
(1986) 03 CAL CK 0015

In the Calcutta High Court

Case No : Income-tax Reference No's. 263 of 1977 and 100 of 1981

Commissioner of Income Tax

APPELLANT

Vs

Bhattacharjee and Co.

RESPONDENT

Date of Decision : 18-03-1986

Acts Referred:

Income Tax Act, 1961 — Section 68

Citation : (1986) 55 CTR 6 : (1987) 164 ITR 89

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

Bench : Division Bench

Advocate : B.K. Bagchi, A.N. Bhattacharjee and Sunil Mukherji, for the Appellant; D. Pal, P.L. Bhowmick and Ila Chatterjee, for the Respondent

Judgement

Dipak Kumar Sen, J.—M/s. M. S. Bhattacharjee, the assessee, is a partnership firm registered under the Income Tax Act, 1961. The assessee carried on the business of dealing in sugar under the control of the Government. In the assessment years 1968-69 and 1969-70, the relevant accounting years ending at or about the middle of April of the years 1968 and 1969, the assessee was assessed to Income Tax. In the course of assessment, the Income Tax Officer noted four credit entries in the account of the assessee for the assessment year 1968-69 in the names of four of its customers aggregating Rs. 39,000, all dated April 13, 1968. When asked to explain, it was stated on behalf of the assessee that the said amount represented a short-term loan obtained by Chandra Nath Bhattacharjee, one of the partners of the assessee, from M/s. Chandmal Pannalal. It was stated further that the said amount had been credited in the names of the said four customers as money was due from the said customers on account of sugar delivered to them under Government permits. It was stated that on receipt of payments from the said four parties, the amount of loan had been repaid to M/s. Chandmal Pannalal on April 16 and 17, 1968.

2. The Income Tax Officer called upon the assessee to produce the books of account of M/s. Chandmal Pannalal for examination u/s 131 of the Income Tax

Act. A representative of Chandmal Pannalal appeared before the Income Tax Officer on December 16, 1971, but did not produce the books of account. The case was thereafter adjourned but the books were not ultimately produced. The Income Tax Officer held that the transaction of the assessee with the said Chandmal Pannalal had not been proved to be genuine and that the said amount of Rs. 39,000 represented the assessee's income from undisclosed sources. The said amount was added to the total taxable income of the assessee.

3. Similarly, in the next assessment year 1969-70, an amount aggregating Rs. 60,074 was found to have been credited in the names of five customers of the assessee. The Income Tax Officer called upon the assessee to explain the same credit entries and the assessee's explanation was the same as in the earlier year. The Income Tax Officer rejected the explanation of the assessee and added the said amount of Rs. 60,074 to the total taxable income of the assessee.

4. Being aggrieved, the assessee preferred appeals against the assessments to the Appellate Assistant Commissioner. Before the Appellate Assistant Commissioner, the assessee relied on a letter dated February 14, 1972, addressed to the Income Tax Officer, where it had been submitted that the original promissory notes recording the said loans of Rs. 39,000 and Rs. 60,074 executed in favour of M/s. Chandmal Pannalal as also signed receipts regarding discharge of the said loans had been produced before the Income Tax Officer. The books of account of the assessee where it was recorded that the said amounts had been received through the said Chandra Nath Bhattacharjee had also been produced. It was contended that after receiving payments of the bills issued to the customers on account of sales of sugar, the said loans were repaid to M/s. Chandmal Pannalal.

5. Before the Appellate Assistant Commissioner, a representative of Chandmal Pannalal appeared with their books of account to corroborate the said two loans. Copies of the accounts with copies of hundies were filed before the Appellate Assistant Commissioner.

6. On a consideration of the facts and circumstances and the evidence adduced, the Appellate Assistant Commissioner held that the assessee itself did not obtain any loan from Chandmal Pannalal and no relationship of debtor and creditor was established between the assessee and the said Chandmal Pannalal. The loans alleged to have been raised by Chandra Nath Bhattacharjee, a partner of the assessee, should have been credited in the books of the assessee either in the name of Chandra Nath Bhattacharjee or in the name of Chandmal Pannalal. As such entries were not there, the Appellate Assistant Commissioner disbelieved the case of the assessee that the said loans were raised for the purpose of its business. It was held that the statement of Chandmal Pannalal and their books of account and documents and the reason for raising the loan were not relevant evidence for deciding whether the cash credits appearing in the names of the nine customers were genuine entries or not. As it was admitted that the said amounts were in fact not received from the said nine customers, the Appellate

Assistant Commissioner came to the conclusion that the entries in the books were false and fabricated.

7. The Appellate Assistant Commissioner confirmed the orders of the income tax Officer except that for the second assessment year, the amount added was reduced by Rs. 39,000, on the ground that the latter amount was available from the earlier year for the purpose of reintroduction in the accounts.

8. Being aggrieved, the assessee preferred a further appeal against the order of the Appellate Assistant Commissioner before the Income Tax Appellate Tribunal. It was contended before the Tribunal on behalf of the assessee that the assessee was in need of money for taking delivery of sugar under the Government permits and, therefore, the said loans were obtained by Chandra Nath Bhattacharjee, a partner of the assessee and the amounts obtained on loan were credited in the accounts of the customers through Chandra Nath Bhattacharjee. The assessee was required to sell sugar to the very same customers against the Government permits and within a few days the assessee received the price of the sugar sold from the said customers upon which the accounts were adjusted. The amounts received were paid back by the assessee to Chandmal Pannalal. The case of the assessee was supported by the documents and accounts produced by Chandmal Pannalal before the Appellate Assistant Commissioner.

9. The Revenue contended to the contrary and submitted that the amounts were rightly treated as income of the assessee u/s 68 of the Income Tax Act and the entries were false and fictitious as they were neither in the name of Chandmal Pannalal nor in the name of the partner, Chandra Nath Bhattacharjee.

10. The Judicial Member of the Tribunal accepted that the assessee at the relevant time lacked sufficient funds for which loans had to be obtained. Such loans were obtained by a partner of the assessee, viz., Chandra Nath Bhattacharjee, and the amounts were shown in the accounts of the assessee as through Chandra Nath Bhattacharjee. It was held that the preliminary entries in the books of account corroborated the loans and the certificate issued by Chandmal Pannalal. The Judicial Member accepted the explanation of the assessee in the light of the evidence produced and directed deletion of the addition of the said amounts from the total income of the assessee.

11. The Accountant Member of the Tribunal took a contrary view. He held that the onus was on the assessee to prove the nature of the cash deposits and such onus became heavy when the assessee admitted that the entries relating to the cash deposits were not correct. He held that there was no mention in the books that the money came from Chandmal Pannalal. There was no independent evidence that Chandra Nath as a partner had deposited the amounts of the loans from Chandmal Pannalal which were credited in the accounts of the customers. Following the decision of this court in *NORTHERN BENGAL JUTE TRADING CO. LTD. Vs. COMMISSIONER OF Income Tax.*, it was held by the Accountant Member that the assessee had failed to prove the source of the cash deposits.

and he upheld the decision of the Appellate Assistant Commissioner.

12. There being a difference of opinion between the Judicial and the Accountant Members, the point of difference was referred to a third member, viz., the Vice-President of the Tribunal u/s 255(4) of the income tax Act, 1961. It was held by the third member that the entries in the books and not their nomenclature should be treated as final to decide the actual transactions involved. The member noted that the case of the assessee throughout had been that the cash credit entries represented a loan transaction. He noted further that the said deposits had been shown in the books as loan transactions. Merely because the assessee had used a wrong narration in making the entries, it could not be held that the transaction was something other than what was being contended. It was necessary to look at the entirety of the transaction to come to a correct conclusion.

13. The third member accepted the case of the assessee and rejected that of the Department that the credit entries in the books were fictitious and, in fact, no money had been received by the assessee from its customers on the dates of the credit entries. It was held that, on the other hand, there was overwhelming evidence on record to suggest that loans had been received by the assessee from M/s. Chandmal Pannalal on the dates on which the credit entries had been made in the books and that the credit entries in dispute were relatable to the said loans. It was found that the Revenue had failed to adduce any evidence to the contrary. It that view of the matter, it was held that money received from M/s. Chandmal Pannalal had been used in the business pf the assessee. The deposits were shown credited in the personal accounts of the customers of the assessee for a limited period of 3 or 4 days only and such entries, it was found, had not resulted in any profit or advantage to the assessee. It was noted that the assessee tried to disguise the transaction and for some reason did not want to bring its real creditor, i.e., Chandmal Pannalal, on record but that would not stand in the way of the assessee in establishing the real transaction. The third member agreed with the finding of the Judicial Member and held that the additions made by the Income Tax Officer and upheld by the Appellate Assistant Commissioner should be deleted.

14. On an application of the Revenue u/s 256(1) of the Income Tax Act, 1961, the Tribunal has referred the following question as a question of law arising out of the order of the Tribunal:

"Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in holding that the amounts of Rs. 39,000 and Rs. 21,074 could not be included in the total income of the assessee in terms of Section 68 of the Income Tax Act, 1961, relating to assessment years 1968-69 and 1969-70, respectively ?"

15. The above question has come up before us in Income Tax Reference No. 263 of 1977.

16. On a further application of the Revenue u/s 256(2) of the Income Tax Act, 1961, this court directed the Tribunal to refer also the following questions as questions of law arising out of the order of the Tribunal for the opinion of this court :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal had no evidence or had relied on irrelevant evidence in coming to the finding that the nature and source of the cash credits amounting to Rs. 21,074 for the assessment year 1969-70 and Rs. 39,000 for the assessment year 1968-69, respectively, had been satisfactorily explained by the assessee and whether such finding of the Tribunal was otherwise unreasonable or perverse ?

(2) Whether, on the facts and in the circumstances of the case, and in view particularly of the fact that the cash credits in the books of account of the assessee were in the names of persons other than M/s. Chandmal Pannalal, the Tribunal was justified in law in holding that the Department had the onus to prove that the assessee's explanation that the cash credits actually represented loans advanced by M/s. Chandmal Pannalal was false ?"

17. The above two questions have come up before us in Income Tax Reference No. 100 of 1981.

18. At the instance of the parties, the two references have been heard together. The learned advocate for the Revenue reiterated at the hearing the contentions of the Revenue raised in the earlier proceedings. The learned advocate submitted, in particular, that in the instant case the books of account of the assessee stood self-condemned inasmuch as the assessee itself submitted and admitted that the entries therein were not correct. In that view, it was submitted that the explanation of the assessee that the amounts in dispute were obtained by way of loans from M/s. Chandmal Pannalal and introduced in the books of account of the assessee in the name of its customers through a partner of the assessee should have been rejected in limine. In any event, such an explanation, it was submitted was neither satisfactory nor reasonable. It was submitted further that the onus of explaining the cash credits in the accounts of the assessee, particularly when the entries were admittedly incorrect, lay entirely on the assessee and in the instant case the assessee had failed to discharge its onus and explain the same.

19. The learned advocate for the assessee contended, on the other hand, that relevant and cogent evidence had been produced to show that the amounts in the books of the assessee recording cash credits were not the income of the assessee but had been obtained by the assessee by way of loan from M/s. Chandmal Pannalal. The corroborative evidence were, inter alia, the books of account of the creditor Chandmal Pannalal; the original hundis and promissory notes, the discharged receipts granted by the creditor after the repayment of the said loans and also the fact that in the books of the assessee, the amounts were shown as having been introduced by Chandra Nath Bhattacharjee, the partner of

the assessee, who had, in fact, obtained the loans.

20. The learned advocate submitted further that the necessity of obtaining the said loan had also been established by the assessee satisfactorily. In order to procure stocks of sugar ultimately to be sold by the assessee to its customers against the Government permits, the assessee had to lift the sugar against payment of cash. The cash position of the assessee not being satisfactory, short-term loans had to be obtained. Sugar was duly lifted and delivered to the customers and after payment by the customers of the price of the sugar delivered, the loans were paid off. The aforesaid facts were not controverted by the Revenue. There was no reason why the aforesaid facts should have been rejected as irrelevant and emphasis given only to the incorrect narration in the entries.

21. In support of the respective contentions of the parties, the following decisions were cited at the Bar.

22. (a) Lalchand Bhagat Ambica Ram Vs. Commissioner of Income Tax, Bihar and Orissa, .

23. In this case, in the relevant assessment year, the assessee had encashed five high denomination notes. The assessee contended that the said notes formed part of its cash balances and in support, the assessee relied on certain entries in its accounts recording that money was received in high denomination notes. Some of the entries were found by the income tax Officer to be interpolations. The assessee's emanation was rejected and the entire amount of the encashments was treated as undisclosed profits of the assessee. The Income Tax Officer noted that the assessee was a speculator and could have earned the undisclosed income in such business and in other illegal activities like smuggling. On appeal, the Tribunal held that apart from the interpolations, there was no other reason to suspect the genuineness of the account books which should have been accepted. Taking into consideration all circumstances, the Tribunal came to the conclusion that the assessee might be expected to possess by way of cash balance a portion of the amount shown to have received on account of encashment of high denomination notes and directed a part of the amount to be treated as undisclosed profits. On a reference, the High Court held that the onus of proving the source of the amount was on the assessee which the assessee did not discharge the finding of the Tribunal on the basis of the evidence before it was a finding purely of fact and could not be disturbed in a reference. On a further appeal, the Supreme Court held that the Tribunal having accepted the books of account as genuine except for the interpolations and having accepted the explanation of the assessee for a part of the amount, the Tribunal was not justified in rejecting the balance. The Supreme Court held further that the Income Tax Officer had proceeded on the basis of conjecture, suspicion and surmise and there was no material to support the finding of the Tribunal that a part of the amount in dispute was profit liable to be assessed to tax.

24. (b) Gouri Prasad Bagaria and Others Vs. Commissioner of Income Tax, West Bengal, . In this case, the assessee sought to explain a credit entry in its accounts in the name of his father as representing sale proceeds of gold purchased by the assessee and kept in the family chest for a long time. The said gold was sold in the assessment year involved and the entry in the books was made in the name of the assessee's father in accordance with the custom of Marwaris. This explanation was not accepted by the Income Tax Officer who treated the amount as income from undisclosed sources. The order of the Income Tax Officer was confirmed by the Appellate Assistant Commissioner. On further appeal, the Tribunal accepted the explanation of the assessee and directed the amount to be excluded from the assessment. On a reference, this court called for a supplementary statement and after considering the facts and circumstances found that there was no material before the Tribunal on which it could be held that the assessee had purchased the gold earlier which was sold in the relevant year.

25. On appeal, the Supreme Court noted that the Tribunal had come to a conclusion on the basis of the statement of the assessee which was believed. The Supreme Court held that when an assessee's statement was believed, there was obviously material on which a finding could properly be based. As such, no question of law arose and even if the question was treated as one of law, the same had to be answered in favour of the assessee in that the conclusion of the Tribunal was based on material on which a finding could be given. The order of this court was set aside by the Supreme Court.

26. (c) NORTHERN BENGAL JUTE TRADING CO. LTD. Vs. COMMISSIONER OF Income Tax., . In this case, in the books of the assessee, there were several entries of cash credits in the names of various persons who were petty employees of the assessee. The explanation of the assessee for the said entries was that the amounts had been received from an associate firm which had disclosed before the Income Tax Investigation Commission, its possession of amounts which exceeded the aggregate of the cash credits in the hands of the assessee. In support of his explanation, the assessee produced a statement from the said firm recording that the loans in question were advanced by the associate firm in the names of the persons mentioned in the account books of the assessee. The explanation of the assessee was rejected by the Income Tax Officer but upheld by the Appellate Assistant Commissioner. The Tribunal set aside the order of the Appellate Assistant Commissioner. On a reference, it was held by this court that the mere production of a letter from a third party admitting the credits as money advanced by the latter would not discharge the initial onus on the assessee to explain the cash credits which were prima facie evidence that they were the income of the assessee. It was held further that there were materials on the basis of which the Tribunal had come to a conclusion that the disputed cash credits were the income of the assessee and the High Court in its advisory jurisdiction in a reference would not interfere with such a conclusion.

27. In the instant case, it cannot be disputed that the assessee had furnished evidence which cannot be held to be of no substance and on the basis of which two Members of the Tribunal have come to a finding. No doubt, on the same materials, the Accountant Member had taken a different view and it is possible for this court also to take a different view. But sitting in an advisory jurisdiction in a reference, this court should not interfere with the finding of the Tribunal on the sole ground that a different view could have been taken on the facts as found. The law is well settled on this point.

28. No doubt, the evidence which was furnished by the assessee was to a certain extent self-destructive in the sense that it was contrary to the narration in the books of account of the assessee. But it was for the Tribunal to appreciate the evidence and the explanation. The two Members of the Tribunal noted the entire background of the transaction as also the specific items of evidence brought on record by the assessee, viz., the original promissory notes or hundis on which the loans were obtained from Chandmal Pannalal, the books of account of Chandmal Pannalal, the discharge receipts furnished by Chandmal Pannalal and the statement of the assessee before the Revenue as also in its books that the amount brought on record had been obtained on loan. On such evidence, it was open to the Tribunal to come to a conclusion or finding as has been recorded by the majority ignoring evidence to the contrary contained in the narration of the entries. The majority of the Tribunal ultimately accepted the case of the assessee on the facts and evidence as on record.

29. In that view, it cannot be said that the finding of the Tribunal is perverse or is one which no reasonable person could have arrived at on the basis of the evidence on record.

30. For the reasons as aforesaid, we answer the question in Income Tax Reference No. 263 of 1977 in the affirmative and in favour of the assessee.

31. The question No. (1) referred in Income Tax Reference No. 100 of 1981 is answered in the negative and question No. (2) in the said reference is answered in the affirmative, both in favour of the assessee.

32. In the facts and circumstances of the case, there will be no order as to costs.

Shyamal Kumar Sen, J.

33. I agree.