

## In Re: Udayram Jagannath vs Unknown on 5 October, 1950

### JUDGMENT

1. This is a reference under Section 66 (1) of the Indian Income-tax Act.

2. The assessee is a registered firm and the assessment year is 1946-47, the relevant accounting period being from October, 1944, to October, 1945. In the books of the assessee there were three cash credits of Rs. 7,000, 8,100 and 15,000 which the assessee claimed were loans from various persons but the Income-tax Officer came to the conclusion that they did not represent genuine items of loan and were suppressed profits. We are not concerned with two of these items as the Tribunal and other Income-tax authorities decided that those items were not revenue receipts. The only items now under consideration is the sum of Rs. 15,000 which, the assessee claims, was borrowed by him on three different dates from Messrs. Narsingh Das Ramgopal. A sum of Rs. 4,000, according to the assessee, was borrowed on 16th September, 1945 a further sum of Rs. 8,000 on 18th September, 1945, and the last item, of Rs. 3,000 was borrowed on the 24th September, 1945. The assessee claims to have returned these amounts by repaying to Messrs. Narsingh Das Ramgopal Rs. 3,000 on 28th September 1945 and Rs. 12,000 on 2nd October, 1945. The Income-tax Officer found that in the corresponding books of Narsingh Das Ramgopal there were no such entries as found a place in the books of account of the assessee. The Income-tax Officer further found that no interest was alleged to have been charged by Messrs. Narsingh Das Ramgopal on the sums advanced. The Income-tax Officer was not satisfied that these entries related to genuine borrowings by the assessee from Messrs. Narsingh Das Ramgopal and this finding of the Income-tax Officer was upheld by the Tribunal on the same grounds.

3. The only point that has been urged before us is that the Income-tax Appellate Tribunal was not justified in holding that the amount was not a loan as there were (i) no entries in, the books of account of Messrs. Narsingh Das Ramgopal, though the amount was borrowed in different sums on three different dates and repaid on two different dates, and (ii) no interest was claimed or paid on this debt. Considering the way in which the question has been formulated, the answer must be against the assessee as the question primarily is a question of fact. .

4. The question framed by the Tribunal is in these words:--

Whether, in view of the facts stated in paras. 3 and 4, particularly the absence of the entries of the deposit shown in the accounts of the assessee as having been advanced to him by his creditor Narsingh Das Ramgopal and the fact that no interest was paid to him, the Tribunal was justified in holding that the assessee had failed to prove the nature of the deposit in Narsingh Das Ramgopal account and inferring that the amount represented revenue receipts disguised as 43 cash deposits.

5. The question whether the Tribunal was or was not justified in holding that the amount was not borrowed from Messrs. Narsingh Das Ramgopal on the material before it which was admittedly relevant to the decision must necessarily be a question of fact and not a question of law. In any case,

as the question has been referred to us, our answer is that it cannot be said that the Tribunal was not justified in coming to the conclusion to which it did. We notice further that towards the end of the question the Tribunal has enquired whether the amount could represent revenue receipts disguised as cash deposits. This point does not appear to have been urged either before the Income-tax Officer or the Appellate Assistant Commissioner of Income-tax nor was it brought out before the Income-tax Appellate Tribunal. Learned Counsel for the assessee did not take up this point till one of us had noticed it from the frame of the question referred to us. The question is of considerable importance but it would not be right, in the circumstances of this case when the question was not urged before the Tribunal, to attempt to answer that question. In a case before the Madras High Court, it was held by that Court that if there is cash receipt and the assessee is not able to explain the source or the nature of such cash receipt, the Income-tax Officer is entitled to draw the inference that it must be income receipt for the relevant year. As a matter of fact, the learned Judges of the Madras High Court went to the length of holding that any other result would be unthinkable. See *G.M. Madappa v. Commissioner of Income-tax, Madras* [1948] 16 I.T.R. 395, at p. 390. A similar question arose before a Bench of this Court in *Mahabir Prasad Munna Lal v. Commissioner of Income-tax* [1947] 15 I.T.R. 393 where the question was answered in the following way :--

In each case it would be a question of fact and the answer must, in every' case, depend on the finding whether the inference is a reasonable inference from the assessee's failure to prove his case, There is nothing in law to prevent an inference that a particular receipt is a revenue receipt, provided that that is a reasonable inference and the assessee fails to satisfy the Income-tax Officer or the appellate authority the source from which the money came.

6. We do not want to express any opinion on the point. As the question does not arise out of the appellate order of the Income-tax Appellate Tribunal and has not been clearly put to us, we do not answer it. The Department is entitled to its costs which we assess at Rs. 200.