Laljimal Girdhar Das vs Commissioner Of Income Tax on 14 September, 1950

JUDGMENT

Bhargava, J.

1. In this reference under Section 66(1) of the Indian Income-tax Act, the following two questions have been referred to us:

> (1) Whether, in the circumstances of the case, the issue of the notice under Section 34 of the Income-tax Act was legal ?
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> (2) Whether, in the circumstances of the case, the sum of Rs. 15,000 was rightly held to be the assessee's income of the previous year Samvat 1994-95 taxed in the assessment year 1939-40?

2. The assessee is a Hindu undivided family carrying on the business of dealing in cloth under the name and style of Messrs Laljimal Girdhar pas at Gorakhpur. They had business dealings with two firms, Dilsukh Rai Jai Dayal of Banares and Ganesh Narain Onkar Mal of Bombay. The accounts of the assessee, after having been assessed for the assessment year 1939-40, came up before the Income-tax Officer for purposes of assessment for the assessment year 19-10-41. During these proceedings, the Income-tax Officer found that a sum of Rs. 15,000 had been credited on Kuar Sudi 9, Samvat 1996 to the accounts of Naunidh prasad, one of the members of the Hindu undivided family. The same amount had also been debited on the same day to the accounts of firm Dilsukh Rai Jai Dayal. For the purpose of investigating these entries the accounts of the previous year of the assessee were examined and it was discovered that, on Kuar Sudi 5, Samvat 1995, the accounts of Firm Ganesh Narain Onkar Mal of Bombay had been debited with the same amount whereas the accounts of Firm Dilsukh Rai Jai Dayal of Banares had been credited with that amount. The accounts of Firm Ganesh Narain Onkar Mal of Bombay were also examined and it was found that for some years prior to Samvat 1995 that firm had shown a sum of Rs. 15,000 to the credit of the assessee in excess of the amount shown in the account books of the assessee itself. These facts are all mentioned in the statement of the case in which it is also related that this amount had no doubt been brought forward in the account books of the Bombay firm from a period prior to Dasehra Samvat 1993 In (these circumstances, this sum of Rs. 15,000 was first treated by the Income-tax Officer as profits accruing in the year Samvat 1995-96 and was, therefore, assessed to income-tax in respect of the assessment year 1940-41. The Appellate Assistant Commissioner of Income tax reversed the decision holding that it could not be treated as income of the year Samvat 1995-96 as it represented the balance of the previous years. Thereupon the Income-tax Officer issued notice under Section 34 of the Indian Income-tax Act to the assessee to show cause why income-tax should not be assessed on this amount as it had escaped assessment during the assessment year 1939-40. It

was held by the Income-tax Officer that this amount was brought in the accounts of the assessee for the first time on Kuar Sudi 5, Samvat 1995 when entries were made in the accounts of the Bombay and Banares firms and since adjustments had been made during the relevant previous year relating to the assessment year 1939-40, the assessee was liable to assessment over this amount in the year in question. The assessee appealed to the Appellate Assistant Commissioner of Income-tax and the Income-tax Appellate Tribunal but unsuccessfully. He then asked for a reference to this Court and the case has now been referred to us by the Tribunal

3. Of the two questions referred to us, we will first take up the second question. With in this question two points have been raised. The first question is whether this sum of Rs. 15,000 was at all the income of the assessee and the second question is whether it was the income of the previous year Samvat 1994-95 taxable in the assessment year 1939-40 The statement of the case as well as the decision of the Income-tax Appellate Tribunal show that the Tribunal nowhere found that this amount of Rs. 15,000 was the income of the assessee. This point was specifically raised by the assessee in its grounds of appeal before the Tribunal. The order of the Tribunal also mentions that such a ground had been raised. The Tribunal, however, assumed it to be income and proceeded only to decide whether it was the income of the previous year relevant to the assessment year in question or of some other year. The facts given in the statement of the case do not lead to the inference that this sum must necessarily be the income of the assessee. The Tribunal found that this sum of Rs. 15,000 was the balance outstanding in favour of the assessee from the Bombay firm from some period prior to Samvat 1993. The manner in which it became an outstanding is not indicated. It is nowhere stated that it was the proceeds due to the assessee which, if received, would become a part of the assessee's income. In fact, there is no indication at all as to how this liability of the Bombay firm in favour of the assessee arose. In proceedings under Section 34 of the Indian Income-tax Act no assessment can be made unless it has first been found as a fact that the amount sought to be assessed was the income of the assessee. In the absence of any finding that this amount was income, it is obviously not assessable to incomes tax at all. The question whether it would be assessable in the year in question or not does not, therefore, arise.

4. Further, in view of this finding, it is not necessary to decide the first question whether the issue of notice under Section 34 of the Indian Income-tax Act was legal.

5. As a result, we answer the reference on the second question in the negative and hold that it has not been proved that this sum of Rs. 15,0001 was the assessee's income liable to be assessed to income-tax. The assessee is entitled to his costs which we assess at Rs. 200.