

## **Commissioner Of Income Tax, A.P. vs Althi Bangarayya on 9 March, 1973**

**Equivalent citations: [1975]100ITR10(SC), (1975)4SCC835, AIR ONLINE 1973 SC 3**

**Author: K.S. Hegde**

**Bench: H.R. Khanna, K.S. Hegde**

### **JUDGMENT**

K.S. Hegde, J.

1. These appeals raise a common question of law for decision, In fact, two appeals were unnecessary. It would have been sufficient if the appellant had filed only one appeal. The two appeals came to be filed because before the Tribunal there was an appeal and cross-objection. But both the appeals related to the same matter and they arise out of the same order.

2. The only question arising for decision in this case is whether the Tribunal was justified in refusing to refer a question of law arising from its order.

3. We shall presently set out the relevant facts. Aggrieved by the decision of the Tribunal, the Commissioner of Income-tax, Andhra Pradesh, moved the Tribunal under Section 256(1) of the Income-tax Act, 1961, to submit to the High Court the following question of law :

Whether, on the facts and in the circumstances of the case and having held that the assessee was in the habit of recording cash purchases as credit purchases and the cash credits remained unexplained was the Income-tax Appellate Tribunal justified in deleting the addition of Rs. 35,996 made by the Income-tax Officer for the assessment year 1963-64 giving benefit of the intangible additions made in the preceding, two years?

4. That question may be reframed thus :

Whether the Tribunal's order is a valid order in law in view of the facts and circumstances found by the Tribunal ?

5. The Tribunal rejected that application holding that its finding was a finding of fact. Thereafter, the Commissioner moved the High Court of Andhra Pradesh under Section 256(2) of the Act for calling

upon the Tribunal to submit the question referred to earlier. The High Court rejected that application. Aggrieved by the decision, the Commissioner has preferred this appeal after obtaining special leave from this Court.

6. Let us now state the material facts. It can be stated conveniently by quoting the relevant portion of the Tribunal's order. It reads thus :

The facts of the case are that, while scrutinising the books of account it came to the notice of the Income-tax Officer that certain purchase which were described as credit purchases were in fact cash purchases and the assessee wrongly and with an ulterior motive gave a deceptive picture of the purchases. In support thereof, the Income-tax Officer located purchases alleged to have been made on credit from Rs. 1. Kishen Saheb 4,600.40 2. Moula Saheb 2,307.80 3. Giridhar Sahu 5,676.70 4. Magatha Naike 4,456.12 5. Dinkar Sahu 5,855.88 6. Apparabatla Gangiah 2,600.00 \_\_\_\_\_ 25,496.90 \_\_\_\_\_ The alleged credit purchases were not paid for during the year, but the amounts were carried forward to the subsequent years. The Income tax Officer considered that it was inconceivable that those persons with very small means of income and living in far off places would sell their goods on credit to the assessee and keep quiet without making any attempt to draw the sale proceeds from the assessee. They were described by the Income-tax Officer as street hawkers. The Income-tax Officer attempted to make cross-verification of those purchases by issue of summons to the vendOrs. Except Apparabatla Gangiah summons could not be served or others.' Shri Gangiah testified that he had given Rs. 2,000 to the assessee and the source thereof was traced down to his savings. The evidence of this person was not believed by the Income-tax Officer on the ground that the deponent was a tinker by profession and his daily income ranged from Rs. 1 to 2. In addition to the aforesaid purchases, the Income-tax Officer noticed certain unexplained cash credits in the following names:

Rs. Shri Chandaka Suryanarayana 4,000 Smt. Althi Seethamma 4,000 Shri J. Sanyasi Naidu 5,000 On a perusal of the Income-tax Officer's order, we find that he accepted the credit of Rs. 2,500 out of Rs. 5,000 standing in the account of Shri Sanyasi Naidu as genuine. Taking the totality of the credits in the accounts, he estimated the total income at Rs. 35,996.

The assessee appealed to the Appellate Assistant Commissioner. (sic) the instance of the Appellate Assistant Commissioner and on the request the assessee, the alleged vendors were examined by the Income-tax Officer and on completion of the examination, a remand report was submitted. On a perusal of the statements of the alleged vendors, the Appellate Assistant Commissioner came to the conclusion that all the five hawkers having admitted the transaction as recorded in the appellant's book and as some of them had stated that these activities were being carried on in co-partnership with certain others, the alleged purchases were credit purchases and not cash purchases as originally suspected by the Income-tax Officer. He went a step

further by looking into the availability of cash; it appears that the assessee had sufficient cash on the various dates of purchases. Therefore, he came to the conclusion that there was no warrant to hold that the purchases were described as credit purchases with any sinister motive attached to them.

With reference to the cash credits in the diverse accounts found by the Income-tax Officer, the Appellate Assistant Commissioner agreed that the genuineness of the cash credit standing in the name of Smt. Althi Seethamma amounting to Rs. 4,000 was not established. With reference to the cash credit standing in the name of Shri Chandaka Suryanarayana, he accepted the genuineness of the same. On an appreciation of the evidence regarding the cash credits, he came to the conclusion that cash credit to the extent of Rs. 6,500 remained unproved and the Income-tax Officer was unjustified in making an addition of Rs. 25,496 as pertaining to purchases. In the view that he took, the Appellate Assistant Commissioner restricted the addition to the trading account to Rs. 25,519 by switching over to the defects in the accounts. In arriving at this figure, he estimated the gross profits at 101/2% on new brassware and 121/2% on old brass articles on estimated turnovers of Rs. 3,00,000 and Rs. 1,60,000, respectively. The department has preferred an appeal against the decision of the Appellate Assistant Commissioner on the ground that there was no warrant for him to admit the evidence of the said five hawkers and to sustain an addition of Rs. 25,519 only by looking to the reasonableness or adequacy of the gross profit. The assessee has also preferred an appeal against the sustenance of the additions of Rs. 25,519 to the trading account.

We have perused the statements of the said five hawkers and are in agreement with the departmental representative that the said persons were having very meagre income and would not have been in a position to keep in abeyance their demands of the amounts due to them, though they have categorically admitted in their respective statements that their incomes were supplemented by the earnings of their women folk. The Income-tax Officer has aptly illustrated the modus operandi of the assessee by making a reference to the account of Mahalaxmi Industries,, The account books of the assessee reveal that there was a credit purchase for Rs. 351.75 from the said concern, while it was actually a cash purchase. On being confronted, the assessee did not feel shy of recoiling from his earlier statement and making an admission that it was only a cash purchase. The Appellate, Assistant Commissioner laboured under the misconception of the principle of judging the exigency of describing cash purchase as credit purchase with reference to the availability of cash on the various dates. We would have allowed the departmental appeal, but for the assessee's counsel taking shelter under intangible additions. The intangible additions in the preceding two years amounted to more than Rs. 50,000. We can hold that the aggregate of the purchase amount as well as the cash credits yet remaining unexplained would be fully covered by the intangible additions of the preceding two years.

In the result, the departmental appeal is dismissed and the assessee's appeal is allowed in part.

7. It is rather difficult to understand the order of the Tribunal. Prima facie, it appears to be self-contradictory. The Tribunal does not appear, to have borne in mind Section 68 of the Act. We shall not say more at this stage. But we have no doubt that a question of law does arise from the order of the Tribunal and that question is as formulated by us above. The High Court will now direct the Tribunal to submit that question to it and proceed to answer that question according to law. Costs will be costs in the cause; one set only.