

## **Mathura Prasad Agarwala vs C.I.T., U.P., Lucknow on 10 March, 1977**

**Equivalent citations:** AIR1977SC1604, [1977]108ITR370(SC), (1977)3SCC383, 1977(9)UJ300(SC), AIR 1977 SUPREME COURT 1604, 1977 3 SCC 383, 1977 TAX. L. R. 661, 1977 2 ITJ 120, 1977 (1) SCWR 599, 1977 9 LAWYER 159, 1977 SCC (TAX) 478, 1977 2 SCJ 187, 1977 U J (SC) 300, (1977) 48 TAXATION 143, 1977 (108) ITR 370, 1977 U P T C 439, 108 I T R 370, 48 TAXATION 143

**Author:** P.N. Bhagwati

**Bench:** P.N. Bhagwati, S. Murtaza Fazal Ali

### JUDGMENT

P.N. Bhagwati, J.

1. These appeals by special leave are directed against an order passed by the High Court declining to make a reference under Section 66, Sub-section (2) of the Indian Income Tax Act 1922. The assessee who is the appellant before us applied to the High Court after rejection of his application by the Tribunal that certain questions of law stated to arise out of the order of the Tribunal may be referred to the High Court. The questions of law which were said to arise out of the order of the Tribunal related to the inclusion of interest on two fixed deposit receipts of Rs. one lakh each which stood in the name of the wife of Mathura Prasad, the karta and manager of the H.U. F. of the assessee. The revenue authorities came to the conclusion that though these fixed deposit receipts stood in the name of the wife of Mathura Prasad. they represented the assets of the assessee and hence the income from the fixed deposit receipts should have been included in the returns of the assessee for the assessment years 1955-56 to 1958 59, but the assessee had concealed this income and not shown it in its returns and thus rendered itself liable to penalty under Section 28(1)(c) of the Act. The Income Tax Officer accordingly imposed penalty on the assessee for each of the assessment years 195556 to 1958 59 and the orders imposing penalty were confirmed by the Appellate Assistant Commissioner in appeal and on further appeal, they were confirmed by a consolidated order made by the Tribunal. The assessee claimed that questions of law arose out of the order of the Tribunal and wanted them to be referred to the High Court. But the Tribunal took the view that no questions of law arose out of its order and so did the High Court and hence the reference was refused. The question is whether the view taken by the High Court that the order of the Tribunal did not give rise to any questions of law, is correct.

2. It is now settled law that the proceedings under Section 28(1)(c) of the Act being quashi-criminal in character, the burden is on the department to establish that the assessee concealed the particulars

of his income or deliberately furnished inaccurate particular thereof and in the circumstances, it is not enough for the revenue merely to show that a certain amount was received by the assessee but it has to go further and prove that it constituted the income of the assessee. Clearly, therefore, in the present case, the onus was on the revenue to show that the income from the two fixed deposit receipts during the assessment years 1955-56 to 1958-59 was the income of the assessee. It is clear from the order of the Appellate Assistant Commissioner confirmed by the Tribunal that there was sufficient material before the revenue authorities on the basis of which this onus could be said to have been discharged by the revenue. The order of the Income Tax Officer for the assessment year 1957-58 shows that one of the two fixed deposit receipts of Rs. one lakh was shown as an asset in the balance-sheet of the assessee. And it is evident from the order of the Appellate Assistant Commissioner that the amounts of both fixed deposit receipts were actually included by the assessee in its wealth-tax returns as the assets of the assessee. Moreover, it was admitted on behalf of the assessee that the amounts of both fixed deposit receipts one time belonged to the assessee and there was absolutely no material produced on behalf of the assessee to show that these two amounts had at any time been gifted by the assessee to the wife of Mathura Prasad and in any event no such gift could be validly made by the assessee to the wife of one of the coparceners without the consent of the other co-parceners. It also appears from the order of the Appellate Assistant Commissioner that the amounts of the two fixed deposit receipts were subsequently taken back by Mathura Prasad, the manager and karta of the assessee, to meet the share of the assessee in the losses arising in the firm of M/s. Agarwala Oil Mills and these two amounts were thus utilized for the benefit of the assessee. These circumstances were sufficient to show that the amounts of the two fixed deposit receipts though standing in the name of the wife of Mathura Prasad, belonged to the assessee and the income arising from them was the income of the assessee. The burden which lay on the department of proving concealment of income on the part of the assessee was thus fully discharged and neither the Tribunal nor the High Court was in error in holding that no question of law arose out of orders of the Tribunal.

3. We accordingly dismiss the appeals with costs. There will be only one set of costs.