Girdhari Lal Nannelal vs The Sales Tax Commissioner, M.P. on 1 March, 1976

Equivalent citations: AIR1977SC298A, [1977]109ITR726(SC), (1976)3SCC701, [1977]39STC30(SC), AIR 1977 SUPREME COURT 298, 1976 3 SCC 701, 1977 TAX. L. R. 1673, 1977 UPTC 609, 109 ITR 729, 109 I T R 726, 1976 JABLJ 882, 39 STC 30, 1976 SCC (TAX) 380

Author: H.R. Khanna

Bench: A.C. Gupta, H.R. Khanna, P.N. Bhagwati

JUDGMENT

H.R. Khanna, J.

1. This appeal by special leave is directed against the judgment of the Madhya Pradesh High Court whereby the High Court answered a number of questions referred to it under Section 44 of the Madhya Pradesh General Sales Tax Act, 1958 (hereinafter referred to as the Act), in favour of the revenue and against the assessee-appellant. At the time the special leave was granted, the leave was restricted to the answers given by the High Court to questions (1)(a) and (1)(b), which read as under:

> (1)(a) Whether on the facts and the circumstances of the case, it was legal to treat Rs. 10,000, an item of cash-credit standing in the name of the wife of one of the partners of the assessee-firm, as the profit or income out of concealed sales ?
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> (1)(b) If the answer to (a) above is in the affirmative, was the enhancement of the gross turnover by Rs. 1,00,000 on the basis that the said Rs. 10,000 represented ten per cent of the profit excessive or arbitrary ?

2. The appellant M/s. Girdhari Lal Nannelal of Burhanpur is a partnership firm and is a dealer registered under the Act. The appellant carries on the business of purchasing and selling cotton and cotton seeds. It also carries on business as a commission agent. While determining the taxable turnover of the appellant for the period from November 1, 1950, to October 31, 1951, the assessing authority took into account a sum of Rs. 10,000 in respect of which there was a cash-credit entry in the account books of the appellant in the name of the wife of Kanji Deosi, partner of the appellant. The assessing authority treated that sum of Rs. 10,000 as income of the appellant out of concealed sales. Adopting ten per cent as the rate of profit, the turnover in this regard was determined to be rupees one lakh. The above amount of rupees one lakh was added to the turnover in computing the gross turnover of the appellant. In doing so the assessing authority rejected the plea of the assessee

that rupees ten thousand represented the amount gifted by Kanji Deosi to his wife before marriage in order to obtain her consent to the second marriage in 1941.

3. The assessee-firm went up in appeal and again raised the contention that the amount of rupees ten thousand had been given by Kanji Deosi, partner of the appellant-firm, to his wife to obtain her consent for his second marriage in 1941. It was stated that the above amount had been lying with her, and had been deposited by her during the year in question with the firm. The appellate authority rejected this explanation. The same view was taken in second appeal by the Board of Revenue. At the instance of the assessee, the two questions reproduced above, along with some other questions, were referred to the High Court.

4. The High Court, while answering the abovementioned questions against the assessee-appellant, referred to the fact that the explanation offered by the assessee in respect of the amount of rupees ten thousand was not reasonable. It was accordingly inferred that the amount reflected profits of the business of the assessee. Those profits, in the opinion of the High Court, arose out of the sales not shown in the account books.

5. In appeal before us, Mr. Sobhagmal Jain on behalf of the assessee-appellant has contended that there is nothing to show that the amount of rupees ten thousand which had been entered in the account books of the assessee-firm in the name of the wife of one of the partners of the appellant-firm, represented the income of the appellant-firm. There was also nothing to show, according to the learned Counsel, that that amount represented the income realised as a result of sale transactions entered into by the appellant-firm. The mere fact that there was no satisfactory explanation regarding the source of that money would not lead to the conclusion that that amount represented the income of the appellant-firm derived as a result of undisclosed sale transactions. The above contentions have been controverted by Mr. Ram Panjwani on behalf of the State. He has laid particular stress upon the absence of reasonable explanation on the part of the appellant-firm as well as its partner Kanji Deosi and his wife regarding the source of that amount.

6. We have given the matter our earnest consideration and are of the opinion that the judgment of the High Court cannot be sustained in so far as it has answered question No. (1)(a) against the assessee-appellant. It would appear from the resume of facts that an entry was made in the account books of the appellant showing a credit of Rs. 10,000 in the name of the wife of Kanji Deosi, partner of the appellant-firm. In order to impose liability upon the appellant-firm for payment of sales tax by treating that amount as profits arising out of the undisclosed sales of the appellant, two things had to be established, (i) the amount of Rs. 10,000 was the income of the appellant-firm and not of Kanji Deosi or his wife, and (ii) that the said amount represented profits from income realised as a result of transactions liable to sales tax and not from other sources. The onus to prove the above two ingredients was upon the department. The fact that the appellant-firm or Kanji Deosi and his wife failed to adduce satisfactory or reasonable explanation with regard to the source of Rs. 10,000 would not in the absence of some further material have the effect of discharging that onus and proving both the ingredients.

7. The approach which may be permissible for imposing liability for payment of income-tax in respect of the unexplained acquisition of money may not hold good in sales tax cases. For the purpose of income-tax it may in appropriate cases be permissible to treat unexplained acquisition of money by the assessee to be the assessee's income from undisclosed sources and assess him as such. As against that, for the purpose of levy of sales tax it would be necessary not only to show that the source of money has not been explained but also to show the existence of some material to indicate that the acquisition of money by the assessee has resulted from transactions liable to sales tax and not from other sources. Further, whereas in a case like the present a credit entry in respect of Rs. 10,000 stands in the name of the wife of the partner, no presumption arises that the said amount represents the income of the firm and not of the partner or his wife. The fact that neither the assessee-firm nor its partner or his wife adduced satisfactory material to show the source of that money would not, in the absence of anything more, lead to the inference that the said sum represents the income of the firm accruing from undisclosed sale transactions. It was, in our opinion, necessary to produce more material in order to connect the amount of Rs. 10,000 with the income of the assessee-firm as a result of sales. In the absence of such material, the mere absence of explanation regarding the source of Rs. 10,000 would not justify the conclusion that the sum in dispute represents profits of the firm derived from undisclosed sales.

8. We, therefore, accept the appeal, discharge the answer given by the High Court to question (1)(a), and answer that question in the negative in favour of the assessee-appellant and against the revenue. Question (1)(b) in the circumstances of the case would not arise for consideration. We make no order as to costs.