
(1984) 02 P&H CK 0040
In the Punjab And Haryana At Chandigarh
Case No : Income-tax Case No. 106 of 1976

Commissioner of Income Tax

APPELLANT

Vs

Bajjnath

RESPONDENT

Date of Decision : 01-02-1984

Acts Referred:

Income Tax Act, 1961 — Section 256(2)

Citation : (1985) 153 ITR 327

Hon'ble Judges : Rajendra Nath Mittal, J; M.M. Punchhi, J

Bench : Division Bench

Advocate : Ashok Bhan and A.K. Mittal, for the Appellant; G.C. Sharma Vimal Gandhi and S.S. Mahajan, for the Respondent

Judgement

Rajendra Nath Mittal, J.—This judgment will dispose of Income Tax Case No. 106 of 1976, Nos. 5 and 6 of 1978 and No. 86 of 1982. The facts in the judgment are being given from I.T. Case No. 106 of 1976.

2. The case of the assessee relates to the assessment year 1970-71. He was carrying on business in woollen shawls. During the course of the assessment proceedings, it came to the notice of the Income Tax Officer (ITO) that the assessee was enjoying overdraft facility from the Hindustan Commercial Bank Ltd., Majith Mandi, Amritsar, and his maximum overdraft was Rs. 2,56,831-41 as on October 20, 1969. The case of the assessee was that the overdraft facility was being enjoyed by him against the hypothecated goods only and that he did not furnish security of any other kind to the bank. However, it was revealed at the time of inquiry by the ITO that during the years 1969 and 1970, the overdraft was allowed to the assessee against the hypothecation of stock and collateral security furnished by the guarantor's deposits. The ITO summoned Shri S. S. Sethi, agent of the bank, and recorded his statement. He stated that the advances made to the assessee were against the hypothecation of stock and some other advances were also collaterally secured against the guarantor's deposits. The documents were duly executed as per rules but the same were not

preserved by the bank after the adjustment of accounts. The ITO made further inquiries from the bank and came to know that there were seven fixed deposit receipts of the value of Rs. 84,500 purchased from March 19, 1969, to April 6, 1970, for the purpose of furnishing deposit guarantees.

3. After obtaining the said information, the assessee was asked to lead evidence to prove the source of money invested in the fixed deposit receipts. The assessee stated that no collateral securities had been furnished by him and in case he had done so, the agent would have produced the documentary evidence consisting of the letters of guarantors and other relevant records of the bank. The ITO held that the bank being in a privileged position of a creditor must have made the advances to the assessee after obtaining the guarantees of depositors backed by their fixed deposit receipts. He also held that the persons in whose names the FDRs stood were not traceable at the given addresses. Consequently, he came to the conclusion that the persons in whose names the FDRs stood were benami parties and in fact the money belonged to the assessee. In the result, he added an amount of Rs. 84,500 to the assessee's income.

4. The assessee went up in appeal before the AAC who upheld the order of the ITO. The assessee went up in further appeal to the Tribunal. It held that the ITO had not brought on record any evidence to show that the fixed deposit receipts were actually purchased by the assessee and that even if it be assumed that the holders of the FDRs have not been able to give satisfactory explanations regarding the source of the money deposited in their names, it could not be concluded that the FDRs belonged to the assessee. Consequently, the Tribunal deleted the additions made by the ITO. Later, an application was filed by the Commissioner before the Tribunal for making a reference to this court which was declined. He has now filed a petition u/s 256(2) of the I.T. Act for directing the Tribunal to refer the following question for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in deleting the addition of Rs. 84,500 sustained by the AAC?"

5. The Tribunal held that there was no evidence at all to establish that the assessee was the real owner of the fixed deposits amounting to Rs. 84,500 and not the various persons in whose names the receipts were prepared by the bank. While coming to that conclusion, it took into consideration all the relevant evidence on the record. The question whether a transaction is a benami or not is a question of fact and the finding recorded by the Tribunal is final. In the said view we are fortified by the decision of the Supreme Court in *Rai Bahadur Mohan Singh Oberoi Vs. Commissioner of Income Tax, West Bengal*, wherein it was held that a finding recorded by the Tribunal on the point whether a purchase was made benami or not is one of fact. It is well settled that the High Court will not interfere with the finding of fact arrived at by the Tribunal. Reference in this regard may be made to a decision of the Supreme Court in *Commissioner of Income Tax (Central), Calcutta Vs. Daulat Ram Rawatmull*, . It was held by the Supreme Court that findings on questions of pure fact arrived at by the Tribunal

are not to be disturbed by a High Court on a reference unless it appears that there was no evidence before the Tribunal upon which they, as reasonable men, could come to the conclusion to which they have come; and this is so even though the High Court could on the evidence have come to a conclusion entirely different from that of the Tribunal. In other words, such a finding can be reviewed only on the ground that there is no evidence to support it or that it is perverse. It has not been shown to us that the case falls in either of the exceptions.

6. No additional argument was advanced in the other petitions.

7. Consequently, we do not find any merit in these petitions and dismiss the same with no order as to costs.