Gopi Nath Agarwal vs Commissioner Of Income Tax, U.P. & V.P. on 24 August, 1955

Equivalent citations: AIR1956ALL105, [1955]28ITR753(ALL), AIR 1956 ALLAHABAD 105

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Bench: V. Bhargava

JUDGMENT

V. Bhargava, J.

1. The assessee in the relevant account year ending with 9-7-1942, in respect of the assessment year 1943-44 was a Hindu undivided family carrying on a business in the name of Gopi Nath Agarwal and it consisted of Gopi Nath Agarwal himself and his two sons, Moti Lal and Murli Dhar. The family disrupted on 9-7-1942, and thereafter the business was carried on by a partnership firm in the same name of Gopi Nath Agarwal.

During the assessment proceedings, therefore, the assesses was frequently described as a partnership firm and Gopi Nath and his two sons were described as partners of the assessee firm. In the relevant account year, however, the assessee was an undivided Hindu family and was assessed as such. On 18-6-1942 a partnership firm was started under a deed of partnership between three persons, Kailash Nath, Harish chandra and Satish Chandra.

Kailash Nath and Harish Chandra were the brothers of one Purshottam Narain who was the son-in-law of the sister of Gopi Nath Agarwal and who had been in the service of the assessee for a period of about 25 years. The third partner, Satish Chandra, was the minor son of Purshottam Narain. The name of the new firm was Harish Chandra Satish Chandra. The business of this firm was the same as was being carried on by the Hindu undivided family, viz., dealing in cloth. It was found by the Income Tax Officer that this firm Harish Chandra Satish Chandra was financed by Gopi Nath Agarwal.

In the assessment proceedings of Firm Harish Chandra Satish Chandra, tax was not assessed separately on that firm on the ground that the business of that firm was a branch business of the Hindu undivided family business of the assessee in the proceedings for the assessment of the assessee firm, notice was issued to the assessee to show cause why the profits of Firm Harish Chandra Satish Chandra should not be assessed as the in--come of the assessee.

The assessee filed an application in reply supported by an affidavit and, on the date of hearing, another reply was presented by the counsel for the assessee mentioning that one of the partners, Moti Lal, of the firm Messrs. Gopi Nath Agarwal, which had by that time come into existence was present and could be examined by the Income Tax Officer if he desired. The accounts were examined but the evidence of Moti Lal was not taken.

The Income Tax Officer held that Firm Harish Chandra Satish Chandra was a branch business of the undivided Hindu family business of the assessee and, therefore, included the income of that firm in the income of the assessee. The assessee appealed before the Appellate Assistant Commissioner of Income Tax and the Income Tax Appellate Tribunal but the appeals were dismissed. The application made by the assessee for a reference of a question of law to this Court was rejected by the Tribunal.

The applicant then moved this Court under Section 66 (2), Income Tax Act, and this Court directed the Tribunal to state the case, holding that a question of law did arise. The Tribunal has now sent a statement of the case and has framed the question of law as follows:

> "Q. Whether there was material on the record for the finding of the Tribunal that the business done in the name of Harish Chandra Satish Chandra belonged to the assessee?"

2. Learned counsel for the assessee has taken us through the judgment of the income Tax Appellate Tribunal and has criticised it strongly on the ground that the Tribunal has completely ignored the fact that the burden of proof that the income of Firm Harish Chandra Satish Chandra was the income of the assessee lay on the Department and has dealt with the case as if the burden lay on the assessee to show the reverse.

He drew our attention to the fact that the Tribunal in its judgment, has mainly dealt with the correctness or incorrectness of the facts relied upon by the assessee in support of his contention that the business of this firm was not the business of the assesses and has made practically no mention at all of the positive circumstances on which the Department relied in order to show that the income of the firm was the income of the assessee, or, that this firm belonged to the assessee.

It does not appear to be necessary for us to go into the question how far the Tribunal wag right in rejecting the contentions that were raised by the assessee though we must take notice of the fact that, on most of the points raised by the assessee, all that the Income Tax Appellate Tribunal did was to say that it was not prepared to believe the assessee's explanation without giving any logical reasoning for it.

When this reference was heard by us, we called upon Shri Jagdish Sarup, learned counsel for the Department, to formulate before us the facts which have been relied upon by the Income Tax authorities as leading to the inference that this firm belonged to the assessee and that the profits of this firm were the income of the assessee. Shri Jagdish Sarup stated that the following facts may be taken to have been found by the Income Tax Appellate Tribunal:

(1) That Purshottam Narain was a partner in the other firm, Messrs. Khunnu Lal Purshottam Narain, the income of which was also sought to be assessed as the income of the assessee, and had brought a capital of Rs. 3,400/- at the time of starting that firm but was not a partner in Firm Harish Chandra Satish Chandra.

(2) That, during the assessment proceedings of Firm Harish Chandra Satish Chandra, the Income Tax Officer had held that that firm was not liable to be assessed as a separate entity on the ground that it was a branch of the assessee business.

(3) That Gopi Nath had financed this firm.

(4) That Gopi Nath did not take Purshottam Narain as a partner in his own business and preferred that another business should be started in the name of Firm Harish Chandra Satish Chandra when he should have adopted the former course if he really desired to assist Purshottam Narain, (5) That the explanation given by the assessee that a sum of Rs. 23000 had been withdrawn from the profits of this firm for the marriage of Harish Chandra Satish Chandra was not accepted by the Tribunal and that Satish Chandra was not actually married even upto the time of assessment.

(6) That, out of the three partners of Firm Harish Chandra Satish Chandra, one partner, Satish Chandra, was a minor and another Kai-lash Nath was employed elsewhere and only one partner, Harish Chandra, was an active member carrying on the business- of the firm.

(7) That, in respect of certain goods sold by that firm, the purchasers had paid the price not to the firm but to the assessee Messrs Gopi Nath Agarwal.

Of these facts relied upon by learned counsel it is obvious that fact No. 5 rejecting the explanation given by the assessee, cannot be held to be any positive fact which can possibly lead to the inference that the income of this firm was the income of the assessee. In this connection we may also take note of the fact that, in its appellate order, the Tribunal had nowhere stated that Satish Chandra was not married at the time when money was withdrawn from the firm, nor did it state that Satish Chandra had not been married even upto the time of assessment.

The Income Tax Officer, in his order, had mentioned that Satish Chandra was not married upto the time of assessment but this fact was not gone into by the Appellate Assistant Commissioner of Income Tax. The language used by the Tribunal in its order indicated that the Tribunal accepted the plea of the assessee that money had been withdrawn for the marriage of both Harish Chandra and Satish Chandra though the Tribunal was not prepared to accept that the amount of Rs. 23000/- withdrawn was all for the purpose of marriage.

In the statement of the case, however, the Tribunal has stated that Satish Chandra was not married even upto the time of assessment made by the Income Tax Officer on 31-12-1947. It is clear that the Tribunal was not entitled to mention a fact in the statement of the case, which it had not found at

the time of deciding the appeal and if it was necessary to find such a fact, appropriate proceedings should have been taken for giving findings on new facts which could only be done if the finding of the Tribunal had been called for on any such new fact in dispute.

The manner, in which the Tribunal dealt with this contention about the withdrawal of the sum of Rs. 23000/- for the marriage of Harish Chandra and Satish Chandra, is a clear example of the Tribunal rejecting a fact without giving any logical reasoning at all; all that the Tribunal has stated in the order is that it was not prepared to accept the contention but has given absolutely no reason why it could not accept it.

A reason was given by the Income Tax Officer who had held that Harish Chandra, had been previously employed on Rs. 30/- per mensem and it could not be believed that a sum of Rs. 23000/-would be spent on his marriage. That reasoning was not adopted by the Tribunal, presumably, because that reasoning was clearly fallacious inasmuch as the sum of Rs. 23000/- was withdrawn at a time when this firm had already carried out transactions of several lacs of rupees and not at the time when Harish Chandra was drawing a salary of a petty sum of Rs. 30/- per mensem.

3. Some of the other facts enumerated by Shri Jagdish Sarup, which have been set forth above, appear to be quite irrelevant. The question in these proceedings was whether the income of Firm Harish Chandra Satish Chandra was the income of the assessee and it had to be decided by the Income Tax Officer after giving an opportunity to the assessee to meet the case set up by the Department. In giving such a finding, it is clear that the Income Tax Officer could not take into account at all the finding given in the proceedings for the assessment of Firm Harish Chandra Satish Chandra itself inasmuch as the assessee was not a party to those proceedings and a mere finding by the Income Tax Officer in those proceedings cannot be treated as evidence against the assessee.

Learned counsel for the Department urged that in case the income of Firm Harish Chandra Satish Chandra had really been the income of that firm and not the income of the assessee, that firm would have filed an appeal against the order refusing to assess that firm separately on its income, but the argument clearly has no force as there is no reason why Firm Harish Chandra Satish Chandra, which was not owned by the assessee, should have gone out of its way to file an appeal" and make itself liable to tax when the income tax authorities, on a wrong finding, were saving it from payment of that tax. Another inference, that can possibly follow from this, is just the reverse.

If Firm Harish Chandra Satish Chandra had really belonged to the assessee, the assessee would have been interested in getting a finding in the assessment proceedings of that firm that it was a separate firm, so that the tax payable by it on the income of this firm would have been a smaller amount and, in that case, it might have been interested in having an appeal filed. The nonfiling of the appeal, if at all, therefore, gives an indication that the assessee was not the owner of Firm Harish Chandra Satish Chandra instead of leading to an inference that that firm be longed to it.

4. Another argument advanced that Gopi Nath Agarwal should have taken Purshottam Narain as a partner in his own firm if the real object of Gopi Nath in financing this firm was to help Purshottam Narain has again to be completely disregarded, because, in the relevant account year, Gopi Nath

Agarwal was carrying on his business as a Hindu undivided family consisting of himself and his two sons and there could be no question of admitting a stranger to a Hindu undivided family business.

The main ground relied upon is the fact that Gopi Nath Agarwal financed this firm by advancing money to carry on its business. The mere fact that a business is being carried on by means of money obtained from a certain individual cannot lead to any reasonable conclusion that that business must belong to that individual. Such an inference can only follow if it be found that the money was advanced as capital for carrying on the business and the person advancing the money retained his interest in the business in the capacity of the person providing the capital.

No such findings were given in this case. It was not held that, in financing this firm, Gopi Nath Agarwal retained any interest in the firm. On the other hand, it appears from the order of the Income Tax Officer that Gopi Nath Agarwal was charging interest on the money advanced by him from this firm. This fact that interest was being charged by Gopi Nath Agarwal from this firm on the money given by him as loan to the firm was urged before the Tribunal also and has been put forward before us by learned counsel for the assessee.

The Tribunal did not take notice of this fact at all, though the order of the Income Tax Officer had made it clear that Gopi Nath Agarwal had charged interest on the money given by him to the firm as a loan. The mere financing of the firm by Gopi Nath Agarwal cannot, in these circumstances, lead to the inference that he was the owner of that firm. Gopi Nath had given an explanation why he advanced the money. Purshottam Narain was closely related to him and, further, Purshottam Narain had rendered loyal service to him for a period of about 25 years. It would, not be unnatural in these circumstances if he wanted Purshottam Narain to be set up in his own independent business and assisted him in that behalf by giving a loan.

In this context, learned counsel also referred to the first fact formulated by him that Purshottam Narain appeared as a partner in the other firm Khunnu Lal Purshottam Narain and not in Finn Harish Chandra Satish Chandra, so that it is not possible to hold that the money was advanced by Gopi Nath in order to assist Purshottam Narain. We must not lose sight of the fact that Purshottam Narain's own minor son, Satishchandra, was admitted to the benefits of partnership in this firm and any assistance given to the minor son would be in line with the desire of Gopinath to assist Purshottam Narain.

5. There remain two other circumstances for consideration. One was that, out of the three partners of this firm, only one Harish Chandra was the active partner. It has not been held by the Income Tax Appellate Tribunal that Harish Chandra was incapable of managing this business or that Gopi Nath Agarwal was actually carrying on this business. The mere fact that the other two partners, Kailash Nath and Satishchandra minor, were not doing the work of the business is, therefore, of no significance whatsoever and, in any case, this circumstance cannot possibly lead to the inference that this was not the business of the partners and was the business of the assessee. The other circumstance is that the prices of certain goods sold by that firm were paid by the purchasers to the assessee instead of being paid direct to the firm.

It is an admitted fact that the partners of this firm and the assessee were closely connected. Even their businesses were closely connected. There were inter se transactions between the assessee and this firm". Goods were purchased from the firm by the assessee and from the assessee by this firm. The payment by certain purchasers to the assessee, even though they had purchased the goods from the firm, is merely an indication of this close connection between the two. Even the Tribunal did not hold that this circumstance led to the inference that the assessee was the owner of the firm.

The only inference that the Tribunal drew was that the people at large understood Firm Harish Chandra Satish Chandra to belong to the assessee. What people thought cannot be a fact which could possibly lead to the inference that the firm really belonged to Gopi Nath Agarwal. Thus it would appear that there were no positive circumstances at all found by the Tribunal from which an inference could reasonably have been drawn that the assessee was the owner of Firm Harish Chandra Satish Chandra.

The Bombay High Court, in -- 'Commissioner of Income Tax, Bombay v. Gokaldas Hukumchand,' 1943-11 ITR 462 (Bom) (A), had occasion to deal with a case where very similar facts were found. In that case also, firms were interconnected and the owner of one had financed the other. In fact, in that case, there were closer associations between the assessee and the partners of the firm, the profits of which were sought to be assessed as the profits of the assessee. It was held that the circumstances could merely give rise to a suspicion but could not justify holding that the assessee had a share in the other firm. The principle laid down in that case is applicable to the case before us.

6. Consequently, our answer to the question referred to us by the Income Tax Appellate Tribunal is in the negative. The assessee will be entitled to its costs from the Department which we assess at Rs. 250/-.