

(1993) 04 GAU CK 0007

In the Gauhati High Court

Case No : Income-tax Reference No. 4 of 1989

Commissioner of Income Tax

APPELLANT

Vs

Assam Cold Storage Co.

RESPONDENT

Date of Decision : 29-04-1993

Acts Referred:

Income Tax Act, 1961 — Section 8(2)

Citation : (1993) 204 ITR 540

Hon'ble Judges : U.L. Bhat, C.J.; R.K. Manisana, J

Bench : Division Bench

Advocate : D.K. Talukdar and B.J. Talukdar, for the Appellant; G.K. Joshi and R.K. Joshi, for the Respondent

Judgement

U.L. Bhat, C.J.—This reference has been made by the Appellate Tribunal at the instance of the Revenue u/s 256(1) of the Income Tax Act, 1961. The question which is in two parts reads as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in deciding that the assessee's source of money invested in the purchase of 2,013 bags of potatoes was Rs. 60,000 disclosed by the assessee under the Voluntary Disclosure Scheme, 1975, and whether the said decision of the Tribunal is against the provisions of Section 9 of the Voluntary Disclosure of Income and Wealth Act, 1976 ?"

2. The assessment relates to the assessment year 1971-72. The assessee is an unregistered firm. The original order of assessment was passed on March 23, 1974, a copy of which is seen in the paper book. By this order, the Income Tax Officer directed a sum of Rs. 54,000 to be added to the income of the assessee as undisclosed income representing purchase of 2,013 bags of potatoes during the previous year and an addition of Rs. 64,000 being concealed trading profit during the year. The assessee filed an appeal before the Commissioner of Income Tax (Appeals) against the above additions as well as other findings. The order was set aside by the Commissioner of Income Tax (Appeals) on August 31, 1974.

Thereafter, the Income Tax Officer made a fresh assessment order on February 28, 1975, adding a sum of Rs. 54,000 (as earlier) and adding a sum of Rs. 92,000 instead of the originally added sum of Rs. 64,000. In an appeal filed by the assessee, the Commissioner of Income Tax (Appeals), vide order dated January 10, 1975, deleted the addition of Rs. 54,000 but retained the addition of Rs. 92,000. The assessee as well as the Revenue filed appeals before the Appellate Tribunal which remanded the matter to the file of the Commissioner of Income Tax (Appeals) directing him to pass a fresh order with specific reference to the observations made in that judgment. The Commissioner of Income Tax (Appeals) called for a report from the Income Tax Officer and passed a fresh order on November 19, 1983. The addition of Rs. 54,000 made by the Income Tax Officer was deleted and the addition of Rs. 92,000 was reduced to Rs. 10,000. The Revenue filed an appeal before the Appellate Tribunal and the assessee filed cross-objections. The Tribunal rejected the contention of the Revenue regarding addition of Rs. 54,000 but partly allowed the appeal in respect of another matter and dismissed the cross-objections. Hence, this reference.

3. Since the question referred is in two parts, we will consider each part separately.

4. First part of the question :

5. This relates to suppression by the assessee in his return of purchase of 2,013 bags of potatoes which was found by the Income Tax Officer and not disputed before us. The purchase price was Rs. 54,000. The Income Tax Officer, therefore, found that this amount was undisclosed and added the same to the income of the assessee. Before the Commissioner of Income Tax (Appeals) passed the order dated November 10, 1975, the Voluntary Disclosure of Income and Wealth Ordinance, 1975, came into force with effect from October 8, 1975. The Ordinance was subsequently replaced by the corresponding Act of 1976 (for short "the Disclosure Act"), which also came into force on October 8, 1975. Section 3 of the Disclosure Act requires disclosure to be made on or before December 31, 1975. The assessee made a disclosure paying the tax stipulated u/s 8(1)(ii) of the Disclosure Act and making the investment as contemplated u/s 8(1)(iii) of the Disclosure Act on December 17, 1975, for the assessment year 1970-71. The amount of income so disclosed was Rs. 60,000. The Commissioner of Income Tax issued a certificate as contemplated in Section 8(2) of the Act. The certificate is dated February 27, 1979.

6. During the hearing of the appeal before the Commissioner of Income Tax (Appeals) which ended in his order dated November 19, 1983, the assessee argued that the sum of Rs. 54,000 added by the Income Tax Officer for the assessment year 1971-72 came out of the sum of Rs. 60,000 voluntarily disclosed as income by him for the assessment year 1970-71 and, therefore, the sum of Rs. 54,000 cannot be regarded as undisclosed income after the above declaration. The appellate authority and the Appellate Tribunal accepted this

contention. Paragraph 8 of the judgment of the appellate authority referred to the certificate issued by the Commissioner of Income Tax u/s 8(2) of the Act and drew the inference that, since the assessee had disclosed an income of Rs. 60,000 for the assessment year 1970-71, the sum of Rs. 54,000 was out of the disclosed income of Rs. 60,000. On this reasoning, the addition made by the Income Tax Officer was deleted. The Appellate Tribunal, in paragraph 4 of the judgment, also referred to the certificate dated February 27, 1979, and held that it was reasonable to accept the assessee's plea that the above sum of Rs. 54,000 was out of the disclosed income of Rs. 60,000. The above reasoning and findings are challenged by the Revenue.

7. It is contended by the assessee that the above finding recorded by the appellate authority and the Appellate Tribunal is a finding of fact which cannot be interfered with in a reference. If this finding is based on some evidence, the court of reference may not reappreciate the evidence to come to a different conclusion. The court also will not examine the sufficiency of evidence. If the finding is based on no evidence, the question will not be regarded as a question of fact but one of law. There is no dispute that the only evidence produced by the assessee before the appellate authority before whom this contention was raised first was the certificate dated February 27, 1979, issued by the Commissioner of Income Tax u/s 8(2) of the Disclosure Act stating that the assessee has voluntarily disclosed the income of Rs. 60,000 for the assessment year 1970-71, paid Rs. 22,250 as Income Tax thereon and invested Rs. 3,000 in securities as required under the law. The question is whether this certificate can be regarded as evidence showing that a sum of Rs. 54,000 was provided out of the disclosed income of Rs. 60,000.

8. A similar state of affairs arose for consideration before the High Court of Andhra Pradesh in *Radio Instruments Associates (P) Ltd. Vs. Commissioner of Income Tax*. In that case, the assessee filed a return showing loss in the previous year 1972-73. During the scrutiny of the accounts, the Income Tax authorities noticed that the assessee had an account in its books for one Standard Radio Corporation, Delhi, which contained a number of transactions and at the end of the accounting year, the account showed a credit balance of about Rs. 1.5 lakhs. The assessee explained that the Delhi branch of the assessee had sold certain stocks on suspense account and from out of the sale proceeds of such stocks made payments to the aforesaid Standard Radio Corporation without recording the same in the books of account. In the books of account of the assessee, there was a suspense account to which credits were made from time to time. It was found that these credits were made whenever the assessee fell short of cash. The sum total of the credits appearing in the suspense account was Rs. 1,02,000. The assessee tried to connect the credits in the suspense account with sale proceeds of goods by its Delhi branch. During the process of scrutiny, the assessee made disclosure of Rs. 7,000 for the assessment year 1973-74 and Rs. 15,000 for the assessment year 1974-75 under the Disclosure Ordinance of 1975. It was contended before the High Court that the amount disclosed

represented the difference between the sale proceeds of the goods sold at the Delhi branch less the corresponding value of the stocks. That contention was rejected by the authorities and the Tribunal. The Andhra Pradesh High Court held (at page 721) :

"We are not satisfied that the connecting link is established by the assessee between the sums periodically credited in the suspense account and the alleged unaccounted sales. No endeavour has been made, as already pointed out above, to connect the credits appearing in the suspense account with the sale proceeds of goods sold at Delhi or any other place. Except the oral assertion of the assessee that the sum of Rs. 1,02,000 credited to the suspense account in periodical instalments represented the unaccounted sales, there is absolutely no evidence connecting the same.

... It is, therefore, necessary that the assessee should establish the nexus between the voluntary disclosure and the assessment proceedings before the tax authorities. Unless this burden is discharged, it cannot be said that the mere filing of a voluntary disclosure automatically absolved the assessee from discharging the obligation that is otherwise cast on him to point out by some evidence the nexus between the voluntary disclosure and the matter under enquiry before the assessing authorities. Admittedly, this has not been done in the present case."

9. The question was answered against the assessee. The assessee filed a SLP before the Supreme Court which was, however, dismissed. (See [1988] 169 ITR 85).

10. It was necessary for the assessee to connect the disclosed income of Rs. 60,000 for the assessment year 1970-71 with the sum of Rs. 54,000 being the concealed transaction in the assessment year 1971-72. The connecting link is absent. Before the appellate authority and the Appellate Tribunal, the assessee failed to place any evidence or material to establish the link. The judgments of the appellate authority and the Appellate Tribunal show that the finding in favour of the assessee was arrived at merely on the basis of a certificate issued u/s 8(2) of the Disclosure Act and without any further evidence of the connecting link. The finding, therefore, is based on no evidence. We, therefore, hold that the appellate authority and the Tribunal were not justified in holding that the investment of Rs. 54,000 representing the price of 2,015 bags of potatoes was from the amount disclosed under the Disclosure Act. The first part of the question is answered in the negative, i.e., in favour of the Revenue and against the assessee.

11. The second part of the question is whether the decision of the Tribunal is against Section 9 of the Disclosure Act. Learned counsel for the assessee clarified that the assessee did not put forward any claim for relief u/s 8 of the Disclosure Act and, therefore, the bar u/s 9 of the Act is not attracted. In view of this submission and in view of our answer in regard to the first part of the question,

we hold that the second part of the question does not arise for consideration.

12. A copy of the judgment under the signature of the Registrar and the seal of the High Court be transmitted to the Appellate Tribunal, Gauhati. There is no order as to costs.