

## **Commissioner Of Income-Tax, Bangalore vs K.Y. Pilliah And Sons on 13 October, 1966**

**Equivalent citations: [1967]63ITR411(SC), AIRONLINE 1966 SC 15, (1967) 63 ITR 411**

**Author: J.C. Shah**

**Bench: J.C. Shah**

### **JUDGMENT**

Shah, J.

1. In their return of income for the assessment year 1951-52 the respondents, Messrs. K. Y. Pilliah & Sons, declared Rs. 18,679 as their income from business. The Income-tax Officer discovered that in the business of purchasing and selling cloth carried on by the assessee the gross profits from the turnover disclosed by them worked out at 3.8% while in the case of other merchants carrying on similar business in the same locality it worked out at 6 to 7% that the relevant vouchers for purchases by the assessee of goods were not produced, and that in respect of those transactions, besides the entries in the books, of account, there was no evidence of actual payment of credit purchases. the Income-tax Officer was, therefore, of the view that the "purchases remained unproved". Thereafter, he made detailed enquiries and found that the assessee had been selling cloth in the name of Bhuvaneshwariah, son of K. Y. Pilliah, principal partner of the assessee, and on the name of Veerabhadrapa, their accountant.

2. The Income-tax Officer rejected the claim of the assessee that their net turnover for the year was Rs. 9,42,524-8-9 and estimated the turnover at Rs. 12 lakhs and estimated their gross profit at 6.5% on the estimated turnover.

3. In the books of account of the assessee in the relevant account year, there were two credit entries in November and December, 1950, totalling Rs. 7,000 in the name of one Sampangappa. Sampangappa was examined by the Income-tax Officer. He admitted that he was not in a position to advance any account at the relevant time. The Income-tax Officer treated Rs. 7,000 as the assessee's income from undisclosed sources.

4. The Appellate Assistant Commissioner confirmed the order of the Income-tax Officer. In appeal to the Income-tax Appellate Tribunal the assessee submitted that, if at all, Rs. 1,05,031-12-0 being the aggregate of the amounts for which transactions, of the assessee in the names of Bhuvaneshwariah and Veerabhadrapa were proved could be added to the turnover returned by

them, and that there was no warrant for estimating the total turnover at Rs. 12 lakhs. It was also contented that the cash credit entry of Rs. 7,000 should have been held attributable to the "secreted profits" in the transactions which were not entered in the books of account. In rejecting that plea, the Tribunal, observed that the assessee were "in the habit of suppressing not only sales but the corresponding purchases as well, so that the full extend of the business is not made known to the income- tax authorities. It was stated before the Income-tax Officer that certain sales did not pass through the books of account because the assessee wanted to save sales tax. Before the Appellate Tribunal the assessee did not persist in his contention that the sales were not suppressed. The only contention raised by the assessee was that the estimated turnover made was excessive. Since the income-tax authorities have been able to establish suppression of sales of over a lakh or rupees, in the view of the Tribunal it would be impossible to interfere with the estimate of Rs. 12 lakhs being the turnover of the assessee." The Tribunal accordingly rejected the contention of the assessee about the rate of gross profit estimated by the Income-tax Officer and also rejected the contention that the entry of Rs. 7,000 in the assessee's books represented "secreted profits" which were already brought to tax.

5. Prima facie, these were findings on questions of fact, and no question of law arose out of the order of the Tribunal. But the High Court of Mysore called for a statement of the case under section 66(2) of the Indian Income-tax Act on the following two question :

"(1) Whether the estimate of the income of the assessee confirmed by the Income-tax Appellate Tribunal rests upon irrelevant considerations and the estimate is not made in accordance with la ?

(2) Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was justified in sustaining both the additions of Rs. 41,142 as income from business and Rs. 7,000 as cash credits and whether such addition does not result in double taxation ?"

6. The High Court at the hearing of the reference was of the view that "the Appellate Tribunal was strongly influenced by the fact that the assessee were in the habit of suppressing not only the sales but the corresponding purchases as well" and also "by the admission made before the Income-tax Officer that certain sales had not passed through the books of account with a view to saving sales tax". These, in the view of the High Court, were "irrelevant considerations" and since the decision of the Tribunal was based "on those irrelevant considerations, the answer on the Tribunal was based, "on those irrelevant considerations, the answer on the first question must be in favour of the assessee." Similarly, in dealing with the amount of Rs. 7,000, which was treated income from undisclosed sources, the High Court held that "the Tribunal had not applied its mind to the facts and had recorded its conclusion merely affirming the decision of the Appellate Assistant Commissioner". On that view, the second question was also decided in favour of the assessee. The Commissioner of Income-tax has appealed to this court with special leave.

7. The true income, profits and gains of the assessee could obviously not be deducted from the books of account of the assessee. That was conceded by the assessee. The assessee had carried on

transactions in the name of the son of the principal partner, and also in the name of the accountant of the business, and those transaction, besides other transactions, were never entered in the books of account. The Income-tax officer, therefore, was of the view that computation of taxable income could not be based on the books of account of the assessee. The assessee had disclosed a turnover of Rs. 9,42,524-8-9 and a gross profit of Rs. 38,857-15-6. These figures were in the view of the Income-tax Officer unreliable : the first, because it did not include sales which were "kept out of the accounts", and the second, because in the light of profits disclosed by other dealers in the same business, it was wholly inadequate. He, therefore, estimated the turnover at rate 6.5%. Transactions of an amount exceeding Rs. 1 lakh were admitted by the assessee as "kept out of the accounts". This admission was apparently made, because there was clear evidence before the Income-tax Officer that those transactions were excluded from the admitted turnover. There were, besides those transactions, other transactions with Messrs. Hameedia Stores, and T. Venkataram of which the extent could not be ascertained.

8. On the facts disclosed, the Income-tax Officer could exercise, the power to estimate the turnover. The power must of course be exercised not arbitrarily, but judicially in the light of relevant materials. It is, however, not even suggested that the Income-tax Officer acted arbitrarily or capriciously in exercising his power to estimate the undisclosed turnover. The estimate made by the Income-tax Officer was affirmed by the Appellate Assistant Commissioner and the Tribunal. There is no reason to believe that the estimate made by the Income-tax Officer was not reasonably made.

9. The Income-tax Officer computed the profits from the business at a flat rate. The gross profits disclosed by the assessee yielded a rate of 3.8%. It appeared, however, that the normal rate of gross profits in similar business carried on by other merchants in the locality varied from 6 to 7%. The assessee furnished no explanation at all as to why profit at the normal rate was not earned. Once the books of account of the assessee were rejected and the rate of gross profit earned by them was found unreliable, it was open to the Income-tax Officer to estimate the gross profit at a rate at which profit was earned in similar business by other merchants. We are unable to hold that the reasons recorded by the Tribunal in support of its order levying tax on profits computed on estimated turnover of Rs. 12 lakhs at the rate of 6.5% were "irrelevant".

10. The form of the second question needs some explanation. The Income-tax Officer worked out the gross profit on the estimated turnover of Rs. 12 lakhs at 6.5% and that the profit amounted to Rs. 78,000. The assessee had by their return disclosed a gross profit of Rs. 36,858. In adopting the rate of 6.5% on the estimated turnover, the Income-tax Officer added to the income returned Rs. 41,142 being the additional profit, and levied tax thereon. It was not suggested that there were any other admissible outgoings which could not be debited against that amount. The question whether Rs. 41,142 were liable to be taxed falls to be determined under the first question. The second question only relates to the amount of Rs. 7,000 which was the cash credit item which represented an unexplained entry in the books of account of the assessee. In respect of that amount, the Income-tax Officer held that the explanation of the assessee was untrue and the Appellate Assistant Commissioner and the Tribunal agreed with the view. The Income-tax Appellate Tribunal is the final fact-finding authority and normally should record its conclusion on every disputed question raised before, it setting out its reasons in support of its conclusion. But, in failing to record reasons, when the Appellate

Tribunal fully agrees with the view expressed by the Appellate Assistant Commissioner and has no other ground to record in support of its conclusion, it does not act illegally or irregularly, merely because it does not repeat the grounds of the Appellate Assistant Commissioner on which the decision was given against the assessee or the department. The criticism made by the High Court that the Tribunal had "failed to perform its duty merely affirming. the conclusion of the Appellate Assistant Commissioner" is apparently unmerited. On the merits of the claim for exclusion of the amount of Rs. 7,000, there is no question of law which could be said to arise out of the order of the Tribunal. The assessee had credited Sampangappa with two sums of Rs. 6,000 and Rs. 1,000 in the months of November and December, 1950, respectively. It was clear that Sampangappa had not advanced at the material time any amount to the assessee. The explanation of the assessee was, therefore, untrue.

11. It was urged before the Appellate Assistant Commissioner and the Tribunal that the amount of Rs. 7,000 could still be attributed to the "secreted profits." But no such explanation was furnished by the assessee; and if the Tribunal declined to accept that contention, no question of law arises from its finding in that behalf. It cannot be said that the Tribunal was on the view, expressed by it not justified in bringing to tax the amount of Rs. 7,000, and no question of double taxation arises.

12. The appeal will therefore be allowed and the two questions referred to the High Court will be answered as follows :

"(1) In the negative.

(2) In the affirmative on the first part of the question; the second part does not fall to be determined."

13. The Commissioner will be entitled to his costs in this court and the High Court.

14. Appeal allowed.