
(2005) 03 AHC CK 0028
In the Allahabad High Court
Case No : Income Tax R. No. 197 of 1992

Commissioner of Income Tax	Vs	APPELLANT
Ashok Kumar		RESPONDENT

Date of Decision : 03-03-2005

Acts Referred:

Income Tax Act, 1961 — Section 256(2)

Citation : (2006) 286 ITR 541 : (2006) 151 TAXMAN 105

Hon'ble Judges : R.K. Agrawal, J;Prakash Krishna, J

Bench : Division Bench

Advocate : Shambhu Chopra, for the Appellant; None, for the Respondent

Judgement

1. The Income Tax Appellate Tribunal, Allahabad has referred the following question of law u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for opinion to this Court:

Whether, on the facts and in the circumstances of the case, the Tribunal was, in law, justified in deleting the addition of Rs. 1,36,911 made on the basis of books found during the course of search and seizure operation ?

2. The reference relates to the assessment year 1983-84.

3. Briefly stated the facts giving rise to the present reference are as follows:

4. The respondent has been assessed to Income Tax in the status of an individual. On January 25, 1983, a search was conducted at his residential premises. During the search certain books of account were found, out of which two books were maintained in the name of Munna Lal, the father of the respondent. Another two books were maintained in the name of Smt. Chanda Devi, deceased mother of the respondent. The books revealed that the business was carried out in the name of Munna Lal and Smt. Chanda Devi. The respondent denied the ownership of these books which plea was not accepted by the assessing authority, who had worked out the investment made through the said

books and the interest earned on such investment at Rs. 1,36,911 and added the said amount as income. Feeling aggrieved the respondent preferred an appeal before the Commissioner of Income Tax (Appeals). Before the Commissioner of Income Tax (Appeals) it was submitted that the business reflected in the books maintained in the name of Smt. Chanda Devi and Munna Lal did not belong to him. Further his father Munna Lal had admitted the ownership of the said books, though at the time of the search he had stated that he had discontinued the business in the year 1977. The Commissioner of Income Tax (Appeals) had agreed with the contention of the respondent and deleted the addition of Rs. 1,36,911 by recording as follows:

2. I have carefully considered these submissions. The facts are that a search had taken place against the appellant and in the course of the same certain books of account were found which included books in the names of Shri Munna Lal and Smt. Chanda Devi and Shri Munna Lal had owned the same and at the same time the appellant had denied its ownership, the Income Tax Officer ought to have established these submissions to be false or in the alternative, was duty bound to accept them as belonging to the two persons. Simply because Shri Munna Lal at some stage had denied having done any business since 1977, he had never denied the books and in fact, had subsequently in an affidavit owned them. Except his earlier statement, no material has been brought on record to hold that the books found in the names of Shri Munna Lal and Smt. Chanda Devi belong to the appellant. In view of the above, if any action is required to be taken for the assessment of amount in dispute, Shri Munna Lal is the person concerned. So far as the appellant is concerned, there is neither any evidence nor any reason to assess the amount in his hands. The addition of Rs. 1,36,911 is accordingly directed to be deleted. (Relief of Rs. 1,36,911).

5. Feeling aggrieved the Revenue preferred appeal before the Tribunal. The Tribunal has dismissed the appeal with the following observations:

7. After giving due consideration to the rival submissions, we find ample force in what has been contended on behalf of the assessee. The learned Commissioner of Income Tax (Appeals) has given sound reasons for deleting the addition and we are in agreement with the reasons recorded by him. That being so, we find no merit in the appeal.

6. We have heard Sri Shambhu Chopra, learned standing counsel for the Revenue. Nobody has appeared on behalf of the respondent/assessee.

7. Learned standing counsel submitted that as the books were found from the premises of the respondent/assessee in the search conducted on January 25, 1983, they belonged to the respondent/assessee and the Income Tax Officer had rightly made additions of Rs. 1,36,911 being the transactions recorded in the said books. He further submitted that at the time of search the father of the respondent had made a statement that he had discontinued his business since 1977 and, therefore, if he had come forward subsequently and owned up the

seized books in question, it would not make any difference. The contention is misconceived. It is not in dispute that the father and son were living jointly in the house. It is also not the case of the Department that the seized books in question were found from the room of the respondent. Indisputably, the father had owned up the books in question. Normally the presumption that the seized books belonged to the person from whose possession they have been seized has been discharged and it was upon the Department to prove by cogent material and evidence that the entries in the said books were that of the respondent. No such material has been brought on record by the Department and, therefore, the Commissioner of Income Tax (Appeals) was perfectly justified in accepting the plea raised by the respondent that the books in question did not belong to him but to his father, who had owned up the same by filing an affidavit. The finding recorded by the Commissioner of Income Tax (Appeals) is based on appreciation of evidence and material on record and has rightly been upheld by the Tribunal.

8. In view of the foregoing discussions, we find no legal infirmity in the order of the Tribunal. Accordingly, we answer the aforesaid question referred to us in the affirmative, i.e., in favour of the assessee and against the Revenue. There shall be no order as to costs.