
(1979) 03 CAL CK 0018

In the Calcutta High Court

Case No : Income-tax Reference No. 612 of 1972

Commissioner of Income Tax

APPELLANT

Vs

Chhyabani (P.) Ltd.

RESPONDENT

Date of Decision : 09-03-1979

Acts Referred:

Income Tax Act, 1961 — Section 297(2), 3(1), 6, 68

Citation : (1980) 121 ITR 644

Hon'ble Judges : Dipak Kumar Sen, J;C.K. Banerji, J

Bench : Division Bench

Advocate : Suhas Sen and S. Pal, for the Appellant; Sauren Roy Chowdhury, for the Respondent

Judgement

C.K. Banerji, J.—This reference u/s 256(1) of the I.T. Act, 1961, arises out of the I.T. assessment of Chhyabani (P.) Ltd., Calcutta, the assessee, for the assessment year 1962-63, the previous year relevant thereto ending on the 31st December, 1961.

2. In the course of assessment the ITO found cash credits recorded in the books of account of the assessee in the following manner :

Rs.

(a)

From K. B. Chatterjee on

27-2-61

...

7,000

(b)

Loan account of J.N. Ganguly on

5-1-61

...

10,000

16-2-61

...

12,000

3-3-61

...

12,500

4-4-61

...

3,500

38,000

Withdrawn on

14-6-61

...

12,000

29-9-61

...

...

Deposited on

31-10-61

...

9,500

5-12-61

...

8,500

31-12-61

...

...

Balance

...

22,000

3. Save for Rs. 9,500 deposited on the 31st October, 1961, the assessee failed to explain the other cash credits and the ITO added the same as income from undisclosed sources.

4. Being aggrieved the assessee appealed to the AAC who confirmed the order of the ITO. On further appeal before the Income Tax Appellate Tribunal, the assessee asserted the genuineness of the said loans and further urged that the credits appearing prior to the 1st April, 1961, should be considered in the assessment year 1961-62 and not in the year in question. The Tribunal accepted the explanation of the assessee in respect of the loan of Rs. 7,000 from K. B. Chatterjee and allowed deletion thereof together with the interest thereon but upheld the order of the ITO in respect of the other amounts. The Tribunal found further that the loans prior to 1st April, 1961, fell within the financial year 1960-61 and relying on the decision of the Supreme Court in *Baladin Ram Vs. Commissioner of Income Tax, Uttar Pradesh*, held that the same could be assessed only in the assessment year 1961-62 as income from undisclosed sources. The Tribunal rejected the contention of the revenue that Section 68 of the I.T. Act, 1961, applied to the said cash credits which were of dates prior to the 1st April, 1962, when the I.T. Act, 1961, came into force and held that Section 68 thereof not having retrospective effect was not applicable to the said cash credits and the same could not be charged to tax under that section.

5. At the instance of the CIT, West Bengal-IV, Calcutta, the Tribunal has drawn up a statement and has referred the following question of law for the opinion of this court :

" Whether, on the facts and in the circumstances of the case and in view of Section 68 of the Income Tax Act, 1961, the Tribunal was right in holding that the unexplained cash credits of Rs. 34,500 in the name of Sri J, N. Ganguly appearing in the assessee's books for the relevant previous year but before April 1, 1961, could not be charged to Income Tax for the assessment year 1962-63 ? "

6. Mr. Suhas Sen, learned counsel for the revenue, contended before us, that the provisions of the Act of 1961 were applicable to the assessment. He urged that the assessment proceedings were not pending when the said Act came into force and the assessee filed its return on the 26th June, 1963, long after the said Act came into force. The assessment was completed u/s 143(3) of the said Act without any objection by the assessee and the applicability of the said Act to the assessment was accepted. Mr. Sen further urged that the financial year of the assessee ended on the 31st December, 1961, and u/s 3(1)(b) of the Act of 1961> the previous year of the assessee ended on the 31st March, 1962, and the assessment was, therefore, validly made under the Act of 1961. We may refer to

Sections 3 and 68 of the I.T. Act, 1961, which provide, inter alia, as follows :

"3. " Previous year " defined.--(1) For the purposes of this Act, " previous year " means-

(a) the financial year immediately preceding the assessment year ; or

(b) if the accounts of the assessee have been made up to a date within the said financial year, then, at the option of the assessee, the twelve months ending on such date ;..... "

" 68. Cash credits.--Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Income Tax Officer, satisfactory, the sum so credited may be charged to Income Tax as the income of the assessee of that previous year."

7. Mr. Sen urged that the provisions of the Act of 1961 being applicable to the assessment, the said cash credits fell within the mischief of Section 68 and was chargeable to Income Tax as income of the assessee in the assessment year 1962-63, the previous year in respect whereof ended on the 31st March, 1962, u/ s 3(1)(b) of the Act of 1961.

8. Mr. Sen submitted that Baladin Ram Vs. Commissioner of Income Tax, Uttar Pradesh, , relied on by the Tribunal, related to the assessment year 1944-45 and the assessment was made under the 1922 Act and the conclusions of the Supreme Court were based on the interpretation of the relevant provisions of that Act and there was no question at all as to the applicability of the Act of 1961 or interpretation of any of its provisions. Mr. Sen further submitted that he did not dispute that if the 1922 Act applied, the cash credits would be assessable in the ordinary financial year, but under the Act of 1961, the position would be different.

9. In support of his contentions Mr. Sen referred to the following observation of the Supreme Court in Baladin Ram Vs. Commissioner of Income Tax, Uttar Pradesh, :

" Mr. Manchanda has called our attention to Section 68 of the Income Tax Act, 1961, according to which where any sum is found credited in the books of an assessee maintained for any previous year and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Income Tax Officer, satisfactory, the sum so credited may be charged to Income Tax as the income of the assessee of that previous year. It is, however, obvious that even under the provisions embodied under the new Act it is only when any amount is found credited in the books of an assessee that the section will apply."

10. Mr. Sen also cited Commissioner of Income Tax, West Bengal Vs. Isthmian Steamship Lines, , where the Supreme Court observed that in Income Tax

matters the law to be applied was the law in force in the assessment year unless otherwise stated or implied.

11. Mr. Soumen Roy Chowdhury, learned counsel for the assessee, contended on the other hand that Section 3(1)(b) of the Act of 1961 had no application in the instant case as the said section was applicable only at the option of the assessee. No option had been exercised or found to have been exercised by the assessee in the instant case. Mr. Roy Chowdhury submitted that the present case came u/s 3(1)(a) of the said Act. He submitted further that the assessee maintained its accounts according to the calendar year ending on the 31st December, and the year concerned having ended on the 31st December, 1961, the previous year u/s 3(1)(a) of the said Act ended on the 31st March, 1961. The cash credits dated prior to the 1st April, 1961, were, therefore, assessable only in the assessment year 1961-62, for which the relevant previous year ended on the 31st March, 1961, and under the Indian I.T. Act, 1922.

12. We are unable to accept the contentions of Mr. Roy Chowdhury. In this case assessment for the year in question was not pending when the Act of 1961 came into force and the return was filed on the 26th June, 1963, long after the said Act came into force. u/s 297(2)(b) of the Act of 1961, the assessment had to be made here in accordance with the procedure specified in the later Act. Accordingly, the assessment was made u/s 143(3) thereof in the assessment year 1962-63. This was accepted by the assessee without any objection and it would be deemed to have exercised its option by implication u/s 3(1)(b) of the Act of 1961 and would be assessed in the previous year ending on the 31st March, 1962, the accounts of the assessee being made up to the 31st December, 1961, within that financial year. The law in force in the assessment year 1962-63 was the I.T. Act, 1961, and Section 68 of the said Act would apply to the said cash credits. The fact that the said cash credits were entered in the financial year ended on the 31st March, 1961, was therefore, of no consequence.

13. For the above reasons, we answer the question referred in the negative and in favour of the revenue. There will, however, be no order as to costs.

Dipak Kumar Sen, J.

14. I agree.