1964

March 31

BANARASI DEVI

v.

INCOME-TAX OFFICER, CALCUTTA

[K. SUBBA RAO, J. C. SHAH AND S. M. SIKRI, JJ.]

Income-tax Act, (11 *of* 1922), *as amended by Income-tax (Amendment) Act* (1 *of* 1959) *s.* 4—*Fiscal enactments—Interpretation of—"Issued" in s.* 4 *of the Amending Act—Meaning of.*

For the assessment year 1947-48 the appellant in the first case field a return of her income and the assessment was completed sometime in 1948 as a result whereof it was found that no tax was payable by her. On April 2,1956, the appellant was served with a notice dated March 19, 1956, under s. 34(1) of the Income-tax Act, 1922, on the ground of escaped assessment. The date of the notice fell within 8 years from the end of the relevant assessment year i.e. March 31, 1948, but it was served beyond 8 years from the date and therefore was clearly out of time under the provisions of the said section. In the second case, the appellant was assessed for the assessment year 1947-48 and the tax thereon was deposited on his behalf. On April 2, 1956, the appellant was also served with a similar notice as aforesaid. The appellants filed two petitions under Art. 226 for quashing the said notices and the learned Judge of the High Court issued rules *nisi* to the Income-tax Officer, the Commissioner of Income-tax and the Union of India. On September 11, 1958, the rules were made absolute. The respondents then preferred appeals to a Division Bench of that Court Pending the appeals, on March 12, 1959, s. 34 of the Act was amended by s. 2 of the Amending Act, 1959. After the said amendment the appeals were heard and relying upon the said amendment the learned judges held that the said notices, though served on the appellants after the prescribed time, were served under s. 4 of the Amending Act. On appeal by Special Leave it was urged on behalf of the appellants that s. 4 of the Amending Act only saved a notice issued after the prescribed time, but did not apply to a situation where notice was issued within but served out of time. The respondents contended that the expression "issued" means "served" and that, in any view, it was comprehensive enough to take in the entire process of giving and serving of notice.

Held: To the present case the general rule of construction of fiscal Acts would apply, and not the exception engrafted on the rule; for, s. 4 of the Amending Act, cannot be described as a provision laying down the machinery for the calculation of tax. In substance it enables the Income-tax Officer to reassess a person's income which has escaped assessment, though the time within which he could have so assessed had expired under the Act before the amendment of 1959. It resuscitates barred claims. Therefore, the same stringent rules of construction appropriate to a charging section shall also apply to such a provision.

Case law discussed.

On a true construction of s. 4 of the Amending Act, it must be held that the clear intention of the legislature was to save the validity of the notice as well as the assessment from an

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attack on the ground that the notice was given beyond the prescribed period. That intention would be effectuated if the wider meaning is given to the expression "issued". The dictionary meaning of the expression "issued" takes in the entire process of sending the notice as well as the service thereof. The said word used in s. 34(1) of the Act itself was interpreted by courts to mean 'served". The limited meaning, namely, "sent" will exclude from the operation of the provision a class of cases and introduce anomalies. In the circumstances, by interpretation, the wider meaning of the word "issued" must be accepted. In this view, though the notices were served beyond the prescribed time, they were saved under s. 4 of the Amending Act.

Case law referred to

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 142 and 143 of 1963. Appeals by special leave from the judgment and order dated July 13, 1961, of the Calcutta High Court in Appeals from Original Orders No. 41 and 69 of 1959.

S. Chaudhury and *K. R. Chaudhuri*, for the appellants (in C.A. No. 142/63).

M. Rajagopalan, K. Rajendra Chowdhary and *K. R. Chaudhuri*, for the appellants (in C. A. No. 143/1963).

K. N. Rajagopal Sastri and *R. N. Sachthey*, for the respondent (in both the appeals).

March 31, 1964. The Judgment of the Court was delivered by

Subba Rao, J.

SUBBA RAO, J.—These two appeals filed by special leave raise the question of the true construction of the provisions of s. 4 of the Indian Income-tax (Amendment) Act, 1959 (Act No. 1 of 1959), hereinafter called the Amending Act. The material facts lie in a small compass and they are as follows. For the assessment year 1947-48 the appellant in Civil Appeal No. 142 of 1963 filed a return of her income before the Income-tax Officer, District IV, Calcutta, and the assessment was completed sometime in 1948 as a result whereof it was found that no tax was payable by her. On April 2, 1956, the Income-tax Officer served on her a notice dated March 19, 1956, under s. 34(7) of the Indian Income-tax Act, 1922, hereinafter called the Act, on the ground of escaped assessment. The date of the notice fell within 8 years from the end of the relevant assessment year i.e., March 31, 1948; but it was served beyond 8 years from that date and, therefore, was clearly out of time under the provisions of the said section.

In Civil Appeal No. 143 of 1963, for the assessment year 1947-48 the appellant was assessed on a total income

of Rs. 28,993/- on December 30, 1948, by the Income-tax Officer and the tax thereon amounting to Rs. 4,747-13-0 was deposited on behalf of the appellant in the Reserve Bank of India. On April 2, 1956, the appellant was served with a notice dated March 19, 1956, by the Income-tax Officer purporting to be under s. 34 of the Act on the ground of escaped assessment. The date of the notice fell within 8 years from the end of the relevant assessment year, i.e., March 31, 1956; but it was served beyond 8 years from that date and was, therefore, clearly out of time under the provisions of the said section.

The appellants in the two appeals filed two petitions in the High Court of Calcutta under Art. 226 of the Constitution for quashing the said notices and for other appropriate reliefs. On March 20, 1957, Sinha, J., of that Court issued rules *nisi* on the said two applications to the Income-tax Officer, the Commissioner of Income-tax and the Union of India. On September 11, 1958, the said Judge made the rules absolute. The respondents to the applications preferred appeals from the judgment of Sinha, J., to a Division Bench of that Court. Pending the appeals, on March 12, 1959, s. 34 of the Act was amended by s. 2 of the Amending Act. After the said amendment the appeals were heard by a Division Bench of the High Court, consisting of Bose, C. J., and G. K. Mitter, J. Relying upon the said amendment the learned Judges held that the said notices, though served on the appellants after the prescribed time, were saved under s. 4 of the Amending Act. In that view they set aside the orders of Sinha, J., and dismissed the writ petitions. Hence the appeals.

Learned counsel for the appellants contends that the notices under s. 34(1) of the Act were served on the appellants beyond 8 years from the end of the assessment year and, therefore, were barred and that on a true construction of the provisions of s. 4 of the Amending Act, the said notices were not saved thereunder. To appreciate the contention it is necessary to read the relevant provisions of the Act, before and after the amendment.

Section 34(1) *of the Indian Income-tax Act,* 1922, *before it was amended by the Finance Act No. XVIII of* 1956:

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

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and truly all material facts necessary for his assessment for the year, income, profit or gain 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

(b) .....

he may in cases falling under clause (a) at any time within eight years.....serve on the assessee.....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 or re-compute the loss or depreciation allowance; and the provisions of this Act shall, so far as may be applied accordingly as if the notice were a notice issued under that sub-Section.

* * * * *

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 period exceeds the period of eight years or four years, as the case may be.

Section 4 of the Amending Act, (Act 1 of 1959)

No notice issued under clause (a) of sub-section (1) of section 34 of the principal Act at any time before the commencement of this Act and no assessment, re-assessment or settlement made or other proceedings taken in consequence of such notice shall be called in question in any Court, tribunal or other authority merely on the ground that at the time the notice was issued or at the time the assessment or re-assessment was made, the time within which such notice should have been issued or the assessment or re-assessment should have been made under that section as in force before its amendment by clause (a) of section 18 of the Finance Act, 1956, and expired.

Section 34(1) (a) of the Act empowered the Income-tax Officer to assess concealed income which escaped assessment by serving a notice on the assessee at any time within 8 years

of the end of the assessment year in respect whereof the said income has escaped assessment. Section 4 of the Amending Act debars the court from questioning the validity of notice issued or the assessment or re-assessment made under sub-s. (1) (a) of s. 34 of the Act on the ground that the time for the issue of such notice or the making of such assessment or re-assessment had expired under the said sub-section before it was amended by s. 18 of the Finance Act of 1956.

Learned counsel for the appellants contends that s. 4 of the Amending Act only saves a notice issued after the prescribed time, but does not apply to a situation where notice is issued within but served out of time. Learned counsel for the respondents argues that the expression "issued" means "served" and that, in any view, it is comprehensive enough to take in the entire process of giving and serving of notice.

Before construing the section it will be useful to notice the relevant rules of construction of a fiscal statute. In *Oriental Bank v. Wright*(1) the Judicial Committee held that if a statute professed to impose a charge, the intention to impose a charge upon a subject must be shown by clear and unambiguous language. In *Canadian Eagle Oil Co. v. R.*,(2) Viscount Simon L. C. observed:

> "In the words of Rowlatt J..... in a taxing Act one has to look at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

In other words, a taxing statute must be couched in express and unambiguous language. The same rule of construction has been accepted by this Court in *Gursahai Saigal v. Commissioner of Income-tax, Punjab* (3), wherein it was stated:

> "It is well recognized that the rule of construction that if a case is not covered within the four corners of the provisions of a taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter applies only to a taxing provision has no application to all provisions in a taxing statute. It does not apply to a provision not creating a charge for the tax but laying down the machinery for its calculation or procedure

(1) (1880) 5 A.C. 842, 856. (2) [1946] A.C. 119, 140.
(3) 1868 Punj. Rec. Crl. Case No. 6.

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for its collection. The provisions in a taxing statute dealing with machinery for assessment have to be construed by the ordinary rules of construction, that is to say, in accordance with the clear intention of the legislature, which is to make a charge levied effective.

In that case, the court was called upon to construe the provisions of s. 18A of the Income-tax Act, 1922, which laid down the machinery for assessing the amount of interest and, therefore, this court did not apply the stringent rule of construction. Apart from the emphasis on the letter of the law, the fundamental rule of construction of a taxing statute is not different from that of any other statute and that rule is stated by Lord Russell of Killowen C. J. in *Attorney-General* v. *Calton Ban*(1), thus:

> "The duty of the court is..... to give effect to the intention of the legislature, as that intention is to be gathered from the language employed, having regard to the context in connection with which it is employed."

To the present case the general rule of construction of fiscal Acts would apply, and not the exception engrafted on that rule; for, s. 4 of the Amending Act cannot be described as a provision laying down the machinery for the calculation of tax. In substance it enables the Income-tax Officer to reassess a person's income which has escaped assessment, though the time within which he could have so assessed had expired under the Act before the amendment of 1959. It resuscitates barred claims. Therefore, the same stringent rules of construction appropriate to a charging section shall also apply to such a provision.

Before the Amending Act of 1959 was passed, Income-tax Officers issued notices before April 1, 1956, and also after that date for reopening assessments made beyond 8 years from the issue of such notices. The validity of such notices was questioned. To save the validity of such notices the Amending Act was passed. This Court in *S. C. Prashar v. Vasantsen Dwarkadas*(2) held, on a construction of s. 4 of the Amending Act, that it operated and validated the notices issued under s. 34(1) (a) of the Act, as amended in 1948, even earlier than April 1, 1956. In other words, notices issued under s. 34(1) (a) of the Act before or after April 1, 1956, could not be challenged on the ground that they were issued beyond the time limit of 8 years from the respective assessment years prescribed by the 1948 amendment Act. Section

(1) [1899] 2. Q.B. 158, 164. (2) [1964] 1 S.C.R. 29.

4 of the Amending Act of 1959, therefore, was enacted for the sole purpose of saving the validity of such notices in respect of all escaped incomes relating to any year commencing from the year ending on March 31, 1941, though they were issued beyond the prescribed time. If the construction sought to be placed by the learned counsel for the appellants be accepted, it would defeat the purpose of the amendment in some cases. If the words were clear and exclude the class of cases where the notices were sent before 8 years from the date of assessment, but served thereafter, this Court has to give them the said meaning.

This bring us to the question of construction of the provisions of s. 4 of the Amending Act. The crucial word in the said section is "issued". The section says that though a notice was issued beyond the time within which such notice should have been issued, its validity could not be questioned. If the word 'issued" means "sent", we find that there is no provision in the Act prescribing a time limit for sending a notice, for, under s. 34(1)(a) of the Act a notice could be served only within 8 years from the relevant assessment year. It does not provide any period for sending of the notice. Obviously, therefore, the expression "issued" is not used in the narrow sense of "sent". Further, the said expression has received, before the amendment, a clear judicial interpretation. Under s. 34(1)(a) of the Act the Income-tax Officer may in cases falling under cl. (a) at any time within 8 years serve on the assessee a notice. The proviso to that section says that where the notice under s. 34(1)(a) is within 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 period exceeds the period of 8 years or 4 years, as the case may be. In *Commissioner of Income-tax, Bombay South v. D. V. Ghurve*(1), it was argued that a notice sent before 8 years though served beyond 8 years was in compliance with the section; and in support of that argument the expression "issued" in the proviso was relied upon to limit the meaning of the word "served" in the substantive part of the section. Rejecting that argument, Chagla, C. J., speaking for the Court, observed:

> "In other words, the attempt is to equate the expression "served" used in section 34 with the expression "issued" used in the proviso to sub-section (3). Now we must frankly confess that we find it difficult to understand why the Legislature has used in the proviso the expression "where a notice under sub-section (1) has been issued within the

(1) (1957) 31 I.T.R. 683, 686.

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time therein limited". In sub-section (1) no time is limited for the issue of the notice: time is only limited for the service of the notice; and therefore it is more appropriate that the expression "issued" used in the proviso to sub-section (3) should be equated with the expression "served" rather than that the expression "served" used in sub-section (1) should be equated with the expression "issued" used in the proviso to sub-section (3)."

This decision equated the expression "issued" with expression "served". The Allahabad High Court in *Sri Niwas v. Income-tax Officer*(1) has also interpreted the word "issued" to mean "served". The relevant rule of construction is clearly stated by Viscount Buckmaster in *Barras v. Aberdeen Steam Trawling and Fishing Co. Ltd.*(2) thus:

> "It has long been a well established principle to be applied in the consideration of Act of Parliament that where a word of doubtful meaning has received a clear judicial interpretation the subsequent statute which incorporates the same word or the same phrase in a similar context, must be construed so that the word or phrase is interpreted according to the meaning that has previously assigned to it."

Section 4 of the Amending Act was enacted for saving the validity of notices issued under s. 34 (1) of the Act. When that section used a word interpreted by courts in the context of such notices, it would be reasonable to assume that the expression was designedly used in the same sense. That apart, the expressions "issued" and "served" are used as interchangeable terms both in dictionaries and in other statutes. The dictionary meaning of the word "issue" is "the act of sending out, put into circulation, delivery with authority or delivery". Section 27 of the General Clauses Act (Act X of 1897) reads thus:

> "Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expression, "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting

(1) (1956) 30 I.T.R. 381. (2) [1933] A.C. 402, 411.

by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

It would be seen from this provision that Parliament used the words "serve", "give" and "send" as interchangeable words. So too, in ss. 553, 554 and 555 of the Calcutta Municipal Act, 1951, the two expressions "issued to" or "served upon" are used as equivalent expressions. In the legislative practice of our country the said two expressions are sometimes used to convey the same idea. In other words, the expression "issued" is used in a limited as well as in a wider sense. We must, therefore, give the expression "issued" in s. 4 of the Amending Act that meaning which carries out the intention of the Legislature in preference to that which defeats it. By doing so we will not be departing from the accepted meaning of the expression, but only giving it one of its meanings accepted, which fits into the context or setting in which it appears.

With this background let us give a closer look to the provisions of s. 4 of the Amending Act. The object of the section is to save the validity of a notice issued beyond the prescribed time. Though the time within which such notice should have been issued under s. 34(1) of the Act, as it stood before its amendment by s. 18 of the Finance Act of 1956, had expired, the said notice would be valid. Under s. 34(1) of the Act, as we have already pointed out, the time prescribed was only for service of the notice. As the notice mentioned in s. 4 of the Amending Act is linked with the time prescribed under the Act, the section becomes unworkable if the narrow meaning is given to the expression "issued". On the other hand, if we give wider meaning to the word, the section would be consistent with the provisions of s. 34(1) of the Act. Moreover, the narrow meaning would introduce anomalies in the section: while the notice, assessment or re-assessment were saved, the intermediate stage of service would be avoided. To put it in other words, if the proceedings were only at the stage of issue of notice, the notice could not be questioned, but if it was served, it could be questioned; though it was served beyond time, if the assessment was completed, its validity could not be questioned. The result would be that the validity of an assessment proceeding would depend upon the stage at which the assessee seeks to question it. That could not have been the intention of the Legislature. All these anomalies would disappear if the expression was given the wider meaning.

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To summarize: the clear intention of the Legislature is to save the validity of the notice as well as the assessment from an attack on the ground that the notice was given beyond the prescribed period. That intention would be effectuated if the wider meaning is given to the expression "issued" takes in the entire process of sending the notice as well as the service thereof. The said word used in s. 34(1) of the Act itself was interpreted by courts to mean "served". The limited meaning, namely, "sent" will exclude from the operation of the provision a class of cases and introduce anomalies. In the circumstances, by interpretation, we accept the wider meaning the word "issued" bears. In this view, though the notices were served beyond the prescribed time, they were served under s. 4 of the Amending Act. No other point was raised before us.

In the result, the appeals fail and are dismissed with costs. There will be one hearing fee.

Appeals dismissed.