

(1979) 07 MP CK 0019

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 241 of 1976

Addl. Commissioner of Income Tax

APPELLANT

Vs

Samrathmal Santoshchand

RESPONDENT

Date of Decision : 13-07-1979

Acts Referred:

Finance (No. 2) Act, 1965 — Section 24, 24(3)
Income Tax Act, 1961 — Section 68

Citation : (1980) 124 ITR 297

Hon'ble Judges : G.G.Sohani, J;B.R. Dubey, J

Bench : Division Bench

Advocate : A.M. Mathur, for the Appellant; S.C. Goyal, for the Respondent

Judgement

Sohani, J.—By this reference u/s 256(1) of the I. T. Act, 1961, the Income Tax Appellate Tribunal, Indore Bench, has referred the following question of law to this court for its opinion :

"Whether, on the facts and circumstances of the case, the Tribunal was justified in law in holding that the acceptance of the voluntary disclosure petitions u/s 24 of the Finance (No. 2) Act of 1965 and the payment of tax thereon by the creditors would, in law, justify the deletion of the amount of Rs. 20,500 and the interest of Rs. 1,140 from the assessment of the assessee who was not the declarant?"

2. The material facts giving rise to this reference briefly are as follows I The assessee, Samrathmal Santoshchand, is a HUF and the assessment year in question is 1967-68. During the course of assessment proceedings, the ITO found credits in the names of the following parties in the books of the assessee:

Name of the party

Rs.

1.

Smt. Chandrakantibai w/o Shri Samrathmal

5,000

2.

Ku. Vimal Kumari (minor unmarried daughter of Samrathmal)

3,500

3.

Ku. Nirmala Kumari (minor daughter of Samrathmal)

3,500

4.

Ku. Chhotihai (minor unmarried daughter of Samrathmal)

3,500

5.

Shri Santoshchand (minor son of Samrathmal)

5,000

20,500

3. The ITO held that these creditors were members of the assessee-HUF and had no independent "source of income of their own. It was contended before the ITO that the aforesaid five creditors had made voluntary disclosures under the Voluntary Disclosure Scheme of the Finance Act, 1965, and that the disclosures were accepted by the CIT. This contention was not upheld by the ITO who held that these credits which appeared in the name of the family members of the assessee were all unproved credits and that they represented the income of the assessee from undisclosed sources. The ITO, therefore, made an addition of Rs. 20,500 and disallowed the interest amounting to Rs. 1,145 on the ground that it was interest paid to self. Against the order of the ITO the assessee preferred an appeal. The AAC held that the acceptance of the voluntary disclosure petitions made by the creditors in question to the Commissioner and the payment of tax thereon, precluded the department from disputing the fact that the income belonged to the said creditors and as the same income cannot be assessed twice, once in the hands of the creditors and again in the hands of the assessee, the order passed by the ITO in that behalf was liable to be set aside. The AAC, accordingly, allowed the appeal preferred by the assessee. The department then preferred an appeal before the Tribunal but the appeal was dismissed. Hence, at the instance of the department, the Tribunal has referred the aforesaid question of law to this court for its opinion.

4. Now, the question referred to us for our consideration falls within a narrow

compass. That question in effect is, whether the provisions of Section 24 of the Finance (No. 2) Act of 1965, hereinafter referred to as "the Act", can be construed as conferring any benefit, concession or immunity on any person other than the person making the declaration under the provisions of the Act. It may be mentioned that to avoid any room for doubt, the Legislature has introduced Section 18 in the Voluntary Disclosure of Income and Wealth Act, 1976 (Act No. 8 of 1976), which specifically provides that save as otherwise provided in the Act nothing contained in the Act shall be construed as conferring any benefit, concession or immunity on any person other than the person making the declaration under the provisions of the Act. The question for consideration is whether the absence of such a provision as is found in Act No. 8 of 1976 leads to the consequence that acceptance of a declaration u/s 24 of the Act confers a benefit which is not provided by the Act on a person other than the declarant and takes away the discretion vesting in the ITO, u/s 68 of the I. T. Act, 1961, to reject the explanation offered by an assessee for a cash credit on the ground that the explanation is unsatisfactory.

5. This question came up for consideration in *Badri Pd. and Sons Vs. Commissioner of Income Tax*, , where the learned judges observed as follows (p. 658):

"Section 24 of the Finance (No. 2) Act of 1965 (Act. No. 15 of 1965} permitted the making of voluntary disclosure in respect of the amount representing income chargeable to tax under the Indian Income Tax Act, 1922, or the Income Tax Act, 1961, for any assessment year commencing on or before the 1st day of April, 1964. On such disclosure being made the amount was to be charged to Income Tax in accordance with Sub-section (3) of Section 24 of the Act, taking the disclosed income as the taxable income of the declarant. The voluntary disclosure scheme only permitted the bringing forward of income for being taxed; it did not require the investigation of the claim of the declarant. If a person made a declaration, the Commissioner was under obligation to assess the same to tax. The only thing which was to be decided by the Commissioner was that the amount was disclosed voluntarily and had not already been detected by the department. The declaration and assessment under the Finance (No. 2) Act of 1965 did not involve any investigation into the correctness of the declaration or any determination that the amount belonged to the declarant."

6. The learned judges further observed (p. 659):

"The Finance (No. 2) Act of 1965 only permitted to bring forth for taxation the undisclosed income by persons to whom it belonged, and neither intended nor had the effect of converting the income belonging to the persons behind the screen into the income of the declarant. The disclosure made by the two ladies and the tax paid thereon was thus of no relevance in establishing either that the money belonged to them or that it did not belong to their respective husbands, who had brought it into the accounts of the assessee-firm. The circumstance was, therefore, not relevant for discharging the burden which lay on the assessee

u/s 68 of the Income Tax Act, 1961, of explaining the cash credits."

7. A similar question also came up for consideration before the Gujarat High Court in *Manilal Gafoorbhai Shah Vs. Commissioner of Income Tax, Gujarat*, , wherein it was held as follows (p. 634):

"The scheme of the Act makes it abundantly clear that it was to protect only those who preferred to disclose the income which they themselves had earned in the past and which they had failed to disclose at a proper time. It is undoubtedly true that the Act was brought on the statute book with a view to unearth unaccounted money, but there is no warrant for the proposition that by enacting the same, the legislature intended to permit, or connive at frauds sought to be committed by making benami declarations. Sub-section (1) of section 24 makes it clear that the declarations, which are expected to be made under sub-section (2), are with regard to the income which was chargeable to tax either under the Indian Income Tax Act of 1922 or under the Income Tax Act of 1961, but which was not disclosed at the proper time. Neither under the Act of 1922 nor under the Act of 1961 a person is required to submit a return with regard to the income which is either not earned or not deemed to have been earned by him. It, therefore, follows that even the declarations under sub-section (2) of section 24 must relate to the income actually earned by him. If, therefore, a person makes a false declaration with regard to the income not earned by him, it is difficult to comprehend how the department can be prevented from proceeding against the person to whom the income actually belonged and during the course of whose assessment that income has escaped."

8. *Shri Goyal*, learned counsel for the assessee, referred to a decision, *Rattan Lal and Others Vs. Income Tax Officer etc.*, . That decision no doubt supports the contention of the assessee. But, with respect, we differ from the view expressed in that decision. The legal fiction created by Section 24(3) of the Act, by virtue of which the amount declared by the declarant has to be charged to Income Tax "as if such amount were the total income of the declarant", is limited in its scope and it cannot be invoked in assessment proceedings relating to some other person and rule out the applicability of the principle recognised by Section 68 of the I.T. Act, that cash credits which are not satisfactorily explained by the assessee may be assessed as income in the hands of the assessee. The construction placed upon the provisions of Section 24 of the Finance (No. 2) Act of 1965 by the Tribunal is, in our opinion, not warranted by the provisions of that Act.

9. In our opinion, therefore, the answer to the question referred to us must be in the negative and against the assessee. Parties shall bear their own costs of this reference in the circumstances of the case.