

Raja Baldeo Das Birla vs Commissioner Of Income-Tax, U. P., ... on 18 November, 1954

Equivalent citations: [1955]27ITR467(ALL)

JUDGMENT

This is reference under section 66 (2) of Indian Income-tax Act. The assessee is Raja Baldeo Das Birla. The assessment year is 1940-41 with relevant account period, the financial year 1939-40. The assessment order was made by the Income-tax Officer on the 30th January, 1941. Later, a notice was issued under section 34 that a sum of Rs. 3,30,000 was brought into British India from an Indian State and that amount had escaped assessment. The Income-tax Officer held that the whole of this amount was income which had escaped assessment, but on appeal the Assistant Commissioner held that two items of Rs. 75,000 and Rs. 50,000 were not taxable income. The assessee appealed and the Appellate Tribunal dismissed the appeal. Two questions that have been referred to us for decision are as follows :

1. Whether the notice issued under section 34 was valid.
2. Whether there is any material on the record to prove that the sum of Rs. 2,05,000 was the assessee's income which accrued or arose to him within an Indian State and was received or deemed to be received in, or was brought into, British India by him or on his behalf during the previous year.

The facts so far as we could ascertain from the appellate order and from the statement of the case are that on the 14th August, 1939, a new account was opened in a bank in Gwalior in the name of Raja Baldeo Dasji Charitable Trust and a sum of Rs. 2,05,000 was deposited in that account by lone Ram Kumar. The money was paid in currency notes. On 20th August, 1939, the assessee transferred a sum of Rs. 75,000 standing in his account in the bank to the account of Raja Baldeo Dasji Charitable Trust. He transferred a further sum of Rs. 50,000 on 26th August, 1939. The total amount in deposit in the trust account was thus Rs. 3,30,000 which was transferred on the 14th of September, 1939, to the account of Birla Brothers Limited, Bombay. On 21st April, 1939, the four trustees of Raja Baldeo Dasji Charitable Trust, who were Ghanshyam Das Birla and his three brothers - sons of the assessee - received a draft trust deed from the solicitors in Bombay for approval. On 1st September, 1939, the solicitors in Bombay acknowledged receipt of a sum of Rs. 2,475 for stamp duty on the trust deed. On 11th March, 1940, the document was executed by the four trustee. In this document the trustees stated that they had received the sum of Rs. 3,30,000 from Raja Baldeo Das Birla and they declared that this amount was held by them on the trusts therein contained. By a subsequent deed dated the 12th November, 1942, the recital with regard to the receipt of moneys contained in the document dated 11th March, 1940, was rectified, and it was made clear that out of the sum of Rs. 3,30,000 a sum of only Rs. 1,25,000 came from Raja Baldeo Das Birla while the balance of Rs. 2,05,000 was donated by other persons, whose names were, however, not disclosed.

The Appellate Tribunal held that Rs. 2,05,000 was taxable income and so far as we could find the grounds given were as follows :

Firstly : That it was not satisfied that this sum of Rs. 2,05,000 did not belong to the assessee at the time when it was deposited in the Gwalior Bank but was collected by Ram Kumar from others.

This fact seems to us to be of no importance. The material date is not 14th August, 1939, when the amount was deposited in the bank at Gwalior but 14th September, 1939, when the money was brought into British India. If before 14th September, 1939, the amount was impressed with a trust then it had ceased to become the money of the assessee and it could not be added to his taxable income as money belonging to him. We cannot see the relevance of the question whether the sum of Rs. 2,05,000 belonged originally to the assessee or to others. Neither from the appellate order nor from the order of the Assistant Commissioner does it appear, nor was it suggested here, that there was in fact no charitable trust in existence and the money was deposited in the bank at Gwalior in a fictitious name. Not only the entry is in the name of the Raja Baldeo Dasji Charitable Trust in the account of the bank in Gwalior but all the subsequent facts go to establish that this was trust money.

Secondly : That the sum of Rs. 2,475 stamp duty was paid not out of the trust account but presumably by Ghanshyam Das Birla and his three brothers, who were the trustees and who executed the document dated the 11th of March, 1940.

It was not necessary that the trustees should have debited the trust account with the expenses incurred in the execution of the document by them. It was a trust created by their father and they might have decided to meet the expenses from their pocket. That also is not a circumstance which could be relied upon to prove that the money was not trust money at the time when it was brought into British India.

To our minds, the mistake that has been committed by the Tribunal and the Assistant Commissioner was in not keeping the relevant date clearly in mind; it was 14th September, 1939, when the money was brought into British India and not 14th August, 1939, when the account was opened in Gwalior. There was no evidence to show that this sum of Rs. 2,05,000 was income of the assessee when it was brought into British India on 14th September, 1939, and no other facts or circumstances except those mentioned above were relied on by the Tribunal for its finding that it was taxable income of the assessee. The amount could be added to the taxable income of the assessee if, when it was brought into British India, it was his income. If the money was already impressed with a trust before it was brought into British India, it had ceased to be money belonging to the assessee and could not be added to his taxable income.

The answer to the question must, therefore, be that there was no material on the record on which the Tribunal could hold that this money belonged to the assessee at the time it was brought into British India. In view of this answer to the second question, it is not necessary to answer the first question.

We assess the assessee's costs at three hundred rupees.

Reference answered accordingly.