

(1982) 08 MP CK 0013

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 379 of 1979

Addl. Commissioner of Income Tax

APPELLANT

Vs

Dharamdas Agarwal

RESPONDENT

Date of Decision : 30-08-1982

Acts Referred:

Citation : (1983) 37 CTR 252 : (1983) 144 ITR 143 : (1983) 15 TAXMAN 485

Hon'ble Judges : G.P. Singh, C.J.;B.C. Varma, J

Bench : Division Bench

Advocate : B.K. Rawat, for the Appellant; H.S. Shrivastava and A.K. Khaskalam, for the Respondent

Judgement

G.P. Singh, C.J.—As directed by this court in Misc. Civil Case No. 128 of 1973, decided on 16th August, 1978, the Tribunal has stated the case and referred the following question of law for our answer:

" Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in deleting the amount of Rs. 1,45,000 assessed as income from undisclosed sources ? "

2. The relevant assessment year is 1963-64. In the account books the relevant accounting year cash credits amounting to Rs. 1,45,000 were found in ten different names. The ITO found that the cash credits were not genuine and on this basis he treated the entire sum of Rs. 1,45,000 as income of the assessee from undisclosed sources. In the appeal before the AAC, the assessee contended that the cash credits really represented the income from undisclosed sources which were taxed in earlier years and that they did not represent the income earned in the relevant account year. This explanation was not accepted by the AAC. The Tribunal, however, accepted this explanation.

3. The law on the question which arises before us has been settled by the decision of the Supreme Court in Anantharam Veerasinghaiah and Co. Vs. Commissioner of Income Tax , Andhra Pradesh, . It was observed in that case

that there can be no escape from the proposition that the secret profits or undisclosed income of an assessee earned in an earlier assessment year may constitute a fund, even though concealed, from which the assessee may draw subsequently for meeting expenditure or introducing amounts in his account books. It was further observed that it was quite another thing to say that any part of that fund must necessarily be regarded as the source of unexplained expenditure incurred or of cash credits recorded during a subsequent assessment year. The Supreme Court held that, in each case, the true nature of the cash deficit and the cash credit must be ascertained from an overall consideration of the particular facts and circumstances of the case. Now, in the instant case, the Tribunal has pointed out that the total additions made in the assessments for the years from 1957-58 onwards up to 1961-62 to the income, as disclosed by the assessee, worked out to Rs. 2,44,500. These additions were made as income from business outside the account books which the assessee was carrying on in the name of some benamidar as also income from undisclosed sources. It also pointed out that the assessee was not claiming the benefit of the entire amount of Rs. 2,44,500 but only to the extent of Rs. 1,45,000 which, according to him, remained with him out of the profits earned from the undisclosed income in the earlier years. The assessee had also pointed out to the Tribunal that he had made an application on 7th March, 1961, addressed to the ITO wherein he had confessed of carrying on the business in the name of a benamidar and had expressed his willingness to be assessed therefore in his own hands. Having regard to all the circumstances of the case, the Tribunal came to the conclusion that the amount of cash credits shown in the names of different persons was not really income earned in the relevant account year but was income earned in the earlier years which had already borne tax. The finding so reached by the Tribunal is a finding of fact and we cannot interfere with it as all relevant circumstances were taken into account.

4. Learned standing counsel for the Department submitted before us that as the assessee pleaded that the cash credits were genuine before the ITO, it was not open to him to contend that they related to income from undisclosed sources earned in earlier years. Learned counsel, in this connection, referred us to two Madras decisions. These cases are S. Ahmed Khabeer Rowther Vs. Commissioner of Income Tax, and Commissioner of Income Tax Vs. Banarsilal Dhawan, . This contention cannot be accepted. In Addl. Commissioner of Income Tax Vs. Ghai Lime Stone Co., it was held by a Division Bench of this court that it was open to an assessee to take an alternative plea, like the one taken in the instant case, before the AAC for the first time. The Madras cases on which reliance was placed by the learned standing counsel were referred to but were not followed as the view taken by this High Court on this question is different.

5. For the reasons stated above, we answer the question referred in the affirmative, in favour of the assessee and against the Department. Parties shall bear their own costs of this reference.