

(1983) 04 MP CK 0022

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 411 of 1980

Banshidher Agarwal Panna

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 19-04-1983

Acts Referred:

Income Tax Act, 1961 — Section 68, 69

Citation : (1983) 36 CTR 94 : (1984) 148 ITR 523 : (1984) 16 TAXMAN 96

Hon'ble Judges : G.P. Singh, C.J.;K.K. Adhikari, J

Bench : Division Bench

Advocate : G.D. Agarwal, for the Appellant; B.K. Rawat, for the Respondent

Judgement

G.P. Singh, C.J.—This is an Income Tax reference. The questions of law referred are as follows :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct in holding that Section 68 and not Section 69 was applicable and on that basis in upholding the addition of Rs. 32,851 in the assessment year 1973-74 ?

(2) Whether, on the facts and in the circumstances of the case, the finding of the Tribunal that though the Income Tax Officer did not take action in the earlier years in the matter of capital build-up as shown by the assessee in the statement accompanying the returns for assessment years 1966-67 to 1972-73, he was at liberty to invoke the provisions of Section 68 in the year under reference and make addition for alleged unexplained investment, is correct ?"

2. The reference relates to the assessment year 1973-74. In the books of account of the assessee there was an entry of Rs. 57,251 in the capital account made on April 3, 1972. The assessee was required by the ITO to explain this entry. The assessee's explanation was accepted by the ITO to the extent of Rs. 10,400 and the rest was taxed as income. In appeal, the AAC accepted the explanation of the assessee to a further extent of Rs. 14,000 and maintained the

addition to the extent of Rs. 32,851. The same view was taken by the Tribunal.

3. The argument of the learned counsel for the assessee is that Section 69 is applicable in this case and Section 68 which has been applied by the Tribunal is not applicable. It is also argued that when the entry is in the beginning of the accounting year, it was not possible to hold that the assessee was able to make that much income. There is no substance in these contentions. A perusal of Sections 68 and 69 will show that Section 68 applies when the sum in respect of which the explanation is not accepted is found credited in the books of account. In such a situation, the sum so credited is charged to Income Tax as the income of the assessee of that previous year in which it is found credited in the books of account. Section 69 applies to unexplained investments which are not recorded in the books of account. We have already stated that in this case the amount which has been added as income was credited in the books of the assessee on April 3, 1972, in the previous year relevant to the assessment year 1973-74. As this amount remained unexplained to the extent of Rs. 32,851, it was rightly added as income in the assessment year 1973-74. Section 68 was clearly applicable here and Section 69 was not applicable. There are a number of cases in which it has been held that even in a case where the amount is credited in the books of the assessee on the very first day of the accounting year and the explanation offered by the assessee is not accepted, such amount is assessable as the income of the assessee of the accounting year for which the books are maintained. These cases are Commissioner of Income Tax Vs. Ashok Timber Industries, , Commissioner of Income Tax, Gujarat-IV Vs. Mansurali Valibhai Dudhani, and Commissioner of Income Tax Vs. Orissa Steel Corporation Pvt. Ltd., . We respectfully agree with these decisions.

4. As regards the second question, the argument of the learned counsel for the assessee is that along with the returns submitted for the assessment years 1968-69 to 1972-73, the assessee had included certain statements in which he had shown as to how his capital was built up and, therefore, the ITO was not entitled to tax this amount which was credited on April 3, 1972, as income earned in the previous year relevant to the assessment year 1973-74. There is no merit in this contention also. As observed by the Tribunal, there is no finding on this point in the assessment orders of the earlier years and it cannot be assumed that the ITO in making the assessments for the earlier years has accepted the growth of capital as shown in the statements annexed to the returns. Had there been any specific finding on that point, the matter may have been different. In the absence of any finding or examination of that question in the earlier years, it cannot be held that the ITO was precluded while making assessment for the year 1973-74 to hold the unexplained entry on April 3, 1972, as the income earned in the accounting year relevant to the assessment year 1973-74.

5. For the reasons given above, we answer both the questions in the affirmative, in favour of the Department and against the assessee. The assessee will pay the

costs of this reference. Counsel's fee Rs. 100 if certified.