

**A COMMISSIONER OF INCOME-TAX, WEST BENGAL
CALCUTTA & ANR.**

v.

HEMCHANDRA KAR & ORS.

April 16, 1970

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

Indian Income-tax Act (11 of 1922), s. 34 and Indian Income-tax Amendment Act, 1953, s. 31—Scope of.

- C** The assessee was a Hindu undivided family. The Income-tax Officer determined the total income of the assessee at a certain figure. Following demonetization of high denomination notes the assessee encashed notes of the value of Rs. 19,000 and each of five members of the family encashed certain notes, the total encashed by all the five members being Rs. 1,10,000. The Income-tax Officer reopened the assessments under s. 34 of the Income-tax Act, 1922 (as amended in 1948 and made applicable by reason of s. 31 of the Income-tax Amendment Act, 1953) and completed the reassessment on January 31, 1955. He included Rs. 19,000 in the total income of the family and the amounts which had been separately encashed by the five members were included in the reassessments of their respective individual incomes. On February 2, 1955, he issued another notice under s. 34 and after hearing the assessee, included the sum of Rs. 1,10,000 in the total income of the family.
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On the question whether the second notice was competent.

- E** HELD : Under s. 34, as it stood at the relevant time, what the Income-tax Officer has to see is if by reason of omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment there had been escapement of income. From the primary facts disclosed by the assessee or discovered by the authority, the authority has to draw inferences as regards other facts and ultimately draw the proper legal inferences. In the present case, the primary facts were within the knowledge of the Income-tax Officer at the time when he completed the first reassessment. When he was in possession of all facts and proceeded to make the reassessment by including the amount in the individual accounts of the members of the family, the escapement has occurred by reason of the failure of the officer to include the total sum in the assessment of the family. He could not therefore, a few days later, merely changed his opinion and issue the second notice under s. 34 to the family. [286 F-H; 287 A-C]
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- G** Majority opinion in *Calcutta Co. Ltd. v. Income-tax Officer, Companies District I Calcutta & Anr.* 41 I.T.R. 191, followed.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2273 of 1966.

- H** Appeal from the judgment and order dated February 12, 1964 of the Calcutta High Court in Income-tax Reference No. 84 of 1960.

S. C. Manchanda, R N. Sachthey and B. D. Sharma, for the appellants.

A. K. Sen and D. N. Mukherjee, for the respondent No. 2.

The Judgment of the Court was delivered by

Grover, J.—This is an appeal by certificate from a judgment of the Calcutta High Court in an Income tax Reference.

The assessee during the material time was a Hindu Undivided Family consisting of the six members. In the original assessment for the assessment year 1946-47 the year of account being from April 14, 1945 to April 13, 1946, the Income tax Officer determined the total income of the assessee at Rs. 35,741 accruing from the business and other sources such as sale proceeds of forest produce, fisheries etc. Following demonetization of High Denomination Notes in January 1946 the assessee encashed such notes of the value of Rs. 19,000. The five members of the family named below also encashed notes of the value shown against each of them, the total value of the notes so encashed being Rs. 1,10,000 :

1. Hem Chandra Kar	..	Rs. 26,000/-
2. Jatindra Nath Kar	..	Rs. 24,000/-
3. Atul Chandra Kar	..	Rs. 23,000/-
4. Narendra Nath Kar	..	Rs. 21,000/-
5. Bishnuram Kar	..	Rs. 16,000/-

The Income tax Officer reopened the assessments of the Hindu Undivided Family and of the five members for the assessment year 1946-47. He included Rs. 19,000 in the total income of the family and the amounts which had been separately encashed by the five members were included in the reassessments of their respective individual income. This reassessment was completed on January 31, 1955. Two days later i.e. February 2, 1955 the Income tax Officer issued another notice under s. 34 of the Income tax Act 1922 to the family seeking to include in the income of the family the amount of the High Denomination notes of the total value of Rs. 1,10,000 which had been encashed separately by the five members. On behalf of the assessee it was explained that each of the five members was in receipt of the pocket allowance varying from Rs. 100 to Rs. 150 per month and also received cash and jewellery as gifts from his relations; therefore the amounts encashed by such members belonged to them individually. The Income tax Officer was not satisfied with the explanation. He included the sum of Rs. 1,10,000 in the total income of the family. The Appellate Assistant Commissioner, on appeal, held that the second notice under s. 34 issued to the family on February 2, 1955 was incompetent. He annulled the reassessment made pursuant

A thereto. The Appellate Tribunal, however, held on appeal by the department that the notice issued under s. 34 was valid. The Tribunal called for a report from the Appellate Assistant Commissioner on merits. In his report the Assistant Commissioner agreed with the view of the Income tax Officer. The Tribunal was finally satisfied that the amounts of the High Denomination notes which
 B had been encashed in the name of the five members individually belonged to the Hindu Undivided Family. The following questions of law were referred by the Tribunal for the decision of the High Court :

- (1) "Whether, on the facts and in the circumstances of the case, the assessment made upon the assessee Hindu Undivided family pursuant to a notice under section 34 of the Indian Income tax Act issued on the 2nd February, 1955 was in accordance with law.
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- (2) Whether on the facts and in the circumstances of the case, the sum of Rs. 1,10,000 was rightly included in the assessment of the Hindu Undivided family".
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The High Court held that the second notice issued under s. 34 of the Act on February 2, 1955 could not have been issued by the Income tax Officer to the Hindu Undivided Family. It was found that when the first reassessment was made the primary facts necessary for reassessment of the family were in the possession of the Income tax Officer. These facts came into possession not by virtue of disclosure made by the family but were discovered by him otherwise. At the time of the first reopening of the assessment of the Hindu Undivided Family and of the individual members the question of assessment of the entire amount represented by the High Denomination Notes was under direct consideration. It was open to the Income tax Officer to assess the whole amount of Rs. 19,000 and Rs. 1,10,000 in the hands of the Hindu Undivided Family at that stage. The escapement, if any, therefore took place by reason of the failure of the Income tax Officer to assess the family with respect to the sum of Rs. 1,10,000 when he was in full possession of all the material facts. The answer to the first question was given by the High Court in the negative. On the second question it was considered that the answer would be merely academic but in spite of this the High Court proceeded to express its agreement with the finding of the Tribunal on the point.
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Section 34 of the Act has been amended from time to time. In the present case this section, as amended in 1948, would be applicable by reason of s. 31 of the Income tax Amendment Act 1953. We are concerned with s. 34(1)(a). If the present case
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could be brought under that provision the second notice which was issued in February 1955 would not be barred by time. But if action could not be taken under it there could be no manner of doubt that the notices which were issued and the reassessment which was made would be beyond the period prescribed. Section 34(1)(a) is in the following terms :

“Income escaping assessment.—(1) If—

- (a) the Income tax Officer has reason to believe that by reason of the omission or failure on the part of an assessee to make a return of his income under section 22 for any year or to disclose fully and truly all material facts necessary for his assessment for that year, income, profits or gains chargeable to income-tax have escaped assessment for that year, or have been under-assessed, or assessed at too low a rate, or have been made the subject of excessive relief under the Act, or excessive loss or depreciation allowance has been computed or”

What has to be seen is whether the Income tax Officer could have reason to believe that by reason of omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment there had been escapement of income? The High Court rightly relied on the observations in the majority judgment in *Calcutta Discount Co. Ltd. v. Income tax Officer, Companies District I Calcutta & Another*⁽¹⁾ that in every assessment proceeding the assessing authority will, for the purpose of computing or determining the proper tax, require to know all the facts which help him in coming to the correct conclusion. From the primary facts in his possession whether on disclosure by the assessee or discovered by him on the basis of facts disclosed or otherwise the assessing authority has to draw inferences as regards certain other facts and ultimately from the primary facts and the further facts inferred from them the authority has to draw the proper legal inferences. Therefore, the duty of disclosing all the primary facts lies on the assessee. The primary facts were admittedly within the knowledge of the Income tax Officer at the time when he completed the first reassessment under s. 34. This is clear from the order of the Appellate Assistant Commissioner to whom the Income tax Officer reported that in the course of reassessment under s. 34 in respect of individual members it became apparent that “they acted as merely name lenders of the Hindu Undivided Family and that the total sum of Rs. 1,10,000 encashed by them actually belonged to the Hindu Undivided

(1) 41 T.T.R. 191.

- A** Family". When the Income tax Officer was in possession of all these facts and he proceeded to make the reassessment of the individual members by including the amounts in question in their individual accounts he could not a few days later merely change his opinion and issue the notices under s. 34 to the Hindu Undivided Family. In this situation it could hardly be said that the requirements of s., 34(1)(a) were satisfied. The escapement had taken place by reason of the failure of the Income tax Officer to include the sum of Rs. 1,10,000 in the assessment of the Hindu Undivided Family when he was in full possession of all the necessary and material facts. We have no doubt that the High Court returned the correct answer to the first question. Evidently the
- B**
- C** second question need not be answered as it becomes purely academic when answer to the first question is in favour of the assessee.

The appeal fails and it is dismissed with costs.

V.P.S.

Appeal dismissed.