under the Act including the appellate tribunal but the High Court gave its advisory opinion in favour of the assessee. In appeal to this Court by the Revenue the main question for consideration was whether the assessment was complete on the date when the income was assessed by the Income-tax Officer or on the date when the tax was computed.

HELD: The appeal must fail.

As long back as September 24, 1953 the High Court of Madras in *Vishwanathan Chettiar's* case came to the conclusion that the word 'assessments' in the proviso to s. 34(3) means not merely the computation of the income of the assessee but also the determination of the tax payable by him. No other High Court has taken a different view. The Revenue must have in all these years acted on the basis of that decision of the Madras High Court. Interpretation of a provision in a taxing statute rendered years back and accepted and acted upon by the department should not be easily departed from. The corresponding provisions of the 1961 Act are materially different from the provisions of the 1922 Act. Under these circumstances this Court would not be justified in departing from the interpretation placed by the High Court in *Viswanathan Chettiar's* case though a different view of the law may be reasonably possible. [954F-H]

*RM.P.R. Viswanathan Chettiar* v. *Commissioner of Income-tax, Madras*, 25 I.T.R. 79, affirmed.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1391 of 1967.

Appeal from the judgment and order dated May 31, 1963 of the Calcutta High Court in Income-tax Reference No. 4 of 1960.

A *Jagadish Swarup* Solicitor-General, *B. D. Ahuja* and *B. D. Sharma*, for the appellant.

*Sukumar Mitra*, and *Rameshwar Nath*, for the respondent.

The Judgment of the Court was delivered by

B **Hegde, J.**—This appeal by certificate by the Revenue is directed against the order made by the High Court of Calcutta in a reference under s. 66(1) of the Indian Income Tax Act, 1922 (to be hereinafter referred to as the Act).

At the instance of the assessee, the Income-tax Appellate Tribunal 'A' Bench, Calcutta referred to the High Court for its C opinion two questions of law *viz.* :

> "(1) Whether the assessment is complete on the date when the income is assessed by the Income-tax Officer or on the date when the tax is computed by him and the challan demanding the tax is issued ?
>
> D (2) Whether on the facts admitted or found in this case, the assessment was time barred under the first proviso to section 34(3) of the Indian Income-tax Act ?"

The original assessment of the assessee for the assessment year 1944-45 was made sometime before March 13, 1953. Sub- E sequently after obtaining the sanction of the Commissioner of Income-tax, the Income-tax Officer re-opened the assessment under s. 34(1) (a) of the Act. On March 13, 1953 he issued a notice to the assessee under s. 34 read with s. 22(2) of the Act. After considering the objection of the assessee, the Income-tax Officer computed the income of the assessee under s. 34 read F with s. 23(4) on March 8, 1954 at Rs. 60,000. The note made by the Income-tax Officer on that day in the order sheet reads :

> "Assessed as per assessment order on a total income of Rs. 60,000 for the assessment year 1944-45 under s. 34/23(4)"

G

But on that date the Income-tax Officer did not determine the tax due from the assessee. It appears that he determined the tax due from the assessee and issued a notice under s. 28(3) in Form 30 only on March 31, 1954. The assessee contended that the assessment is barred under s. 34(3). That contention was H rejected by the authorities under the Act including the appellate tribunal but on a reference made by the tribunal to the High Court, the High Court following the decision of the Madras High Court in *RM. P. R. Viswanathan Chettiar* v. *Commissioner of*

*Income Tax, Madras*(1) accepted the contention of the assessee while giving its advisory opinion on the questions of law referred to it by the appellate tribunal. This appeal is directed against that decision. A

The provisions of law which are material for deciding the point in issue are ss. 23 and 34(3) of the Act. Those provisions at the material time read as follows : B

"23(1). If the Income-tax Officer is satisfied without requiring the presence of the assessee or the production by him of any evidence that a return made under section 22 is correct and complete, he shall assess the total income of the assessee, and shall determine the sum payable by him on the basis of such return. C

(2) If the Income-tax Officer is not satisfied without requiring the presence of the person who made the return or the production of evidence that return made under section 22 is correct and complete, he shall serve on such person a notice requiring him, on a date to be therein specified, either to attend at the Income-tax Officer's Office or to produce, or to cause to be there produced, any evidence on which such person may rely in support of the return. D

(3) On the day specified in the notice issued under sub-section (2) or as soon afterwards as may be, the Income-tax Officer, after hearing such evidence as such person may produce and such other evidence as the Income-tax Officer may require, on specified points, shall by an order in writing, assess the total income of the assessee, and determine the sum payable by him on the basis of such assessment. E F

(4) If any person fails to make the return required by any notice given under sub-section (2) of section 22 and has not made a return or a revised return under sub-section (3) of the same section or fails to comply with all the terms of a notice issued under sub-section (4) of the same section or, having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of the section, the Icome-tax Officer shall make the assessment to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment. G

Section 34(3)—No order of assessment under section 23 to which clause (c) of sub-section (1) of section 28 H

(1) 25, I.T.R. 79.

A applies or of assessment or re-assessment in cases falling within clause (a) of sub-section (1) of this section shall be made after the expiry of 8 years and no order of assessment or re-assessment in any other case shall be made after the expiry of 4 years from the end of the year in which the income, profits or claims were first
B assessable :

Provided that where a notice under sub-section (1) has been issued within the time therein limited, the assessment or re-assessment to be made in pursuance of such notice may be made before the expiry of one year from the date of the service of the notice even if such
C period exceeds the period of 8 years or 4 years as the case may be".

It has been stated over and over again by this Court as well as by the Judicial Committee that the words "assessment" and the "assessee" are used in different places in the Act with different meaning. Therefore in finding out the true meaning of those
D words in any provision, we have to see to the context in which the word is used and the purpose intended to be achieved. It is true that sub-ss. 1, 3 and 4 of s. 23 require the Income-tax Officer to "assess the total income of the assessee and determine the sum payable by him". In other words in those provisions the word "assess" has been used with reference to computation of the
E income of the assessee and not the determination of his tax liability. But in s. 34(3) the word used is not "assess" but "assessment". The question for decision is what is the meaning of that word ? As long back as September 24, 1953, the High Court of Madras in *Viswanathan Chettiar's* case(1) came to the conclusion that the word "assessment" in proviso to s. 34(3) means not merely
F the computation of the income of the assessee but also the determination of the tax payable by him. No other High Court has taken a contrary view. The Revenue must have in all these years acted on the basis of that decision of the Madras High Court. Interpretation of a provision in a taxing statute rendered years back and accepted and acted upon by the department
G should not be easily departed from. It may be that another view of the law is possible but law is not a mere mental exercise. The courts while reconsidering the decisions rendered long time back particularly under taxing statutes cannot ignore the harm that is likely to happen by unsettling law that had been once settled. We may also note that the Act has been repealed by the Income-tax Act, 1961. The corresponding provisions of the
H 1961 Act are materially different from the provisions referred to earlier. Under these circumstances we do not think that we would

(1) 25 I.T.R. 79.

be justified in departing from the interpretation placed by the Madras High Court in *Viswanathan Chettiar's* case(1) though a different view of the law may be reasonably possible. A

In the result this appeal fails and the same is dismissed. But in the circumstances of the case we make no order as to costs. B

G. C. *Appeal dismissed.*

(1) 25 I.T.R. 79.