

Commissioner Of Income-Tax, West ... vs Durga Prasad More on 22 August, 1968

Equivalent citations: [1969]72ITR807(SC), AIRONLINE 1968 SC 13

Bench: J.C. Shah, A.N. Grover

JUDGMENT

Shah, J.

1. Durga Prasad More--hereinafter called "the assessee"--was assessed by the Income-tax Officer, Calcutta, to tax under the Indian Income-tax Act, 1922, in the assessment year 1945-46 in the status of individual resident and ordinarily resident in British India. In proceedings for reassessment of the income of the assessee, the Income-tax Officer added to the total income of the assessee for the assessment year 1945-46 an amount of Rs. 2,20,000 remitted from Nawalgarh in Rajasthan--then without British India--by three demand drafts to Calcutta in the months of February and March, 1944. The plea of the assessee that the three demand drafts represented the assessee's cash balance which was sent from Calcutta in November, 1941, and was brought back in the months of February and March, 1944, was disbelieved. The order of the Income-tax Officer was affirmed by the Appellate Assistant Commissioner and by the Income-tax Appellate Tribunal, Calcutta Bench 'A'. The High Court of Calcutta answered the following questions :

"(1) Whether there was any evidence on record to sustain the finding of the Tribunal that the said sum of Rs. 2,20,000 remitted from Nawalgarh to Calcutta during the year of account constituted income from some undisclosed sources ?

(2) Whether the Tribunal was entitled to reject the evidence on behalf of the assessee on mere scepticism instead of any tangible evidence to support its findings ?"

2. Submitted by the Tribunal under Section 66(2) of the Income-tax Act, 1922, in the negative. The Commissioner of Income-tax has appealed to this court against the order of the High Court on the first question. The High Court recorded their answer on the second question in favour of the Commissioner and no appeal has been filed by the assessee against that order, and nothing more need be said in this appeal in that behalf.

3. Before the Income-tax Officer the assessee had contended that he had in November, 1941, a large cash balance in his Calcutta business and out of that balance he had transferred Rs. 3,00,000 to Nawalgarh. The reasons for the transfer according to the assessee were: (1) that there was a scare of Japanese invasion; and (2) that proceedings for recovery of a large amount of tax due by the firm of

Messrs. Ram Sahaymal More--an unregistered firm--which the assessee was a partner were initiated by the income-tax authorities in the year 1941. The Income-tax Officer on a review of the evidence disbelieved the plea of the assessee and observed that "in the circumstances of the case, the three amounts aggregating to Rs. 2,20,000 not recorded in Calcutta books of account" represented "profits of undisclosed business activity in British India", and were on that account liable to be taxed as income of the assessee in the assessment year 1948. The order of the Income-tax Officer was affirmed by the Appellate Assistant Commissioner. He observed :

"As the assessee has failed to discharge the onus of proving satisfactorily that the remittances formed really a part of the cash balance as shown in the Calcutta account, the Income-tax Officer was perfectly justified in treating the sum of Rs. 2,20,000 as income from undisclosed source."

4. In appeal to the Tribunal, the order passed by the Appellate Assistant Commissioner was confirmed, after rejecting the case of the assessee that the amount of Rs. 2,20,000 was part of the cash balance on hand. The Tribunal recorded its conclusion as follows :

"In these circumstances we agree with the department in holding that the assessee has failed to prove the source of the money from which he made the remittances under consideration. The amount has been rightly held to be an income from some undisclosed sources."

5. In the opinion of the High Court the Tribunal had "ample justification in holding" that the receipt of Rs. 2,20,000 was "profit from undisclosed source". But the High Court proceeded to observe that there was no evidence in support of the finding that the money represented "profit from an undisclosed business activity in British India," and on that view they recorded an answer in the negative on the first question. They observed :

"Applying these principles to the instant case, we find there is ample justification for the income-tax authorities to reject the assessee's explanation as unsatisfactory and to hold that the said receipt of Rs. 2,20,000 is a profit from undisclosed source. But, unfortunately, the Income-tax Officer, after rejecting the assessee's explanation, has come to the conclusion that the said amount is profit from business activity in British India, a finding which cannot be warranted without some evidence or information adduced by the department. The assessee was a resident of India and it was the statutory duty of the assessee to disclose his total world income, and, accordingly, the alleged receipt might have been income at Nawalgarh, or at some other place outside British India. The Appellate Assistant Commissioner and the Appellate Tribunal have confirmed the order of the Income-tax Officer, but they have in their order described the said sum as income from undisclosed sources. The very fact that they have confirmed the order of the Income-tax Officer shows that they have meant that this undisclosed source relates to the assessee's business activity in British India. If their objects are to reverse the finding of the Income-tax Officer on this point their orders could have been sustained inasmuch as the assessee is a resident of India and his

income from undisclosed source, whether earned in India or outside, is taxable in India. There is no dispute as to the fact that the said sum of Rs. 2,20,000 has been remitted from Nawalgarh to Calcutta. The explanation offered by the assessee to the effect that the said sum was a part of the cash balance of the Calcutta business in November, 1941, has been rejected, and rightly so, for the reasons stated earlier. The result of the rejection is that the money never went from Calcutta to Nawalgarh. The only conclusion in such a case is that the money represents profit from undisclosed source, But that is not the finding which the Income-tax Officer has arrived at. The rejection of the assessee's explanation does not necessarily follow that the particular receipt is an income from undisclosed business activity in British India."

6. But the Tribunal did not record a finding that the income was " from some undisclosed business activity in British India of the assessee. " The assumption made by the High Court that the Tribunal held that the income was from some undisclosed business activity in British India was not warranted.

7. Again, the total income of the assessee was liable to be charged to tax at the rates in force under the appropriate Finance Act. According to the Income-tax Act then in force, the total income of the (previous year of an assessee, who was resident in British India, included all income, profits and gains during such year which accrued or arose or were deemed to accrue or arise to him in British India during such year. The assessee was resident and ordinarily resident in British India in the relevant previous year, and the income brought to tax had accrued or arisen to him in British India. That was so found by all the authorities and the High Court also agreed with that view. If the amount of Rs. 2,20,000 represented income of the assessee of the previous year, it was liable to be included in the total income of the assessee, and an enquiry whether for the purpose of bringing the amount to tax the income was from a business activity or from other source was not relevant. The principle laid down by this court in Commissioner of Income-tax v. M. Ganapathi Mudaliar that " once it is found that " a receipt by the assessee " was income of the assessee it was not necessary for the revenue to locate its exact source " applies in our judgment alike to cases in which an entry is found in the books of account of the assessee, and to cases in which no such entry is found. It was not the plea of the assessee that the demand drafts represented income, which was either wholly or in part not chargeable to tax : if he intended to rely upon that plea it was for him to prove such a plea. It was not even attempted to be argued before the Tribunal that the source of the income affected its exigibility to tax. We are, therefore, unable to uphold the answer recorded by the High Court.

8. We allow the appeal, discharge the answer recorded by the High Court on the first question, and record an answer in the affirmative. The assessee will pay the costs of the Commissioner in this court and in the High Court.