

(1984) 02 DEL CK 0033

In the Delhi High Court

Case No : Income Tax Case No. 314 of 1979

Commissioner of Income Tax

APPELLANT

Vs

Didar Singh

RESPONDENT

Date of Decision : 15-02-1984

Acts Referred:

Citation : (1985) 22 TAXMAN 520

Hon'ble Judges : D.P Wadhwa, J;D.K. Kapur, J

Bench : Division Bench

Judgement

D.K. Kapur, J.—There are four applications (I.T.C. Nos. 314, 315, 316, and 317 of 1979) u/s. 256(2) of the IT Act, 1961, in respect of the same assessed for three asst. yrs. 1962-63, 1963-64, and 1964-65. All these years were dealt with together by the Tribunal when a common order was passed. There were five reference applications, four by the department and one by the assessed which were also dealt with by a common order. We are now concerned with the references at the instance of the department.

2. The assessed used to be assessed to Income Tax at Amritsar where he was carrying on business as commission agent and dealer in dry fruits, but he shifted to Delhi and claimed that he had lost his account books in 1965. It appears that in each of these assessment years, no return was filed and the assessed was assessed to Income Tax for the years 1962-63 and 1964-65, u/s. 144 on the basis of filing no return. For the year 1963-64, the position was slightly different. In any event, the ITO, Delhi, received information from the ITO, Amritsar that the name of the assessed and certain credits were shown in the account books of certain dealers there who were engaged in Hawala business. According to this information, substantial sums were outstanding to the credit of the assessed.

3. As a result of this information, proceedings were started under s. 147(a) of the Act and considerable amounts were added to the assessment in each of these years as a result of the reopening of the assessment proceedings. It appears, however, that in 1963-64, the assessed was assessed u/s. 144 r/w s.

148, it was computed that he had income of Rs. 40,000 from business and Rs. 70,000 from undisclosed sources.

4. On appeal, the quantum was reduced by the AAC in each of these years.

5. When a further appeal was taken to the Tribunal, a plea was raised in each of the three years that s. 147(a) was not attracted as there was no material on which the reopening could have been done. This plea was rejected for the year 1963-64 on the ground that an initial return was filed showing an income of Rs. 20,000 and that return was filed u/s. 148. For the other two years 1962-63 and 1964-65, it was held that the ITO did not have jurisdiction to reopen the assessment.

6. The reason for this conclusion in these two years was that even initially the assessed had filed no return and had been assessed u/s. 144 and the information from Amritsar was not of such a character as to show that there was further income from undisclosed sources. The mere existence of credit entries in the books of three dealers could be either on the basis of cash credits or for payment of goods supplied or, for money returned, etc. As the material had not been collected and the statements not brought on record, the Tribunal was of the view that action u/s. 147(a) could not be taken. Reliance was placed on the Supreme Court's judgment in *Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das*, .

7. For these three years, the department has claimed a reference regarding the following two questions :

"(1) Whether on the facts and in the circumstances of the case, the Tribunal is correct in law in cancelling the reassessment proceedings made by the ITO u/s. 147(a) of the IT Act holding that the ITO was not justified in reopening the assessment in the circumstances of the case ?

(2) Whether on the facts and in the circumstances of the case, the Tribunal is correct in law in holding that the information received from the ITO, Amritsar regarding certain bogus nature of cash credits appearing in the books of the assessed do not constitute "information" in the hands of the assessing ITO for the purpose of reassessment proceedings u/s. 147(1) of the IT Act ?

These two questions have been refused by the Tribunal in its order u/s. 256(1) on the ground that all the Tribunal held was that there was no direct nexus for forming the opinion or having a reasonable belief that income had escaped assessment. The Tribunal thought that here was no misdirection in law or any wrong appreciation of facts to justify a reference.

8. There was some unusual aspect of this case as regards these two years. For one thing, the original assessment was a best judgment assessment u/s. 144 and there was no information on record to show what was the material on which that best judgment assessment was made. Furthermore, the Tribunal had concluded that the documents sent from Amritsar by the ITO were not sufficient

to form any opinion and it was necessary for the ITO also to get statements concerning the nature of the entries and also material from the parties concerned as to what the credits represented, and in the absence of this, there was no jurisdiction to re-assess the income. Due to the unusual nature of the case in as much as there were no accounts initially and no accounts even later, there was some aspect of this case that put us in some doubt as to what order we should pass.

9. However, the point arising from the asst. yr. 1963-64 seems also to decide the case regarding 1962-63 and 1964-65. What happened was that the material for these two years was examined by the Tribunal and substantially the same material was available for the two asst. yrs. 1962-63 and 1964-65. There were some credits appearing in favor of the assessed in the books of three firms at Amritsar which were M/s. Tola Singh Som Singh M/s. Bhoj Raj Mohan Dass and Shri Gurdit Singh Kataria. These credits totalled Rs. 70,000. The ITO had added the entire amount of Rs. 70,000 but the AAC reduced the amount to Rs. 35,000 on the view that some of these credits may be included in the computation of Rs. 40,000 representing the business income. So, there was a duplication.

10. In any event, the Tribunal came to the following decision :

"In our view, the contentions of the learned Chartered Accountant for the assessed are well founded and are supported by the two decisions relied on by him. Apart from the copy of account from the books of M/s. Bhoj Raj Mohan Dass, there is no other material to establish the alleged credits in favor of the three parties referred to above. Further the statements alleged to have been given by these three parties have not been brought on record in spite of the efforts made by the Income Tax Officer as mentioned by the Appellate Assistant Commissioner. It is also seen from the order of the Appellate Assistant Commissioner that it is not clear from the copies of accounts received from the Income Tax Officer, Amritsar, whether these represented any borrowings by the assessed or whether they were any advances made by the assessed to them or whether they represented any amounts due for goods supplied as discussed by the Appellate Assistant Commissioner in his order, which we have already extracted in paragraph 13 above. In the circumstances, we have no hesitation in holding that there is no material to hold that the impugned addition of Rs. 77,000 really belonged to the assessed and represented his income from undisclosed sources, to justify its addition. Accordingly, we hold that there was no basis even for the addition of Rs. 35,000 sustained by the Appellate Assistant Commissioner as the assessed's income from undisclosed sources. In this view, we delete the addition of Rs. 35,000 sustained by him. It automatically follows that the department's appeal on this point has to be rejected."

In connection with this decision, the department has filed two Income Tax References u/s. 256(1) and after rejection u/s. 256(2). One reference is concerned with the deletion of Rs. 35,000 and the other on the contention that the amount Rs. 70,000 should have been added for this year.

11. As it appears to us that this is wholly a question of fact being a conclusion based on the material with ITO for sustaining the addition, we cannot call for a reference for 1963-64.

12. In view of the conclusion regarding the year 1963-64, it follows that it would be point less to call for a reference for the year 1962-63 or 1964-65 because the material is exactly the same. As the deletion by the Tribunal is based on a consideration of the material, the same result would follow for the other two assessment years. So, calling for a reference for the two years would be merely academic. We would accordingly decline to call for a reference in any of the four references and dismiss the applications. In view of the circumstances in which we have dismissed the reference applications, we leave the parties to bear their own costs.