(2002) 01 KAR CK 0018

In the Karnataka High Court

Case No : Income Tax R.C. No. 3 of 1997

Birendra Singh APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 15-01-2002

Acts Referred:
Income Tax Act, 1961 — Section 256 (2), 69 A

Citation : (2002) 256 ITR 696

Hon'ble Judges : G.C. Bharuka, J;A.V. Srinivasa Reddy, J

Bench : Division Bench

Advocate : Gayathri, for K.R. Prasad, for the Appellant; M.V. Seshachala, for the Respondent

Judgement

A.V. Srinivasa Reddy, J.

1.The Tribunal has referred the following question of law along with the statement of the case, u/s 256(2) of the Income Tax Act, 1961, for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in rejecting the explanation of the assessee that the amount of Rs. 75,000 had come out of the income of the firm, Madhu Sweets, and in holding ultimately that the amount represented the income of the assessee from undisclosed sources ?"

A search was conducted at the residence of the assessee on August 17, 1984, and the assessee was found in possession of Rs. 50,000 in cash and Rs. 50,000 in the bank locker of his son. The assessee claimed that Rs. 75,000 out of Rs. 1,00,000 belonged to the firm, Madhu Sweets, of which he was a partner. This explanation was not accepted by the Assessing Officer and the said amount was treated as income of the assessee from undisclosed sources, u/s 69A of the Income Tax Act ("Act" for short). The assessee took the matter in appeal before the Commissioner of Income Tax. The Commissioner of Income Tax directed deletion of the amount of Rs. 75,000 from the computation of the total income of the assessee. In the appeal preferred by the Department to the Tribunal, the Tribunal found that the assessee failed to discharge the burden placed on him to trace the unexplained amount to the firm. On an application by the assessee, the Tribunal referred the above question for the opinion of this court.

Learned counsel for the assessee cited the decision in Parimisetti Seetharamamma Vs. Commissioner of Income Tax, Hyderabad, , in support of the proposition that the Act does not provide that whatever is received by a person must be regarded as income liable to tax. This rule would apply only in a case where the assessee claims that a receipt did not fall within the taxing provision, the source of the receipt is disclosed by the assessee and there is no dispute about the truth of that disclosure. The source of the receipt as disclosed by the assessee is disputed by the Department. The assessee has not discharged the burden cast on him u/s 69A of the Act to establish the source of the receipt. Thus, the decision cited by learned counsel for the assessee is not of any relevance in the facts of the case.

In order to assume that the amount of Rs. 75,000 found in the residence of the assessee was the income of another assessee, Madhu Sweets, of which the assessee is a partner, it was for the assessee to trace this undisclosed income to the firm. The Tribunal has found that the assessee had failed to discharge the said burden. The question whether the said sum of Rs. 75,000 belonged to the assessee or the firm in which the assessee was a partner, being purely a question of fact, its decision by the Tribunal does not give rise to any question of law.

The reference is, accordingly, rejected.

