Kale Khan Mohammad Hanif vs Commissioner Of Income-Tax, Madhya ... on 8 February, 1963

Equivalent citations: [1963]50ITR1(SC), AIRONLINE 1963 SC 15, (1963) 50 ITR 1

JUDGMENT

SARKAR J. - These are two appeals arising out of two assessment orders made under the Income-tax Act, 1922, respectively for the years 1945-46 and 1947-48. In each assessment case there was a reference of certain questions to the High Court of Madhya Pradesh under section 66 of the Act and the present appeals are against the High Courts answers to these questions.

The assessee is a trader carrying on two businesses, namely manihari (general merchandise) and bidis. He had also certain income from property but with this income we are not concerned in these appeals. For each of the assessment years concerned, the assessee had submitted a return but as his accounts were not found complete and reliable, the Income-tax officer had assessed the gross profits of the businesses on the basis of certain percentages of the total sales which had also to be fixed by estimates. No question arises in these appeals as to the correctness of these assessments.

Subsequently, while dealing with the assessment for the year 1948-49, the Income-tax Officer noticed various credit entries in the assessees books of account which had all escaped his attention at the time of the assessment for the years 1945-46 and 1947-48 earlier mentioned. These entries were as follows :

1945-46 Rs.

(i) Gold Khata ...

41,300

(ii) Ghar Khata ...

33,000

(iii) Mohammad Islam Khata ...

10,000

(iv) Muslim Bi Khata ...

11,000 Total ...

95,300 1947-48

(i) Ghar Khata credit under sale of ornaments ...

19,575

(ii) Yakub Manihar account Loan from Yakub Manihar ...

20,000 Total ...

39,575 The Income-tax Officer thereupon, with the sanction of the Commissioner of Income-tax, re-opened the assessments in respect of these years and after giving the assessee full opportunity to explain the nature of these entries made fresh assessments under section 34. In the fresh assessments he added to the previously estimated incomes the said sum of Rs. 95,300 in respect of the year 1945-46 and the said sum of Rs. 39,575 in respect of the year 1947-48, as he was unable to accept the explanation offered by the assessee in support of his contention that the credit entries did not represent income.

The assessee appealed against these fresh assessments to the Appellate Assistant Commissioner but the appeals were unsuccessful. He then appealed to the Income-tax Tribunal. The Tribunal found the assessees explanation with regard to the said entries for the amounts of Rs. 33,000 and Rs. 10,000 under the heads "Ghar Khata" and "Muhammad Islam Khata" respectively, acceptable and ordered their deletion from the assessment for the year 1945-46, but otherwise maintained the orders of the Income-tax Officer. Thereafter, under the orders of the High Court under section 66(2) of the Act made at the instance of the assessee, the Tribunal framed six questions in each of the assessment cases and referred them to the High Court for its decision. The questions framed were identical in the two cases excepting as to one minor matter in question No. 6 which made no difference and the reference in the two cases were heard together. These questions were answered by the high Court against the assessee and hence, the present appeals by the assessee.

As we have said, there were six questions in each case which were for all practical purposes in identical terms and the questions in the two cases, therefore, need not be discussed separately. Of these six questions it is unnecessary to deal with the first three, for two of these had been abandoned in the High Court and High Courts answer to the third was not challenged in this court.

The first question that arises for discussion is question No.4, which was in these terms :

"Whether the burden of proving the source of the cash credits is on the assessee ?"

It seems to us that the answer to this question must be in the affirmative and that is how it was answered by the High Court. It is well established that the onus of proving the source of a sum of money found to have been received by the assessee is on him. If he disputes liability for tax, it is for

him to show either that the receipt was not income or that if it was, it was exempt from taxation under the provisions of the Act. In the absence of such proof, the Income-tax Officer is entitled to treat it as taxable income : see A. Govindarajulu Mudaliar v. Commissioner of Income-tax.

We come now to question No.5, which is as follows :

> "If so, then whether in the absence of satisfactory proof as to the source of credits the inference of the Tribunal that these credits are the assessees income from some undisclosed sources is an inference of factor or an inference of law ?"

We confess we find it difficult to see the point of this question. Questions can be referred under section 66 of the Act when they are questions of law which arise out of the facts found by the Tribunal and which the Tribunal is said to have answered erroneously thereby unlawfully imposing a burden of tax on an assessee. On questions of fact, the Tribunal is the final authority and such questions cannot be referred to a High Court for its decision. Now the present question assumes that the Tribunal has made an inference. Either that inference is one of fact or it is one of law. If it is of fact, no question with regard to it can be referred to the High Court. If it is one of law, then a question whether the inference could in law be drawn might be referred to the High Court. But the question whether the inference drawn by the Tribunal is one of law or fact, which is the question here framed, is not a question which arises out of the decision of the Tribunal nor one which the Tribunal has at all answered. It does not seem to us that a question in this form can be referred under section 66. The High Court, however, answered the question by saying that the inference was one of fact. If this is the correct view, then the matter ends there, for, as we have said, on questions of fact the Tribunal is the final authority. If, on the other hand, the inference is one of law, then a question may have been referred to the High Court as to whether the inference was justified in law. That was not done. We may, however, add that if the inference is treated as one of law, in our view, the Tribunal had drawn it lawfully and this view would receive support from A. Govindarajulu Mudaliars case.

We have now to deal with the last question, question No.6, which, as framed in the case for the assessment year 1945-46, is set out below :

> "Whether having regard to the fact that the Income-tax Officer has assessed the income on a percentage basis, he was justified in treating the said sums of Rs. 41,300 and Rs. 11,000 as profits from an undisclosed source ?"

In the case for the assessment year 1947-48 the corresponding question was in identical terms except that the figures mentioned in it were Rs. 19,575 and Rs. 20,000. The High Court answered the question in the affirmative, and in our view rightly, for we do not think that any other answer is possible.

We are in some difficulty in appreciating the point of this question also. The question would seem to suggest that because the income from a disclosed source has been computed on the basis of an estimate and not on the basis of the return filed in respect of it, an income represented by a credit

entry in the books of account of that source cannot be held to be income from another and undisclosed source. We do not see why it cannot be so held. It appears from the judgment of the High Court that the reason given in support of the suggestion was that if that income was held to be income of an undisclosed source, the result would be double taxation of the same income which the Income-tax Act does not contemplate. Apparently, it was said that there would be double taxation because it was assumed that the same income had once been earlier taxed on the basis of an estimate. This reason is obviously fallacious, for if the income is treated as one from an undisclosed source which the question postulates, it is not treated as income of the disclosed source which had previously been assessed to tax and, therefore, there is in such a case no double taxation. It is not a case where the income sought to be taxed was held to be undisclosed income of a disclosed source, the income of which source had previously been taxed on the basis of an estimate. If it were so, the question of double taxation might have been legitimately raised. That, however, is clearly not the case here as the question as framed itself shows.

We concede that the question as to the source from which a particular income is derived is one which has to be decided on all the facts of the case. Hence the question whether income represented by an entry in the books of a business is income of that business or of another business would have to be decided on the facts which showed the business to which it belonged. But quite clearly the answer to that question would not depend on whether the income from the first mentioned business had been computed on the basis of a return filed or of an estimate of the income made by the taxing authorities. This, however, is what the question as framed suggests, and that suggestion is in our view wholly without foundation. Therefore, it cannot be said that the taxing authorities were precluded from treating the amounts of the credit entries as income from undisclosed sources simply because the entries appear in the books of a business whose income they had previously computed on a percentage basis. That is why we think that the answer to the question as framed must be in the affirmative.

As we have earlier said, the question as to the source from which a particular income is derived has to be decided on all the facts of the case. In the present case, the Income-tax Officer held the income represented by the credit entries to be income from undisclosed sources, that is, neither from the manihari (general merchandise) nor from the bidi business of the assessee which he had disclosed. This view was upheld by the Appellate Commissioner and by the Tribunal excepting as to two of the amounts earlier mentioned. It was open to the assessee to raise the question that the finding that those amounts were income received from undisclosed sources was not based on any evidence or was, for other reasons, perverse. It appears that he did raise some questions of this type before the Tribunal for reference to the High Court but the Tribunal did not think that those questions legitimately arose and did not refer them to the High Court. The assessee accepted the decision of the Tribunal and did not move the High Court to direct a reference in regard to those questions under section 66(2). Those questions, therefore, cannot be raised in this court. We have dealt with the reference made on the basis that the finding that the amounts of the credit entries were income received from undisclosed sources was disputed only on the ground that the income from the business had been computed on the basis of an estimate. In the circumstances of the case we could not have done anything else.

These appeals fail and are dismissed with costs. There will be one set of hearing fees.

Appeals dismissed.