

Mithoo Lal Tek Chand vs Commr. Of Income-Tax, United ... on 5 February, 1953

Equivalent citations: AIR1953ALL701, [1953]23ITR494(ALL), AIR 1953 ALLAHABAD 701

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Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. This reference arises out of three cases, two of them relate to income-tax assessment for the years 1943-44 and 1946-47 and the third to excess profits tax assessment for the year 1946-17. The assessee is a Hindu undivided family which carries on business in grain, cloth, commission agency, speculation etc. The method of accounting, as given in the assessment orders, is mercantile. The relevant account period for the assessment year 1943-44 was from 20-10-1941 to 8-11-1942. The Income-tax Officer found a cash deposit of Rs. 5,000/- in the capital account of the assessee in the name of Surajmal Suraj Bam entered on 25-10-1941. When he asked the assessee from where this amount had come the assessee stated that it was a part of the amount unspent out of the withdrawal of Rs. 30,000/- on 18-7-1940. For the assessment year 1946-47 the relevant account year was from 17-10-1944 to 4-11-1945. On the first day i.e. 17-10-1944, there were three credit entries in the capital account, a sum of Rs. 50,000/- in the name of Surajmal Suraj Ram as having been received from him, another sum of Rs. 10,000/- as having been received from Srikishan Dass and a third sum of Rs. 5,000/- as having been received from Dharam Dass. Surajmal Sura] Ram, Shrikishan Dass and Dharam Dass are all members of the Hindu undivided family.

2. The explanation given by the assessee was that Surajmal Suraj Ram had withdrawn a sum of Rs. 50,000/- on 10-9-1936, & two sums of Rs. 10,000/- & Rs. 5,000/- were respectively withdrawn by Srikishan Dass and Dharam Das on 18-7-1940, and that it is these three items that had been brought back and redeposited on 17-10-1944. The explanation given by the assessee as regards these 3 items was rejected. The Tribunal pointed out that the assessee could not have kept such large sums of money lying idle for such long periods and the assessee must have utilised the amounts withdrawn to make other profits; that the assessee carried on business on a large scale and it was not expected that the assessee would instead of investing these large sums let them remain idle; that it was not believable that all these sums would be kept at the family house at Jaselmair where only women and servants resided; and that the assessee had bank accounts and it was not likely that if the money was withdrawn and not utilised the money would not be put back in the business or deposited in the bank

and would be allowed to remain unproductive in the hands of the various members of the family, The Tribunal might also have noticed that, if the sum of Rs. 50,000/- withdrawn by Surajmal Suraj Ram on 10-9-1936, (and not 1933 as mentioned by the Appellate Assistant Commissioner) had remained undisposed of in the hands of the assessee, there was no reason why on 18-7-1940, he should have withdrawn from business another sum of Rs. 30,000/- and deposited Rs. 5,000/- out of the latter sum on 25-11-1941, and the sum of Rs. 50,000/- not till 17-10-1944. We have no hesitation, therefore, in agreeing with the Tribunal that there was sufficient material on which the Tribunal could hold that the explanation given to the assessee was false.

3. The next question that arises is whether it was a reasonable inference that these sums represented secret profits made during the relevant account year. We find from the assessment order of the year 1943-44 that in that year the business income of the assessee was computed at a figure of Rs. 47,666/-. The assessee, as has already been said, carried on extensive business in grain, cloth,, commission agency and speculation. The explanation given by the assessee having been rejected & it having been found that he had given false explanation as to the receipt of these items, it could not be said that the inference drawn by the revenue authorities that this represented secret profits of the year in which the amounts were entered was unreasonable.

4. It has been urged by Shri Pathak that the burden of proving that any receipt is assessable income rests on the Income-tax Officers and the mere fact that the explanation given by the assessee is false does not warrant the inference that the receipt is taxable income. Shri Jagdish Swarup on behalf of the Department has urged that if it appears from the account books of the assessee or otherwise that, in the relevant account period, the assessee has received a sum of money, the burden lies on the assessee to show that that amount is not taxable income; and, if the explanation given by the assessee is unsatisfactory, the Income-tax Officer can assume that the amount must be taxable income. A large number of cases have been cited at the Bar which Shri Jagdish Swarup has divided into three groups. The first group relates to cases under Section 10A, Excess Profits Tax Act, the second group relates to cases under Section 34, Income-tax Act and the last group relates to the question of assessment under Section 23 (3), Income-tax Act. According to Shri Pathak, there is no justification in this grouping and he has contended that the same principle should govern all these cases. We are, however, inclined to agree with Shri Jagdish Swarup that the cases have to be grouped in the manner suggested by him.

5. The relevant portion of Section 10A, Excess Profits Tax Act reads as follows:

"10A (1) Where the Excess Profits Tax Officer is of opinion that the main purpose for which any transaction or transactions was or were effected was the avoidance or reduction of liability to excess profits tax, he maymake such adjustments as respects liability to excess profits tax as he considers appropriate"

If, as a result of a transaction entered into by an assessee, the liability to excess profits tax is affected and the Excess Profits Tax Officer claims that that transaction was entered into with the definite purpose of evading liability to excess profits tax, the burden must be on him to prove that the main

purpose behind the transaction was avoidance of the payment of the tax. To this effect are decisions in -- 'Ganga Sahai Umrao Singh v. Commr. of Excess Profits Tax, U. P., C. P. and Berar', A. I. R. 1950 All. 595 (A), a decision by this Bench; in -- 'Hajee Mohammad Ibrahim & Co. v. Commr. of Excess Profits Tax, Madras', AIR 1953 Mad. 221 (B), a decision of the Madras High Court; and in -- 'Amritsar Rayon and Silk Mills, Ltd. v. Commr. of Income-tax East Punjab', (1952) 21 I. T. R. 548 (Punj) (C), a decision of the East, Punjab High Court.

6. In the second group of cases falling under Section 34, Income-tax Act, it must be borne in mind that the assessment was once completed and the Income-tax Officer wants to reopen the same, the burden must, therefore, lie on him to show that there was sufficient justification for re-opening the proceedings which had once been concluded. The cases cited before us relate to a period before 1948 when Section 34, Income-tax Act was not amended, and it is not necessary for us in this case to consider the effect of the amendment, nor is it necessary to discuss those cases at any length. Those cases are -- 'Laljimal Girdhar Das v. Commr. of Income-tax', U. P.', 1951-19 I. T. R. 418 (All.) (D) again a decision by this Bench; -- 'Radhey Lal Jawahar Lal v. Commr. of Income-tax, U. P.', Misc. Case No. 3 of 1949, D/-16-1-1952, (All) (E), by this Bench but (unreported); -- 'Lal Mohan Krishna Lal v. Commr. of Income-tax, Bengal', A. I. R. 1945 Cal. 62, (P), and a Full Bench case of this Court in -- 'In re Ram Datta Sita Ram of Basti', 1947-15 I. T.R., 61 (All) (P. B.) (G). In those cases the burden of proving that it was taxable income of the relevant years was placed on the Income-tax Officer. On the other hand, in--'Mahabir Prasad Munna Lal v. Commr. of Income-tax', AIR 1947 All. 414 (H) where the assessee's explanation was rejected, it was held that in each case it would be a question of fact & the answer would depend on the finding whether the inference was a reasonable inference from the assessee's failure to prove his case.

7. The cases in the third group are cases where an Income-tax Officer, in the course of an assessment under Section 23 (3) discovers that the assessee has received a sum of money during the relevant account period and his explanation as to the nature of the receipt is not satisfactory. These cases are really in point and we would, therefore, deal with the cases in this group at some length.

8. The first case that was cited to us is --'Ganga Prasad v. Commr. of Income-tax, U. P.', 1941-9 I.T.R. 373 All. (I). In that case there was an entry of the receipt of a sum of money. The assessee claimed that the money had been gifted by his aunt. This explanation was not, found satisfactory. The Income-tax Officer-further found that he gave an evasive reply to a direct question, whether the money did not represent profits made by himself. It was also found that there was a regular inflow of money year after year from the same source. A conclusion was drawn that the assessee had been carrying on a secret business which yielded income and profit. This Court held that this was a conclusion on a question of fact and no question of law arose.

9. The facts in -- 'Stoneleigh Products Ltd. v. Dodd (H. M. Inspector of Taxes)', (1948) 30 Tax Case 1 (J) are somewhat similar. The assessee claimed that a greater part of the amount represented money belonging to his aunt which she had lent. The aunt was examined and she denied having ever lent the money. The amount was then treated as taxable income. It was held that the question was one of fact.

10. In -- 'J. A. Shellim v. Commr. of Income-tax, Bengal', A. I. R. 1947 Cal. 338 (K) the assessee's bank accounts showed considerable credits, for a period of one year. The assessee gave no information as to the source of these credits. The Income-tax Officer was obliged to act under the provisions of Section 13 and in doing so he allowed 2/3rd of the total amount of credits towards expenses and included the balance of 1/3rd in the assessable income. It was held that this was a pure question of fact, there being nothing to show that the Income-tax Officer had in any way acted' inconsistently with the provisions of Section 13.

11. In -- 'Jadunandan Sahu Deokisanram v. Commr. of Income-tax, Bihar and Orissa', A. I. R. 1949 Pat 215 (L) the assessee's explanation that the amounts entered were received from the home-chest of the family was disbelieved. The return showed extraordinarily low profits and from the circumstances the Tribunal had held that these were secret profits. On a reference the High Court held that it could not go into the question, whether the conclusion arrived at by the Tribunal was justified so long as there was legal evidence to support it.

12. In -- 'G. M. Madappa v. Commr. of Income-tax, Madras', A. I. R. 1949 Mad. 246 (M) it was held that the burden of proving that cash credits were not profits was on the assessee and not on the Income-tax Officer, and the fact that he had failed to notice similar unexplained cash receipts in earlier years did not affect the question of burden of proof. The observations are important and are as follows:

"There cannot be the slightest conceivable doubt that when both the source and the nature of the cash receipts shown in the accounting year have not been proved, the Income-tax Officer cannot draw any other inference except that those two amounts are income receipts. He cannot come to the conclusion that they are capital receipts. If it were held that he should the result would be that every assessee will be entitled to enter cash credits in his account and refuse to furnish the requisite particulars about its source and nature and insist that those entries should be automatically treated as capital receipts and not as income receipts."

13. In -- 'In re Udayram Jagannath', 1951-19 I. T. R. 222 (All) (N) the assessee's explanation that certain cash credits entered in his books represented loans was rejected. The question referred was to the effect, whether the Tribunal was justified in holding that the amount represented revenue receipts disguised as cash deposits. The High Court held that the question was one of fact for the Tribunal to decide and on the facts of the case it could not be said that there were no materials on the record on which the Tribunal could come to the finding it had arrived at.

14. The facts in -- 'Commr. of Income-tax, Excess Profits Tax, Madras v. South Indian Pictures Ltd., Karaikudi', A. I. B. 1952 Mad. 231 (O) were entirely different. There the source of the receipt was known. The amount having been paid to the assessee as compensation for termination of three contracts, the question was whether this was income or a casual receipt or capital receipt. It was held that if the Department claims to exercise the right of taxing a particular receipt, it must be established that the receipt in question was income, profit or gain falling under any of the heads of income mentioned in Section 6 of the Act.

15. The last case cited at the Bar is -- 'Narayandas Kedarnath Firm v. Commr. of Income-tax Central', A. I. R. 1952 Bom 459 (P). The facts in this case were also different. There too the source of the money received by the assessee was established. It represented genuine remittances from outside by partners. The explanation of the partners as to where they got the money from was not accepted. It was held that from the failure to accept the explanation of the partners the Department might be able to draw an inference that the amount represented undisclosed profits of the partners, but there was no material on which it could be held that the remittances were undisclosed profits of the assessee-firm.

16. An examination of these cases would, therefore, go to show that, if from the books of account of the assessee it appears that during the relevant account period he had received certain sums of money, it is for him to explain from where he got the same, and if his explanation is accepted there is an end of the matter. The question then might arise, which would be in most cases a question of law, whether the assessee's claim that the receipt -- its true source being known -- is not taxable income is justified or not.

Where, however, his explanation is rejected, the Tribunal has to record a finding on such materials as may be available, whether the money represents revenue receipt taxable as income of the relevant account period. The burden, in the first instance, must be on the assessee to show the true nature of the receipt and why he claims that it is not taxable income. When the assessee furnishes an explanation, if that explanation is unsatisfactory, that may in itself be a circumstance which the Income-tax Officer may be entitled to take into consideration but it need not necessarily, in every case, lead to the conclusion that the receipt is a revenue receipt taxable as income received in a particular year.

The question must always remain a question of fact which has to be decided on the materials available. In each case the revenue authorities are entitled to take into consideration the fact that the explanation given by the assessee is either unreasonable or is false and then to consider whether that circumstance alone or the other materials available along with that circumstance would entitle them to hold that the amount so deposited represented the undisclosed income of the assessee in the year in question,

17. Mr. Pathak, learned counsel for the assessee, has relied on the fact that the amount of Rs. 5,000/- was deposited on 25-11-1941, i.e., a month and five days from the beginning of the account year, which was 20-10-1941. Considering the extent of the business mentioned above it cannot be said that it was not possible for the assessee to have made secret profits of Rs. 5,000/- in the course of a month and five days. We cannot, therefore, say that the inference drawn was an unreasonable inference.

18. As regards, however, the cash deposit of Rs. 65,000/-, learned counsel for the assessee has pointed out that the deposit was made on the very first day of the account year and, considering the extent of the business carried on by the assessee, it was not possible that they could have made a profit of Rs. 65,000/- on one day. The Tribunal, however, did not seem to have attached any importance to this argument and have overlooked this aspect. We have looked through the

assessment order for the year 1946-47 and we find that in that year the assessee had made a total profit of Rs. 1,08,166/-. After deducting a sum of Rs. 45,378/- for excess profits tax liability, the business profits tax was reduced to Rs. 62,788/-. The sum of Rs. 65,000/- thus was more than half of the total profits made in the course of the year and it is not at all reasonable to expect that this huge profit could have been made on 17-10-1944 the first day of the relevant account year. No attempt was made to go further into this matter or to procure any material which would go to show that this huge profit could be made on the first day when the account year commenced. Mr. Pathak has offered to produce before us the account books to show that after having carried over the previous years balance these were the first entries that were made in the account books. He has suggested that the entries must have been made early in the day and there was, therefore, no likelihood of any secret profit having been made on that day. We do not think we can allow learned counsel to produce fresh evidence before us, but from the circumstances that appear from the statement of the case and the assessment order we do not think we can say that there was any material from which a conclusion could be arrived at that Rs. 65,000/- was the profit made in the account year from 17-10-1944 to 4-11-1945. We may mention that we are not called upon to decide, nor is it the case of the Department that these profits were made in the previous account year 1943-1944.

19. Our answer, therefore, to the question referred to us is that the Tribunal could reasonably hold that the cash deposit of Rs. 5,000/- in the assessment year 1943-44 represented the assessee's assessable income from some undisclosed source but it was not a reasonable inference that the sum of Rs. 65,000/- was income taxable in the assessment year 1946-47.

20. As the assessee has substantially won we allow them costs which we assess at Rs. 300/-