Madhya Pradesh High Court
Commissioner Of Income-Tax vs Dharamchand Anandkumar on 22 November, 1979
Equivalent citations: 1981 128 ITR 219 MP
Author: G Singh
Bench: G Singh, R Shrivastava
JUDGMENT G.P. Singh, C.J.

1. This is a case stated under Section 256(1) of the I.T. Act, 1961, by the Income-tax Appellate Tribunal referring for our answer the following question of law :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right, in law, in holding that the provisions of Section 68 of the Income-tax Act, 1961, will apply to the assessment of the cash credits and that they were not liable for assessment as income from undisclosed sources, for the assessment year 1960-61 ?"

2. The facts stated are as follows. The assessment year involved is 1960-61 for which the assessee's accounting year was the calendar year ending 31st December, 1959. The assessee had not filed any voluntary return of the income under Section 22(1) of the Indian I.T. Act, 1922. The ITO had also not issued notice to the assessee under Section 22(2) of that Act. After the commencement of the I.T. Act, 1961, while perusing the accounts of the assessee for the calendar year 1960, the ITO came across the following cash credits in the capital account of the assessee :

	Rs.
1-1-1960	10,000
30-3-1960	5,000

3. The ITO disbelieved the explanation offered by the assessee in respect of these entries and decided to treat them as the assessee's income from undisclosed sources. As these amounts appeared in the books of account of the assessee relating to the financial year ending on 31st March, 1960, the ITO was of the view that these should be assessed as income from undisclosed sources for the assessment year 1960-61. This view of the ITO was based on the law as recognised under the 1922 Act. The ITO initiated action under Section 147 of the 1961 Act and served a notice on the assessee on 2nd January, 1964, calling upon him to file his return of income for the assessment year 1960-61. The ITO estimated the income of the assessee from business at Rs. 2,000. To this income the ITO added the cash credits of Rs. 15,000 mentioned above as the assessee's income from undisclosed sources. The AAC, in appeal, confirmed the order of the ITO. In appeal before the Tribunal, it was contended by the assessee that as the cash credits appeared in the books of account in the calendar year 1960, and as the assessee's accounts were maintained treating the calendar year as the previous year, there was no justification for treating the credits as the income of the assessee for the assessment year 1960-61, and that in accordance with the provisions of Section 68 read with Section 297(2)(d)(ii) of the 1961 Act, the credits could have been assessed only as the income for the

assessment year 1961-62. This contention found favour with the Tribunal. On an application made by the department, the Tribunal referred the question which we have set out above.

4. The settled law under the 1922 Act was that the only possible way in which income from an undisclosed source could be assessed or reassessed was to make the assessment on the basis that the previous year for such income was the ordinary financial year [Baladin Ram v. CIT [1969] 71 ITR 427 (SC)]. Section 68 of the 1961 Act makes a departure on this point in respect of amounts found credited in the books of the assessee. The section provides thus:

"Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Income-tax Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year."

5. It will be seen that the section has application where any sum is found credited in the books of an assessee maintained for any previous year. If the amount so credited is found to be the business income of the assessee for which the books of account are maintained, the income discovered from the credit entries would be taken to be the income of the previous year for which the accounts are maintained. This was also the law under the 1922 Act, and to this extent there is no change. However, when the amount credited in the books of the assessee maintained for any previous year is not found to be the business income of the assessee but is held to be income from undisclosed sources, the income so discovered will, under Section 68, still be deemed to be the income of that previous year for which the accounts were maintained. The position in this respect under the 1922 Act was different and, as earlier noticed, an income from undisclosed sources under that Act could be assessed only on the basis that the previous year for such income was the ordinary financial year. In the instant case, the cash credits were found in the books of the assessee maintained for the calendar year 1960, which was the previous year of the assessee for business income. If Section 68 applied, the cash credits which were found to be income from undisclosed sources would be taken as the income of the previous year for which the accounts were maintained, i.e., the calendar year 1960, and they could be assessed only as income for the assessment year 1961-62. If Section 68 was inapplicable and if the law to be applied was that which prevailed prior to the commencement of the 1961 Act, the cash credits would be taken as the income of the financial year 1959-60, assessable as income for the assessment year 1960-61.

6. The 1961 Act came into force on 1st April, 1962. By Section 297(1) of that Act, the 1922 Act was repealed. The repeal was subject to the provisions contained in Sub-section (2) of Section 297. We are here concerned with Clause (d) of Sub-section (2), which reads as follows :

"(d) Where in respect of any assessment year after the year ending on the 31st day of March, 1940,--

(i) a notice under Section 34 of the repealed Act had been issued before the commencement of this Act, the proceedings in pursuance of such notice may be continued and disposed of as if this Act had not been passed;

(ii) any income chargeable to tax had escaped assessment within the meaning of that expression in Section 147 and no proceedings under Section 34 of the repealed Act in respect of any such income are pending at the commencement of this Act, a notice under Section 148 may, subject to the provisions contained in Section 149 or Section 150, be issued with respect to that assessment year and all the provisions of this Act shall apply accordingly ".

7. In the instant case, no notice was issued under Section 34 of the 1922 Act. Action was taken under Section 147 of the 1961 Act, for assessing the escaped income found in the form of cash credits. The argument of the learned counsel for the assessee is that in such a situation "all the provisions" of the 1961 Act applied in view of Sub-section (2)(d)(ii) of Section 297 and, therefore, Section 68 also applied. The argument of the learned counsel for the department, on the other hand, is that the expression "all the provisions of this Act" as it occurs in Sub-section (2)(d)(ii) of Section 297 refers only to the procedural provisions of the Act, and not to the substantive provisions. The learned counsel further argues that Section 68 is a substantive provision and, therefore, it has no application here. Sub-section (2)(d)(ii) of Section 297 was considered by the Supreme Court in Govinddas v. ITO [1976] 103 ITR 123. The Supreme Court held that the words "all the provisions of this Act shall apply accordingly" merely refer to the machinery provided in the new Act for the assessment of escaped income and they do not import any substantive provisions of the new Act which create rights or liabilities. It was further observed that the word "accordingly" in the context meant nothing more than "for the purpose of assessment" and it clearly suggested that the provisions of the new Act which were made applicable were those relating to the machinery of assessment. In view of the deci sion in Govinddas's case [1976] 103ITR 123 (SC) the substantive provisions of the 1961 Act cannot be pressed into aid by recourse to Sub-section (2)(d)(ii) of Section 297. The liability to be taxed was incurred when the 1922 Act was in force and it is clear that the substantive law to be applied for deter mining the tax liability must consequently be the law under that Act as that was the law to be applied during the relevant assessment year, i.e., 1960-61 or 1961-62. The question then is whether Section 68 of the 1961 Act is a substantive provision or a machinery provision. In case it is a substantive provision, it would not be possible to apply it in the instant case under Sub-section (2)(d)(ii) of Section 297.

The scheme of the charging provisions of the 1922 Act and the 1961 Act is the same. The charging provisions were contained in Sections 3 and 4 of the 1922 Act and the corresponding provisions of the 1961 Act are Sections 4 and 5. The income-tax is charged for any assessment year in respect of the total income of the previous year. The previous year of an assessee which in substance means the accounting year is thus intimately connected with the charging provisions of the Acts. A change in the previous year by Section 68 of the new Act is, in our opinion, a change in the substantive law and not merely a change in the machinery or procedural provision. By the operation of the 1922 Act, before its repeal, the assessee incurred the liability to pay the tax in respect of the income disclosed by the cash credits on the basis that it was the income of the financial year 1959-60, assessable for the assessment year 1960-61. This liability cannot be affected by recourse to Section 68 by treating the cash credits as the income of the calendar year 1960, assessable for the assessment year 1961-62. Such a change affects substantive rights and obligations leading to change in total income, rate and quantum of tax. Such a change, in our opinion, cannot be allowed by recourse to Sub-section (2)(d) of Section 297 which is restricted to the application of the machinery provisions of the new Act. The

Calcutta High Court in Damodar Hansraj v. CIT [1979] 118 ITR 999 did not think it necessary to decide the point but it appears to be of the opinion that Section 68 in so far as it relates to the fixing of the previous year for income from undisclosed sources is a substantive provision. We are also of the same opinion.

8. For the reasons given above; we answer the question referred to us in the negative, in favour of the department and against the assessee. There shall be no order as to costs.