

Gouri Prasad Bagaria And Ors. vs Commissioner Of Income-Tax, West ... on 10 January, 1961

Equivalent citations: [1961]42ITR112(SC), AIRONLINE 1961 SC 5

Bench: J.C. Shah, J.L. Kapur, M. Hidayatullah

JUDGMENT

Hidayatullah, J.

1. This appeal is by Gouri Prasad Bagaria and others in respect of the assessment of their father, Hanuman Prasad Bagaria, who died after the grant of special leave to him by this court. It will be convenient to refer to Hanuman Prasad Bagaria as the assessee, and his legal representatives as the appellants. The appeal is directed against the judgment and order of the High Court of Calcutta dated December 14, 1955, in an income-tax reference under section 66(1) of the Indian Income-tax Act. The High Court answered the question :

"Whether, on the above facts and circumstances of this case, there was any material before before the Tribunal to hold that the assessee purchased gold in the year 1918 which he sold in the year under consideration and the sum of Rs. 72,523 represents the sale proceeds the sale proceeds of such gold ?"

in the negative.

2. The facts of the case are simple. For the assessment year 1945-46 corresponding to the financial year 1944-45 the Income-tax Officer found sum of Rs. 72,523 credited in the name of Ganesh Das Hanuman Prasad, father of the assessee. The assessee was called upon to explain the nature and source of this amount, and he stated that it represented the sale proceeds of gold purchased by him in 1918 in Bombay, that the gold was kept in the family chest, and that it was sold in the account year. The entry in the account books in the name of the assessee's father was explained as being in accordance with Marwari Custom. In the pass book of the assessee, there was a withdrawal of Rs. 1,00,000 after a few days, and the assessee explained that the amount was given away to Messrs. Birla Brothers for purchasing a colliery.

3. The Income-tax Officer did not accept this explanation, and treated this amount as income of the assessee from some undisclosed source. The order of the Income-tax Officer was confirmed by the Appellate Assistant Commissioner. On further appeal to the Tribunal, the explanation was accepted, and the amount was ordered to be excluded. The order of the Tribunal is extremely brief, and may be quoted in extenso :

"The only point pressed in this appeal is about the addition of a sum of Rs. 72,523 as the assessee's got this money by sale of gold but what is not admitted is that the assessee got this money by sale of gold but what is not admitted is that the assessee had gold with him since 1918 when, as the assessee says, he purchased it in Bombay when the metal was cheap. We have heard the parties at some length the examined the personal history of the appellant. On the whole, the impression left in our minds is that his explanation has the ring of truth. We accept it and exclude the sum of Rs. 72,523 from the assessment."

4. The Commissioner of Income-tax then applied for a reference, and the Income-tax Appellate Tribunal, Calcutta Bench, which had by then changed, referred the case on the above stated question.

5. The High Court of Calcutta called for a supplementary statement of the case under section 66(4), the directed the Tribunal to draw up and to forward to the court a supplementary statement "as to the manner in which the Appellate Bench of the Tribunal examined the personal history of the appellant." The High Court directed that the Bench which heard and disposed of the appeal should state :

"(a) Whether the assessee was examined at all by the Appellate Bench of the Tribunal; (b) if he was, whether there is on the records any record of the examination; (c) if there be, what the record is; (d) even if there be no record of any examination of the assessee, whether he was examined in fact, and (e) if he was examined in fact but no record of the examination was made, whether it is possible for the members who heard the appeal to remember what he had said."

6. This supplementary statement of the case was submitted by the original Judicial Member and an Accountant Member, who had not heard the appeal. They consulted the previous Accountant Member, and stated that he had agreed with what was stated in the supplementary statement. It is needless to say that the Tribunal was somewhat vague in its replies to the questions which had been put; but they sent for the assessee again the examined him as to what had transpired at the hearing a year and a half earlier, and enclosed a copy of the statement.

7. The High Court, after examining the matter from various angles and expressing disapprobation of the way in which the supplementary statement was submitted, held that there was no material before the Tribunal on which it could be said that the assessee has purchased gold in the year 1918, which he sold in the year of account.

8. In our opinion, this was a perfectly simple case, in which a question of law hardly arose. The Tribunal had believed the assessee's word in view of his conduct and past history, such as they had been able to see. Where the assessee's statement is believed, there is obviously material on which the finding is based; and to seek for other material is tantamount to saying that a statement made by an assessee in not material on which a finding can be given. In our opinion, the Tribunal having believed the assessee's statement, there was an end of the matter in so far as that fact was

concerned, and if the finding was based upon a statement which was good material on which it could be based, no question of law really arose. However, treating the question as one of law, the answer is irresistible that there material, viz., the statement of the assessee believed by the Tribunal, on which the finding could be given.

9. In our opinion, the answer given by the High court must be set aside, and the question answered in the affirmative.

10. In the result, the appeal is allowed with costs here and in the High Court.

11. Appeal allowed.