

Calcutta High Court

Commissioner Of Income-Tax vs Luxmi Trading Co. on 7 April, 1978

Equivalent citations: 1979 117 ITR 439 Cal

Author: Sen

Bench: D K Sen, C Banerji

JUDGMENT Sen, J.

1. This reference arises out of the income-tax assessment of Luxmi Trading Co. for the assessment year 1963-64, the corresponding accounting period being the Ram Navami Day of S.Y. 2019. At the assessment, the ITO found a number of cash credits standing in the names of various persons as follows :

(a) M/s. Arjunlal Bhagwandas--Rs. 6,000 ; (b) M/s. Laxmichand Parmanand--Rs. 40,000 ; (c) Gopaldas Chainrai--Rs. 30,000 ; (d) M/s. Ghanshyamdas Uttamchand--Rs. 35,000 ; and (e) Seth Giridharidas Lila-ram--Rs. 40,000. The ITO also found khata-peta loans of Rs. 20,000 and Rs. 52,000 purported to have been received from M/s. Daluram Gaganmull and Padam Textiles.

2. In confirmation of the cash credits, which according to the assessee were originally borrowed on hundis as also the khata-peta loan, confirmation letters of the lenders were produced. The ITO issued summons under Section 131 of the I.T. Act, 1961, to the lenders at the addresses given by the assessee, but they were returned unserved with the remark "not known". The assessee could not furnish the latest whereabouts of the creditors except that one Bidyanand Surekha was produced on behalf of Daluram Gaganmull. Even this person could not produce the books of account or any other evidence in support of the loan. The ITO took note of the fact that Bidyanand Surekha had made a confession before the ITO, Special Circle, Calcutta, that all loan transactions shown as having been effected with the firm, Daluram Gaganmull, were the petitioner's. No money actually passed and the firm had acted as a mere name-lender. The ITO accordingly held that neither the cash credit loans nor the khata-peta loans had been explained by the assessee and that the amounts thereunder represented the concealed income of the assessee during the relevant year from undisclosed sources and, taking into consideration the peak amount of the cash credits, added the amount of Rs. 1,51,000 to the assessee's income. Similarly, the khata-peta loans aggregating Rs. 72,000 were also added back.

3. Being aggrieved, the assessee preferred an appeal before the AAC. It was contended in the appeal that the summons having been issued long after the transaction the assessee could not be held responsible for causing the physical appearance of the creditors at the proceedings. It was submitted that the onus of proving the transactions had been discharged by the assessee as the circumstantial evidence adduced showed the genuineness of the loans and the identity of the creditors had also been established. The AAC found as follows :

"In most of the transactions both the receipts and payments were by crossed account-payee cheques. In three cases, where the amounts were received in cash, certificates were produced from the bank in confirmation. Each of the creditors had confirmed the loans by letters mentioning their Income-tax file numbers. Seven hundies of Ghanshyamdas Uttamchand had been discounted

through the Dena Bank."

4. On such findings, the AAC deleted all the additions made in respect of the said cash credits' and the said khata-peta loans.

5. From the above order of the AAC, the revenue preferred a further appeal to the Tribunal. It was contended that the order of the AAC was erroneous as the signatures of the creditors had not been proved and that in any event the alleged creditors had made confessions before the revenue authorities.

6. The Tribunal noted the following facts :

(a) In the assessment proceedings the assessee had furnished confirmatory letters from the creditors.

(b) The transactions were by cheques.

(c) The Income-tax Officer did not investigate the accounts on which the cheques were drawn.

(d) The assessee was not confronted with the confessions of the persons on which the revenue relied on the basis of these facts.

7. The Tribunal upheld the order of the AAC in respect of the cash credits resulting from hundi loans. As to the khata-peta loans the Tribunal found that the loan of Rs. 20,000 alleged to have been received from Daluram Gaganmull had not been explained and that the deletion of the said amount from the total income of the assessee was not justified. The representative of the alleged creditor could not produce any books in support of the transaction and the assessee did not cross-examine him about his confession. About the khata-peta loan from Padam Textiles the Tribunal noted that the transaction was by cheque and the absence of the party was explained by the fact that summons was issued on it after a lapse of several years. The Tribunal held that this loan from Padam Textiles has been satisfactorily proved. Accordingly, the Tribunal disposed of the appeal partly in favour of the assessee and partly in favour of the revenue.

8. For the assessment year 1964-65, the assessee claimed deduction in respect of the interest paid on the aforesaid hundi loans as also the khata-

peta loans. By reason of his order in the earlier year, the ITO did not accept this claim for deduction. On appeal, the AAC totally accepted the claim of the assessee. The Tribunal confirmed the disallowance of the interest paid to Daluram Gaganmull but allowed the deduction in respect of the interest paid to the other parties.

9. At the instance of the CIT, West Bengal-III, the Tribunal under Section 256(1) of the I.T. Act, 1961, has drawn up a statement of case and has referred the following questions:

Assessment year 1963-64 :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal's order upholding the deletion of Rs. 1,51,000 being the alleged hundi loans and Rs. 15,347 interest is perverse or unreasonable ?

2. Whether, on the facts and in the circumstances of the case, there was evidence before the Tribunal to hold that the khata-peta loan in the name of M/s. Padam Textiles is genuine and to delete the addition of Rs. 52,000 and the interest of Rs. 3,184 ?"

Assessment year 1964-65:

"1. Whether, on the facts and in the circumstances of the case, the claim of Rs. 13,707 representing interest paid to the hundi lenders was an allowable deduction ?

2. Whether, on the facts and in the circumstances of the case, the claim of Rs. 225 representing interest paid to M/s. Padam Textiles was an allowable deduction ?"

10. Mr. B. L. Pal, learned counsel for the revenue, contended at the hearing that the order of the Tribunal upholding the deletion of the alleged hundi loans and interest thereon was not in any way supported by the evidence before the Tribunal and was, therefore, perverse. In this context Mr. Pal cited a decision of this court in *Sikri & Co. Pvt. Ltd. v. CIT*. The facts here were, inter alia, that the assessee during the relevant assessment year claimed that it had borrowed diverse amounts on hundis from nine different parties aggregating Rs. 3,10,000, The ITO enquired into the sources of these amounts and called upon the assessee to furnish evidence to prove the genuineness of the loans. Summons under Section 131 of the I.T. Act, 1961, requesting the parties to produce their books of account and other documents for the relevant accounting period could not be served. The alleged lenders were found not traceable at the addresses given by the assessee. On a further opportunity being given to the assessee, it stated that the letters of creditors confirming the loans had been filed before the ITO and, therefore, the assessee had discharged the onus which lay upon them. The ITO did not accept the assessee's submission and added back the amount as assessee's income from undisclosed sources. The AAC upheld the order of the ITO. The Tribunal also upheld the order of the ITO. One of the questions referred to this court was whether on the facts and in the circumstances the said sum of Rs. 3,10,000 could be treated as income under Section 68 of the I.T. Act, 1961. It was urged that these sums could not be treated as undisclosed income of the assessee as the ITO did not call for any statement from the bank and the presence of the creditors was not enforced by the ITO, This court held that the alleged creditors were not traceable at the addresses furnished by the assessee and that the assessee did not co-operate with the department by giving any further evidence or information. Therefore, it would have been futile for the department to chase the alleged creditor any further. Some of them had made confessions before the ITO disclosing their modus operandi. Having regard to these facts, the court held that the conclusion reached by the ITO and upheld by the Tribunal was a probable or possible conclusion.

11. In our opinion, this case is of little assistance to the revenue as the matters in both the cases involve appreciation of evidence. Conclusion drawn in one set of facts, therefore, cannot be imputed into another set. In the facts before us, it can also be said that the conclusion reached by the AAC and upheld by the Tribunal is a probable and possible conclusion and it is not such a conclusion that no reasonable person could have arrived at. There was some evidence before the authorities on which this conclusion could be reached. We have discussed the items of evidence which were considered by the AAC and the Tribunal earlier. The only contention of the revenue before the Tribunal was that the Tribunal should reappreciate the evidence. For the reasons given above, we answer question No. 1 for the assessment year 1963-64, in the negative and in favour of the assessee.

12. On question No. 2 in respect of the assessment year 1963-64, we have already noted that this transaction was by cheque and passed through a bank. There was a confirmation letter from the creditor. So it cannot be said that there was no evidence before the Tribunal to hold that the said khata-peta loan is genuine. Accordingly, we answer this question in the affirmative and also in favour of the assessee.

13. The questions referred in respect of the assessment year 1964-65 are consequential and in view of the answers given to the questions in the earlier year, we answer both the said questions in the affirmative and in favour of the assessee. In the facts and circumstances, there will be no order as to costs.

Banerji, J.

14. I agree.