

(1976) 01 KL CK 0004

In the High Court Of Kerala

Case No : Income-tax Reference No. 53 of 1974

Commissioner of Income Tax

APPELLANT

Vs

C.P. Adam

RESPONDENT

Date of Decision : 09-01-1976

Acts Referred:

Income Tax Act, 1961 — Section 68

Citation : (1976) 105 ITR 465

Hon'ble Judges : P. Govindan Nair, C.J;T. Kochu Thommen, J

Bench : Division Bench

Advocate : P.A. Francis and P.K. Ravindranatha Menon, for the Appellant; V. Sivaraman Nair, V.M. Nayanar and K. Raveendran, for the Respondent

Judgement

Kochu Thommen, J.—The assessee is a timber merchant and a coupe contractor at Pallikandy, Calicut. The assessment year is 1964-65. The following questions have been referred to us by the Income Tax Appellate Tribunal, Cochin Bench, at the instance of the Commissioner of Income Tax, Kerala:

"(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is justified in law in deleting Rs. 90,000 out of the addition of Rs. 1,35,000 made by the Income Tax Officer as income from unexplained cash credits in the name of the assessee in his assessment for 1964-65 ?

(2) Whether, on the facts and in the circumstances of the case, the finding of the Appellate Tribunal that the department had examined previously the two persons whom the assessee wanted to examine, is supported by any material ?

(3) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is justified in holding that the assessee has discharged the onus of proof in respect of the alleged loans of Rs. 25,000 each on April 30, 1962, and Rs. 20,000 each on June 15, 1962, from Seth Motiram Newandram and Seth Khubchand Harisingh by requesting that they should be summoned for being examined ?

(4) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is justified in law in finding that the deduction of Rs. 15,780 out of Rs. 23,672 claimed by the assessee as payments towards interest on the alleged loans from Seth Motiram Newandram and Seth Khubchand Harisingh should be allowed ?"

2. The assessee had made the following credit entries in his books of accounts:

Date Name of the Banker Amount

Rs. Rs.

30-4-1962 Seth Vashdev Biharilal 25,000

20,000

----- 45,000

30-4-1962 Seth Motiram Newandram 25,000

15-6-1962 20,000

----- 45,000

30-4-1962 Seth Khubchand Harisingh 25,000

20,000

----- 45,000

Total 1,35,000

3. The assessee's books of account also showed a sum of Rs. 23,672 as having been paid by way of interest to his three bankers referred to above. According to the assessee, the total sum of Rs. 1,35,000 had been borrowed by him from the three Multani bankers in respect of which he had executed hundies. A sum of Rs. 23,672 was the interest paid thereon. The assessee, therefore, claimed deduction in respect of the interest. According to the assessee, the entire amount of Rs. 1,35,000 had been repaid by him by a proper discharge of the hundies. He had submitted to the Income Tax Officer the discharged hundies and confirmation statements and receipts from the bankers to show that the amounts had been fully repaid. The Income Tax Officer examined the banker, Seth Vashdev Biharilal, in the presence of the assessee and the assessee was allowed to cross-examine him. Biharilal denied any knowledge of the loan and contended that all the bundles were havala hundies, they being mere adjustments and the banker having only lent his name. The assessee maintained that he executed the hundies on April 30, 1962, and June 15, 1962, for the purpose of depositing money in the sub-treasury, Chalakudy, in respect of the forest coupes. In order to prove the bona fides of his claim he requested the Income Tax Officer by his letter dated March 5, 1969, to examine the other two bankers namely, Seth

Motiram Newandram and Seth Khubchand Harisingh. It would appear that summons had been issued to them by the officer, but they were returned unserved. It would also appear that these persons had in fact been examined by the officer at Madras in the absence of the assessee. The Income Tax Officer, however, refused to issue fresh summons to them as, according to him, it was the responsibility of the assessee to produce them if he was keen on cross-examining them. This is what the officer says :

"The assessee's request that the department should summon them and that they are all Income Tax assesseees and, therefore, it is for the department to examine them and allow the assessee to cross-examine them, cannot be acceded to. Since the assessee has not discharged the onus of producing the bankers and proving the genuineness of the loans, I am unable to accept these loans as genuine."

The officer further remarks :

"Enquiries made by the departmental officials at Madras go to show that none of the bankers had any discounting facilities with any banks and that their capital was too small for getting the turnover in the business to the tune of several lakhs of rupees. Enquiries also reveal that all these bankers had done havala business on an extensive scale and their turnover was several lakhs in each year. Many assesseees had approached them for havala hundies and brought into their accounts their own black money in the shape of hundi loans from these bankers."

For these reasons the Income Tax Officer, by his order dated March 18, 1969, treated the total sum of Rs. 1,35,000 as the assessee's concealed income, and added the same to his total income, u/s 65 of the Income Tax Act. He also disallowed the claim for deducting the interest of Rs. 25,672. The order of the Income Tax Officer was confirmed by the Appellate Assistant Commissioner by his order dated November 11, 1969. On further appeal, the Tribunal confirmed the finding of the Income Tax Officer in regard to the loans borrowed from the first banker, viz., Seth Vashdev Biharilal, but set aside the finding in regard to the other two loans. The Tribunal held that Biharilal had been examined by the officer in the presence of the assessee and that the assessee also had cross-examined him. Biharilal denied having lent any amount to the assessee. When he was shown the hundies he stated that they did not represent true transactions. He stated that he did not receive any interest for the said amount and that he received only a commission. This is what the Tribunal says:

"But he was examined not merely in respect of the appellant's case but in respect of other assesseees also. He denied having lent any money to the appellant. When he was shown the three hundies for Rs. 15,000 executed by the appellant in his favour on April 30, 1962, he stated that they did not represent true transactions. While admitting having passed receipts in token of having received interest from the appellant, he stated that no interest was in fact received by him and that he had received only commission."

The Tribunal further observes :

"According to the appellant he deposited in the sub-treasury at Chalakudy Rs. 56,750 on April 30, 1962, and Rs. 56,625 on June 15, 1962. It is his further case that the first deposit was made out of Rs. 75,000 borrowed by him from the above-mentioned three bankers at Madras on April 30, 1962, and the second deposit was made out of Rs. 60,000 borrowed by him from them at Madras on June 15, 1962. If really the amounts had been borrowed at Madras only on April 30, 1962, and June 15, 1962, it is not understandable how the appellant could have made the deposits in question in the sub-treasury at Chalakudy on the very same day. This circumstance clinchingly shows that the appellant's version that he borrowed from Vashdev Biharilal at Madras Rs. 25,000 on April 30, 1962, and Rs. 20,000 on June 15, 1962, is not true and that the version of Vashdev Biharilal that he had not lent any money to the appellant is true."

The Tribunal accordingly, as stated earlier, confirmed the order in regard to the amounts claimed to have been borrowed from Biharilal. As regards the other two loans, the Tribunal could have in the circumstances held that its finding as regards the first borrowing equally applied to these loans also. Nevertheless, the Tribunal felt that the assessee ought to have been given a proper opportunity to prove his case. According to the Tribunal, it was the responsibility of the department to have given him an opportunity for cross-examining the other two bankers, especially when they had been examined by the officer in the absence of the assessee. For this purpose, the department ought to have issued fresh summons. The Tribunal was apparently impressed with the assessee's contention based on the principles of natural justice. This is what the Tribunal says on this aspect:

"We are aware that this circumstance is equally applicable in the case of the other two loans. But we do not desire to draw an adverse inference against the appellant in view of the fact that the other two bankers have not been examined in the presence of the appellant and the latter has not been given an opportunity to cross-examine them. In the result, we hold that Rs. 45,000 covered by the credit entries in the name of Vashdev Biharilal for Rs. 25,000 on April 30, 1962, and Rs. 20,000 on June 15, 1962, represent the undisclosed income of the appellant and is liable to be taxed under the head "other sources". We, therefore, sustain the addition of Rs. 45,000 out of the addition of Rs. 1,35,000 made under the head "other sources".

4. As already Stated, the appellant claimed deduction of Rs. 23,672 representing payment of interest to the above-mentioned three bankers. In view of our finding that Rs. 45,000 alone could be added under the head "other sources", it follows that Rs. 15,780 out of Rs. 23,672 claimed as deduction by way of interest payment, should be allowed." The Tribunal has thus allowed the appellant's claim to deduct the proportionate interest in respect of the last two loans and set aside the order treating the last two loans amounting to Rs. 90,000 as undisclosed income. Hence the present reference.

5. Section 68 of the Income Tax Act, 1961, reads as follows:

"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 well-established that the onus of proving the source of any money received by the assessee is upon him. If liability to pay tax is disputed, it is the responsibility of the assessee to show that the receipt was either not income or income exempted from payment of tax. As pointed out by the Supreme Court in *Commissioner of Income Tax, Uttar Pradesh Vs. Devi Prasad Vishwanath Prasad*, :

"Where there is an unexplained cash credit it is open to the Income Tax Officer to hold that it is the income of the assessee and no further burden lies on the Income Tax Officer to show that that income is from any particular source."

(See also *KALE KHAN MOHAMMAD HANIF Vs. COMMISSIONER OF Income Tax, MADHYA PRADESH AND BHOPAL.*, , *A. Govindarajulu Mudaliar Vs. Commissioner of Income Tax, Hyderabad*, and *P.V. Raghava Reddi and Another Vs. Commissioner of Income Tax*,

6. If the assessee has not been able to satisfactorily prove the source and nature of certain sums of money received by him during the accounting year, the officer is perfectly justified in drawing an inference that the receipts are undisclosed income. The revenue is entitled to collect information from any source available to it and it is not obliged to reveal such source.

7. It is the responsibility of the assessee to adduce the necessary evidence to prove the source and nature of the cash credits. In the present case the assessee made no attempt to produce the witnesses whom he wanted to cross-examine, apart from merely asking the department to issue fresh summons. The officer refused to issue fresh summons because according to him there was no purpose in issuing summons over and over again after the first summons had been returned unserved. In the circumstances it cannot be said that the assessee was denied a reasonable opportunity of adducing evidence. The officer cannot be said to have acted unreasonably or in violation of the principles of natural justice. He was, in the circumstances of this case, entitled to draw an inference that the receipts were of an assessable nature. The Tribunal having disbelieved the assessee's version in regard to his borrowing from Seth Vashdev Biharilal, had no evidence to accept his version in respect of his borrowings from Seth Motiram Newandram and Seth Khubchand Harisingh which also arose in identical circumstances. The only reason given by the Tribunal for accepting the assessee's version concerning the two loans was, that, unlike in the case of Biharilal who was examined by the officer in the presence of the assessee, Newandram and Harisingh, although examined by the officer, had not been produced by him for cross-examination by the assessee. As stated by us earlier,

the officer had not denied any reasonable opportunity to the assessee to adduce evidence. In our opinion, the finding of the Tribunal in regard to these borrowings is unsupported by any evidence. In fact, the evidence on record suggests that the Tribunal ought to have extended its reasoning concerning the borrowing from Biharilal to the other two loans as well. Consequently, we answer questions Nos. (1), (3) and (4) in the negative, that is, in favour of the department and against the assessee. We do not find it necessary to answer question No. (2) in view of what we have stated in regard to questions Nos. (1), (3) and (4). We do not, therefore, answer question No. (2). We direct the parties to bear their respective costs.

8. A copy of this judgment under the seal of the High Court and signature of the Registrar will be sent to the Income Tax Appellate Tribunal, Cochin Bench.