
(1985) 08 CAL CK 0005
In the Calcutta High Court
Case No : Income Tax Ref. No. 166 of 1976

COMMISSIONER OF INCOME TAX

APPELLANT

Vs

DHANIRAM GUPTA.

RESPONDENT

Date of Decision : 05-08-1985

Acts Referred:

Citation : (1986) 52 CTR 44 : (1986) 24 TAXMAN 584

Hon'ble Judges : G. N. Ray, J; Dipak Kumar Sen, J

Bench : Full Bench

Judgement

Dipak Kumar Sen, J. - Dhaniram Gupta the assessee, was assessed to Income Tax in the status of an individual for the asst. yr. 1966-67, the corresponding accounting year ending on the 31-12-1965. The assessee claimed to be a partner of a firm named M/s. Dhaniram Gupta & Co. constituted by and between the assessee and one Kian Tan under a Deed dt. 20-11-1956.

2. The ITO found that on the same day another Deed had been executed amongst Kian Gwan Co. (Cal) Private Ltd. (hereinafter referred to as the company, the assessee and the said Kian Tan recording that the company will be the real partner in the firm and Kian Tan, would represent the company in the partnership.

3. The ITO further found inter alia that -

- (a) Only the Deed of partnership had been registered with the Registrar of firms.
- (b) Purushottamdas Bhiwaniwalla, the brother and Fatechand Bhiwaniwalla the father of the assessee were authorised to operate the Bank account of the firm.
- (c) The assessee held 539 out of a total of 830 shares of the company.
- (d) Kian Tan had left India for a period prior to the assessment year.
- (e) For the asst. yr. 1961-62 and subsequent years there had been no allocation of the profits of the firm to its partners though the accounting periods had been

closed.

(f) The Deed of partnership had not been acted upon fully.

(g) There were a number of questionable transactions between the firm and the company.

(h) The registration granted to the firm on and from the asst. yr. 1961-62 onwards had been cancelled under s. 186(1) of the IT Act.

4. On the basis of the aforesaid, the ITO came to the conclusion that the firm only a creation on paper to evade the Income Tax liabilities of the assessee and that the assessee for all practical purposes and in reality was the sole proprietor of the firm. Accordingly, the ITO included the income of the firm in the taxable income of the assessee.

5. Being aggrieved, the assessee preferred an appeal against the assessment before the AAC. An order dt. 20-5-1972 had been passed by the AAC in respect of the firm where it was held that the registration granted to the firm had been wrongly cancelled for the earlier assessment year. By the said order the assessments of the firm had also been set aside with a direction to make fresh assessments. Relying on the said order the Appellate Commissioner held that the ITO was not justified in including the entire income of the firm in the income of the assessee. The ITO was directed to include in the income of the assessee only his share of profits in the firm. The appeal of the assessee was allowed.

6. The revenue went up on appeal from the order of the AAC to the Income Tax Tribunal. The Tribunal noted that in the appeals preferred by the revenue in respect of registration of the said firm, the Tribunal had affirmed the order of the AAC recording that there was no material before the ITO to hold that the firm was not genuine. It was noted that on identical grounds the ITO had treated the assessee as the sole proprietor of the firm. As the firm was held to be genuine, its entire income could not be included in the income of the assessee. The Tribunal on the basis of the above, upheld the order of the AAC.

7. On an application of the revenue under s. 256(1) of the IT Act, 1961 the Tribunal has referred the following question stated to be a question of law arising out of its order for the opinion of this Court :

"Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee was not the sole proprietor of M/s. Dhaniram Gupta & Co. and the whole of its income could not be included in the assessment of the assessee ?"

8. At the hearing the Id. Advocates for the parties reiterated their contentions made in the proceedings below.

9. It is a matter of record that the cancellation of the registration of the firm, set aside by the AAC has been upheld by the Tribunal and also by this Court on a number of references. Therefore, the genuineness of the firm has been

established so far as this Court is concerned. The question as framed appear to be a question of fact. The findings of the Tribunal in respect of this question has not been challenged as perverse or contrary to evidence. It is also not the case of the revenue that there was no evidence to support the decision of the Tribunal.

10. For the reasons as above the question referred is answered in the affirmative and in favour of the assessee. There will be no order as to costs.

G. N. Ray, J. - I agree.