
(1988) 08 PAT CK 0007

In the Patna High Court

Case No : Taxation Cases No's. 155 to 157 of 1980

COMMISSIONER OF Income Tax

APPELLANT

Vs

GEETA DEVL AGARWAL.

RESPONDENT

Date of Decision : 02-08-1988

Acts Referred:

Income Tax Act, 1961 — Section 143, 256, 263

Citation : (1988) 174 ITR 601

Hon'ble Judges : D. K. Sen, C.J;M. P. Singh, J

Bench : Full Bench

Judgement

D. K. SEN C.J. - The material facts and proceedings on record lead-up to this reference are, inter alia, that Smt. Geeta Devi Agarwal, the assessee, was assessed to Income Tax for the assessment years 1971-72, 1972-73 and 1973-74, the accounting years ending on March 31, of the calendar years 1971, 1972 and 1973, under a scheme formulated by the Central Board of Direct Taxes known as "Scheme to help new taxpayers in small income groups."

The material provisions of the scheme were, inter alia, as follows :

"New cases where the returned income does not exceed Rs. 15,000 and the capital invested including the borrowed capital does not exceed Rs. 25,000 should ordinarily be completed u/s 143(1) Return of income filed in the names of minors and ladies should not, however, be accepted without proper enquiries ..."

In the returns filed by the assessee her income was declared to be Rs. 5,100 for both the assessment years 1971-72 and 1972-73. For the year 1973-74, the income declared in the return was Rs. 5,520 The incomes in each of the assessment years were stated to have been derived from pawnbroking business carried on by the assessee with an initial capital of Rs. 16,500.

An Inspector of the Income Tax Department deputed by the Income Tax Officer to make an enquiry into the affairs of the assessee submitted his report on December 9, 1972, as follows :

"Enquired into the business activity of the lady. It was learnt that well to do family and she received cash gifts and also gifts in kind from her relatives

It was also learnt that she had been doing pawn-broking business and casual money-lending business since long. She could have sufficient amount of money as capital from the above business. The facts stated in her application dated December 19, 1972, seem to be correct.

The Income Tax Officer made assessments for each of the assessment years u/s 143(1) of the Income Tax Act, 1961, accepting the returns

Subsequently, the Commissioner of Income Tax issued a notice u/s 263(1) of the Income Tax Act, 1961, where it was stated, inter alia, that on perusing the records, it appeared to the Commissioner that the said assessment orders appeared to be irregular, erroneous and prejudicial to the interests of the Revenue. The Income Tax Officer had accepted the initial capital as declared without any enquiry and also assessed the incomes as arising from the alleged pawn-broking business though there was little evidence that any income as claimed had been earned by the assessee. The Commissioner also noted that Rs. 5,100 earned in the very first year by assessee appeared to be absurd. He observed that such income appeared to be earned by someone else and had been declared by the assessee to accommodate the person whose income it was and who might have been assessed at a higher rate of tax.

Pursuant to the said notice the assessee appeared before the Commissioner, filed a statement and contended that it had been found as a fact that the assessee carried on the business of pawn-broking, as corroborated by the report of the Inspector as also letters from five persons who admitted to have borrowed money from the assessee. It was further stated that the initial capital of the assessee came out of gifts and presents received by the assessee from her parents-in-law on different ceremonies or functions. The initial capital of Rs. 16,500 was attributable to the savings of the assessee made out of such gifts. Even in 1971-72, the father-in-law of the assessee had made further gifts to her on which gift-tax had been paid and interest earned by the assessee on the said gift had been assessed in the hands of the assessee in the assessment years 1971-72, 1972-73 and 1973-74

The Commissioner held that the report of the Inspector was vague and stereotyped and the letters produced from the alleged borrowers could not be accepted without examining them and their books of account. The Commissioner noted that the bulk of the capital of Rs. 25,000 had been invested by the assessee in a firm, named Bihar Trading Co., where the husband of the assessee was a partner. Subsequently on December 28, 1973, the amount invested was withdrawn from the said firm and invested in fixed deposit with the Central Bank of India, Raxaul. The Commissioner did not accept that an income of Rs. 5,100 could have been earned by the assessee in the very first year of her business on a capital of Rs. 16,500 and came to the conclusion that the income disclosed in

the returns of the assessee was income of either the husband of the assessee or the firm in which the husband of the assessee was a partner.

The Commissioner also found that even assuming that the assessee had received gifts out of which the initial capital was accumulated, the assessee would not have kept the same idle till March 31, 1970, specially when she had invested the other gifts received by her in the said firm. There was also no explanation as to where the said initial capital of Rs. 16,500 had been kept by the assessee till 1971-72. The Commissioner came to the conclusion that the affairs of the assessee had to be examined further as there was insufficient proof of the initial capital acquired by the assessee and the income returned out of such capital was unreasonably high. He found further that the Income Tax Officer did not make proper enquiries in respect of the initial capital, the nature and extent of the incomes returned and the true ownership thereof before completing the assessments. The Commissioner set aside the assessments in each of the said assessment years and restored the proceedings to the file of the Income Tax Officer with a direction to make fresh assessments after further scrutiny of the initial capital and also the actual income earned by the assessee.

Being aggrieved by the aforesaid, the assessee filed appeals against the aforesaid decision of the Commissioner before the Income Tax Appellate Tribunal.

It was contended on behalf of the assessee before the Tribunal that the order of the Commissioner under appeal was erroneous inasmuch as it has been held that the Income Tax Officer had completed the assessments without making enquiries either into the initial capital or the extent of the pawn-broking business of the assessee. It was contended further that the Commissioner violated the principles of natural justice in passing the said order on mere suspicion. The orders of assessment made by the Income Tax Officer were not prejudicial to the interests of the Revenue and as such the Commissioner could not assume jurisdiction u/s 263 of the Income Tax Act, 1961, to interfere with the said assessments. It was contended last that the Commissioner was not competent u/s 263 of the Act to reopen or revise assessments made under the said scheme formulated by the Board with the object of helping new taxpayers in small income groups.

The Tribunal held that the finding of the Commissioner that the Income Tax Officer had made the assessments without enquiry was not correct, inasmuch as the Income Tax Officer concerned had deputed an Inspector to enquire into the income of the assessee. The Tribunal held that the Commissioner had not dealt with this report of the Inspector in detail nor had it been stated as to why the said report was considered to be vague and stereotyped. There was no material before the Income Tax Officer to refute the report of the Inspector and as such the Income Tax Officer was justified in acting on the same.

The Tribunal also held that the conditions laid down in the said scheme for assessment of new taxpayers in small income groups were satisfied and as such the orders of assessment passed by the Income Tax Officer could not be

interfered with by the Commissioner by assuming jurisdiction u/s 263(1) of the Act. The Tribunal held further that the order of the Commissioner was based upon mere surmises and conjectures. There was no material on the record to support the finding that the initial capital as claimed by the assessee belonged to the assessee's husband or the said firm or that the assessee had declared her capital or income only with the object of accommodating her husband. On the other hand the fact that the assessee had deposited Rs. 25,000 in the said firm in her own name established that the conclusion of the Commissioner as to the ownership of the initial capital was not correct. The mere fact that the husband of the assessee was a partner of the said firm would not make him the owner of the amount deposited by the assessee. As such, the finding of the Commissioner that the husband of the assessee and not the assessee was the real owner of the said initial capital and income was without any basis.

Following the earlier decision of the Income Tax Appellate Tribunal, Patna, in the case of *Smt. Rambha Devi v. ITO*, the Tribunal held that the Commissioner was not legally competent to reopen and revise the assessment made by Income tax Officer under the said scheme.

The contention on behalf of the Revenue that for the assessment year 1973-74, the assessee could not claim the benefit of the said scheme as the same had been withdrawn by that time was also rejected by the Tribunal. The Tribunal held that the Commissioner did not make any distinction between the assessment year 1973-74 and the earlier assessment years and by a consolidated order passed in a mechanical manner set aside all the assessments. The assessment made by the Income Tax Officer for the said assessment year 1973-74 was supported by the orders of assessment in the earlier assessment years 1971-72 and 1972-73 and there was no reason to take a different view for the said assessment year 1973-74. The Tribunal allowed that appeal and set aside the order of the Commissioner passed u/s 263(1) of the Income Tax Act, 1961.

On an application of the Revenue u/s 256(1) of the Income Tax Act, 1961, the Tribunal has referred the following questions, stated to be mixed questions of law and fact arising out of the said order of the Tribunal, for the opinion of this court.

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal has rightly held that the assessment orders, having been passed by the Income Tax Officer after necessary enquiries in pursuance of the scheme to help new taxpayers in the small income groups launched by the Government, were not erroneous so as to enable the Commissioner of Income Tax to assume jurisdiction u/s 263(1) of the income tax

(2) Whether, on the facts and in the circumstances of the case, the Tribunal has rightly held that the impugned order of the Commissioner of Income Tax is based upon mere surmises and conjectures and is, therefore, not valid ?

(3) Whether, in view of the decision of the Income Tax Appellate Tribunal Patna, in the case of *Smt. Rambha Devi v. ITO* (I.T.A. Nos. 1713 to 1715 (Pat) of

1974-75), the Tribunal has rightly held that the Commissioner of Income Tax, acting u/s 263(1) of the Income Tax Act 1961, could not legally set aside an order of assessment made u/s 143(1) in pursuance of the scheme to help new taxpayers in small income groups evolved by the Government ?

(4) Whether, on the facts and in the circumstances of the case, the Tribunal has rightly held that the Commissioner of Income Tax acted in a mechanical manner in setting aside the assessment order for the assessment year 1973-74 and his order for that year is invalid ?

(5) Whether, on the facts and in the circumstances of the case, the Tribunal has rightly cancelled the consolidated order passed by the Commissioner of Income Tax u/s 263(1) of the Income Tax Act, 1961, for the assessment years 1971-72 to 1973-74 ?

At the hearing before us, Mr. B. P. Rajgarhia, learned senior standing counsel for the Central Government, submitted that the controversy raised in the questions referred were covered by the decision of a Division Bench of this court in Commissioner of Income Tax Vs. Pushpa Devi, , as also a subsequent decision of the same Division Bench in Commissioner of Income Tax Vs. Smt. Rambha Devi, , where, on identical facts, similar questions had been answered in favour of the Revenue. He submitted that the decision of the Tribunal was based mainly on the earlier decision of the Tribunal in the case of Smt. Rambha Devi which had been set aside by this court on reference.

Learned counsel for the Revenue also cited an unreported judgment dated April 5, 1983, in Taxation Cases Nos. 114 of 1979 and 115 of 1979 in the case of CIT v. Pushpa Devi (since reported in [1988] 173 ITR 446) where questions identical to those in the present reference before us and arising out of similar facts were all answered in favour of the Revenue.

The learned advocate for the Revenue next cited a decision of the Supreme Court in Rampyari Devi Saraogi Vs. Commissioner of Income Tax, West Bengal and Others, , where it was held that if in passing an order u/s 33B of the Indian Income Tax Act, 1922 (in pari materia with section 263(1) of the Income tax Act, 1961), the Commissioner relied on any additional material in support of his basic grounds on which the order was passed and if the same had not been indicated or communicated to the assessee, who did not have an opportunity to meet the same, the same would not affect the validity of the order. The failure of the Commissioner to disclose to the assessee such additional material and result of his enquiry would not cause any prejudice to the assessee who would have full opportunity of showing to the Income Tax Officer in further proceedings as to whether the income originally assessed was correct or not. The assessee could not be said to have been denied an opportunity of showing cause against such additional grounds and materials and the rules of natural justice were not violated.

The learned advocate for the Revenue also cited another decision of the Supreme

Court in Smt. Tara Devi Aggarwal Vs. Commissioner of Income Tax, West Bengal, Calcutta, , where an order of the Commissioner passed u/s 33B of the Indian Income Tax Act, 1922, cancelling the assessment and proceedings was upheld. The Supreme Court observed as follows (p. 328) :

"Even where an income has not been earned and is not assessable, merely because the assessee wants it to be assessed in his or her hands in order to assist someone else who would have been assessed to a larger amount, an assessment so made can certainly be erroneous and prejudicial to the interests of the Revenue. If so-and we think it is so-the Commissioner u/s 33B has ample jurisdiction to cancel the assessment and may initiate proceedings for assessment under the provisions of the Act against some other assessee who according to the Income Tax authorities is liable for the income thereof.."

The learned advocate for the assessee submitted, on the other hand that, in the instant case, there was sufficient material before the Income Tax Officer on which the original. assessment could be sustained. The Income Tax Officer had made enquiries through an Inspector into the affairs of the assessee before making the impugned assessment. The Inspector had enquired into the initial capital of the assessee and had specifically recorded in his report his findings. The report of the Inspector in the case of Commissioner of Income Tax Vs. Pushpa Devi, was silent as to the initial capital of the assessee. In the case of Commissioner of Income Tax Vs. Smt. Rambha Devi, also, the report of the Inspector did not deal with the initial capital of the assessee.

The learned advocate for the assessee next contended that in the instant case, the assessee had produced further materials before the Commissioner to support the accumulation of her initial capital and had contended that even in 1971-72, the assessee had received gifts from her father-in-law on which gift-tax had been paid and the interest earned by the assessee on such gift had been assessed in the hands of the assessee in the said assessment year.

The learned advocate for the assessee next contended that in the instant case, there was no material before the Commissioner to hold that the impugned assessments were prejudicial to the interests of the Revenue.

In support of his contentions, the learned advocate for the assessee cited the following decisions :

(A) Gouri Prasad Bagaria and Others Vs. Commissioner of Income Tax, West Bengal, . This decision was cited for the following observations of the Supreme Court

"Where the assessee's statement is believed, there is obviously material on which the finding is based; and to seek for other material is tantamount to saying that a statement made by an assessee is not material on which a finding can be given. In our opinion, the Tribunal having believed the assessee's statement, there was an end of the matter in so far as that fact was concerned, and if the

finding was based upon a statement which was good material on which it could be based, no question of law really arose ..."

(B) Addl Commissioner of Income Tax, Madras-I Vs. Gangabai Charities, . In this case, the Commissioner had set aside an order of assessment made u/s 263(1) of the Income Tax Act, 1961, inter alia, on the ground that the Income Tax Officer concerned had no jurisdiction to make the assessment. There was an observation in the order that the Income Tax Officer appears to have made an underassessment in view of the assessee's records and profits shown by others in the same line of business. No further reason was given as to why the Commissioner came to the conclusion that there was an underassessment or wrong computation of income. A Division Bench of this court held that the Commissioner had proceeded mainly on the basis that the order of assessment was without jurisdiction but no further reason was given in the order nor any material indicated on which it could be held that the assessments were prejudicial to the interests of the Revenue. On that ground, the decision of the Tribunal, setting aside the order of the Commissioner, was upheld.

In view of the earlier decisions of this court in the cases of Commissioner of Income Tax Vs. Pushpa Devi, and Commissioner of Income Tax Vs. Smt. Rambha Devi, , questions Nos. 1 and 3 have to be answered in the negative and in favour of the Revenue.

Next, we have to examine questions Nos. 2 and 4, namely, whether the order of the Commissioner was based on mere surmises or conjectures or whether the Commissioner had acted in a mechanical manner in setting aside the assessment order for the assessment year 1973-74.

It appears to me that the Commissioner was justified in issuing notice initiating proceedings u/s 263(1) of the Income Tax Act, 1961. At the time of issue of such notice, the materials before the Commissioner were only the assessment orders and the report of the Inspector of the Income Tax Department. It is clear from the assessment order that the Income Tax Officer did not make any enquiry on his own. It was not even recorded in the said orders that the Income Tax Officer had considered the report of the Inspector and accepted the same to be correct. The report of the Inspector, on the basis of which the Income Tax Officer apparently proceeded, is extremely vague and devoid of all material particulars. It was not ascertained by the Inspector as to when the assessee was married and when she received the cash gifts from her relatives and the amounts of such gifts. The names of the donors were not enquired into. Similarly, the Inspector did not ascertain since when the assessee started carrying on pawn-broking and money-lending business. The conclusion of the Inspector was that the assessee saved amounts received from her business and the same constituted her capital. No books of account were produced or examined during the assessments.

In the further proceedings before the Commissioner u/s 263(1) of the Act, further materials produced by the assessee appear to be the letters from five

alleged borrowers to confirm that they had borrowed money from the assessee. The particulars of the transactions do not appear to have been furnished by the assessee. The amounts borrowed by the different borrowers or the rate of interest paid by them were not brought on record. The further case of the assessee was that even in 1971-72, she had received further gifts from her father-in-law on which gift-tax was claimed to have been paid and that the interest earned on the amount of such gift had been assessed in the hands of the assessee. It is not clear as to whether the gifts received by the assessee in the year 1971-72 constituted additional capital in the hands of the assessee. In any event, if the amount received by way of gift in 1971-72 had been invested and had earned interest, the same would not have been available to the assessee for her pawn-broking business. The Commissioner also found that the bulk of the capital of Rs. 25,000 had been invested in a firm where the husband of the assessee was a partner and that the said capital was withdrawn only on December 23, 1973, and put in fixed deposit in a bank.

In my view, the Commissioner was justified in holding that the assessee had failed to explain her initial capital of Rs. 16,500 or her income of Rs. 5,100 from such capital. The affairs of the assessee needed further investigation and the Commissioner was justified in passing the impugned order u/s 263(1) of the Act. The fact that in the report of the Inspector, a general observation as to the initial capital of the assessee had been recorded makes no difference to the position. In the case of Pushpa Devi in Taxation Cases Nos. 114 and 115 of 1979 [1988] 173 ITR 446, the report of the Inspector contained similar observations as to the initial capital of the assessee. In spite of that, a Division Bench of this court answered identical questions raised in that reference in favour of the Revenue.

In the facts and circumstances as aforesaid, I am unable to agree with the conclusion of the Tribunal that the impugned order of the Commissioner is based on mere surmises and conjectures. I am also unable to accept the finding of the Tribunal that in setting aside the assessment for the assessment year 1973-74, the Commissioner has acted in a mechanical manner. If the assessments for the earlier assessment years 1971-72 and 1972-73 of the assessee could not be sustained, the subsequent assessment for the year 1973-74, which suffered from the same vice, also could not be sustained on its own.

The only other aspect to be discussed is whether the findings of the Commissioner could lead to the conclusion that the impugned assessments were prejudicial to the interests of the Revenue as the actual income was liable to be assessed in the hands of another person at a higher rate. The point appears to be covered by the decision of the Supreme Court in Smt. Tara Devi Aggarwal Vs. Commissioner of Income Tax, West Bengal, Calcutta, . Even otherwise, it appears to me that further enquiry into the affairs of the assessee might have led to the assessee being assessed on a larger income. In any event, if there were materials to support the conclusion that a wrong person has been assessed on a particular income, the likely presumption would be that such assessment would

be prejudicial to the interests of the Revenue, irrespective of the amount which would be brought to tax ultimately. Irregular assessments are not sustainable under the Income Tax Act.

For the reasons as aforesaid, I answer questions Nos. 2 and 4 both in the negative and also in favour of the Revenue. For the reasons of my answer to questions Nos. 1, 2, 3 and 4, question No. 5, which is a general question, has also to be answered in the negative and in favour of the Revenue.

The references are disposed of accordingly. There will be no order as to costs.

M. P. SINGH J. - I agree.