(1975) 05 CAL CK 0009

In the Calcutta High Court

Case No : Income-tax Reference No. 238 of 1970

Basdeo Agarwalla APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 26-05-1975

Acts Referred:
Income Tax Act, 1961 — Section 256, 68

Citation : (1980) 121 ITR 901

Hon'ble Judges : Dipak Kumar Sen, J;Deb, J

Bench : Division Bench

Judgement

Dipak Kumar Sen, J.—In this reference, the question referred u/s 256(2) of the I.T. Act, 1961, was as follows :

" Whether the finding of the Tribunal that the sum of Rs. 10,000 with interest thereon was the assessee''s income from undisclosed sources was perverse on the facts and in the circumstances of this case ? "

2. A preliminary objection was taken on behalf of the revenue to the effect that this question which was reframed and made absolute at the time of the hearing of the rule should not be answered inasmuch as the assessee never called upon the Tribunal to refer this question and the same did not arise out of the order of the Tribunal.

3. The questions which according to the assessee arose but of the order of the Tribunal and which the assessee wanted to be referred to the High Court u/s 256(1) of the Act were as follows :

" 1. Whether, on the facts and evidence on record, the Tribunal''s finding about the genuineness of the loan of Rs. 10,000 from Sri Surana was based upon a misunderstanding or misconstruction of a material document like the said certificate of Sri Surana containing his Income Tax file number in confirmation of the said loan transaction ?

2. Whether, without proper appreciation of the facts, circumstances and evidence on record, the Tribunal misdirected itself in law in arriving at its finding about that loan by overlooking or ignoring a crucial fact or document, namely, the failure of the ITO to verify the said Income Tax file number and/or signature of Sri Surana as noted in his said certificate ?

3. Whether, in view of the facts, circumstances and evidence of the case, the Tribunal could lawfully hold that the addition of the loan of Rs. 10,000 with interest thereon as the assessee''s income from undisclosed source was justified ? "

4. The decisions of the Supreme Court in the cases of Commissioner of Income Tax, Uttar Pradesh Vs. Madan Gopal Radhey Lal, and Commissioner of Income Tax, Bombay Vs. Scindia Steam Navigation Co. Ltd., were cited on behalf of the revenue in support of their contention.

5. Learned counsel appearing on behalf of the assessee invited the court to reframe the question again so that it could come within the ambit of the questions mooted before the Tribunal. Accordingly, at the suggestion made on behalf of the assessee, the question is refrained as follows :

" Whether the finding of the Tribunal that the sum of Rs. 10,000 with interest thereon was the assessee''s income from undisclosed sources was justified on the facts and in the circumstances of the case ? "

6. The facts found as appearing from the statement of the case in annexure thereto are, inter alia, as follows :

(a) The assessment year involved is 1962-63.

(b) The assessee is an individual and a dealer in scrap iron.

(c) During the assessment for the said assessment year it was found that the assessee had obtained three cash loans one of which was for a sum of Rs. 10,000 from one Tarachand Surana.

(d) In support of this entry the assessee merely filed a copy of his account with the said Tarachand Surana certified by the latter and nothing else. The Income Tax Officer treated the amount as the assessee''s income from undisclosed sources and disallowed the interest claimed.

(e) In appeal before the Appellate Assistant Commissioner, the assessee contended that the transaction was genuine and alleged that the said Tarachand Surana was to be found at the address given by the assessee. The Appellate Assistant Commissioner asked the assessee to furnish the latest known address for verification but the assessee then submitted that such address was not available. The Appellate Assistant Commissioner confirmed the addition and disallowed the interest.

(f) Before the Tribunal in second appeal it was submitted on behalf of the assessee that he had discharged the primary or initial onus laid upon him by furnishing -a certificate from the creditor which contained the Income Tax file number of the creditor. The Tribunal looked into the document and found that there was no statement from the creditor that he was an assessee under the Income Tax Act or that the number stated in the document was the number of his assessment file or that the signature contained in the document was the signature of the alleged Tarachand Surana. The Tribunal rejected the appeal.

7. From the facts as found above, it appears that there was enough material before the Tribunal to come to the conclusion that the said sum of Rs. 10,000 shown as credit in the account of the assessee was the income of the assessee from undisclosed sources. u/s 68 of the I.T. Act, 1961, it was for the assessee to furnish satisfactory explanation an respect of the entry, It appears that the assessee has failed to prove the said entry to be a loan or to furnish sufficient evidence to explain the same.

8. Learned counsel on behalf of the assessee relied on several decisions of the Supreme Court and other High Courts as follows :

Parimisetti Seetharamamma Vs. Commissioner of Income Tax, Hyderabad, , Tolaram Daga Vs. Commissioner of Income Tax, Assam, , Orient Trading Co. Ltd. Vs. Commissioner of Income Tax (Central), Calcutta, and Bansidhar Onkarmall Vs. Commr. of Income Tax,

9. The above authorities cited do not materially advance the case of the assessee. The propositions laid down in the above cases do not apply in the facts of the case before us. In the circumstances, we answer the question in the affirmative and in favour of the revenue.

10. There will be no order as to costs.

Deb, J.

11. I agree.

