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(1999) 09 KAR CK 0010

In the Karnataka High Court

Case No : Income Tax R.C. No. 142 of 1995

Commissioner of Income Tax — APPELLANT

Vs

G.M. Dharia — RESPONDENT

Date of Decision : 30-09-1999

Acts Referred:
Income Tax Act, 1961 — Section 147 (a), 185

Citation : (2000) 243 ITR 104

Hon'ble Judges : V.K. Singhal, J;T.N. Vallinayagam, J

Bench : Division Bench

Advocate : E.R. Indra Kumar, for the Appellant; S. Parthasarathi, for the Respondent

Judgement

V.K. Singhal, J.—The Income Tax Appellate Tribunal has referred the following question of law arising out of the order dated January 17, 1994, in respect of the assessment year 1981-82.

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that Shree Trading Corporation (firm) could not be considered to be a benami of the assessee ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that income derived by Shree Trading Corporation could not be included in the individual assessment of the assessee ?"

2. The assessee is an individual. There was a firm by name Shree Trading Corporation which was doing the business separately. It was held that the said firm is a benami firm and accordingly proceedings u/s 147(a) were initiated. In the said firm the wife of the petitioner and the married daughter were partners. There were nine other partners who were friends and employees of Shri G.M. Dharia. In the assessment proceedings of Shree Trading Corporation, the Income Tax Officer found that the firm is not a genuine one and the entire income belonged to Sri G.M. Dharia. The registration claim was refused and the income

was subjected to tax as an unregistered firm. In the case of reassessment proceedings of Sri G.M. Dharia which was reopened it was contended that there were 11 partners in the firm out of which only two belong to the family of Sri G.M. Dharia and the firm had obtained sales tax registration certificate and complied with the statutory obligations of a business concern. The firm was dealing in sugar. The income of the firm cannot be considered as belonging to Sri G.M. Dharia. The Income Tax Officer observed that in the order passed by the Third Income Tax Officer, Belgaum, regarding the genuineness of the firm he had discussed the matter at length and the said matter has become final. The partners were inexperienced and they have obliged Sri G.M. Dharia by signing the partnership deed and, therefore, it was observed that the income of the firm belonged to Sri G.M. Dharia. The Commissioner of Income Tax (Appeals), ''found that the firm was bogus and the partners were benamidars of the appellant and the inclusion of the income of the firm in the hands of the appellant was confirmed. The appeal was dismissed. The Tribunal found that the Income Tax Officer passed a protective assessment in the status of an unregistered firm and in the order u/s 185 it was found that the firm was bogus and sham. The wife and daughter contributed Rs. 5,000 each as capital and the other partners have contributed Rs. 1,000 each and a total capital of the firm was Rs. 19,000. It was found that the circumstances undoubtedly show that Shree Trading Corporation was a bogus one. One partner, Sri G.K. Joshi, has signed the instrument not only for himself but also as representing another partner by name B.G. Shankesh-wari. B.G. Shankeshwari said that he has not signed the paper. It was observed that it was necessary for the Revenue to have shown that G.M. Dharia had invested his funds to trade in the name of a bogus firm. The transactions of the firm were only with the concerns where G.M. Dharia had an interest. The goods were purchased at a low price and sold at a very high price. It was considered that these circumstances do not lead to an inference of benami and at best it could be said that the profits of Shree Trading Corporation were part of the profits which those concerns should have made. It was found that a few circumstances may show that G.M. Dharia had a role in bringing about a spurious company by name Shree Trading Corporation but on that basis an inference of benami cannot be drawn merely on suspicion and surmises. The appeal was allowed.

3. Arguments of both learned counsel for the parties heard.

4. In para. 13 of the order of the Tribunal it was found that the Shree Trading Corporation was a bogus and spurious trading concern. But in paras. 15 and 16 of the order, the Tribunal has not considered the partners to be the benamidars of G.M. Dharia. In the assessment of the firm it was considered to be bogus and all the partners were held benamidars of the asses-see. This position was not contested by the firm. The Commissioner of Income Tax (Appeals) on that basis rejected the contention of the assessee that the income does not belong to him. The Tribunal also agreed that Sri G.M. Dharia was very much aware of the assessment proceedings of the firm, but also came to the conclusion that the

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inference of benami cannot be drawn on suspicion and surmises.

5. On behalf of learned counsel for the assessee it is submitted that the assessee has not contributed any capital and simply because the wife and daughter have made contributions the income arising from the said firm cannot be considered as belonging to the assessee nor could the firm be considered as benami. The wife and daughters should not be treated simply as name-lenders. It is not a registered firm. To whom the income belongs has to be decided on the basis of some evidence. Since there was no material, it could not be considered that the said income belongs to the assessee nor could it be considered to be a benami concern of the assessee.

6. In the order passed by the Tribunal, it was considered that the assessee had the knowledge of the order passed in the case of the firm of Shree Trading Corporation. The order passed u/s 185 has not been challenged and has become final. In view of the finding as reproduced above, the inevitable conclusion which arises is that the firm, Shree Trading Corporation, was a bogus firm which has also been accepted by the Tribunal. The income, therefore, has to be treated as that of Sri G.M. Dharia as he was instrumental in floating the firm and managing its affairs. In these circumstances, we are of the opinion that the Tribunal was not justified in holding that the firm which was proved as a bogus one and in which the assessee had a considerable role in managing the affairs was not a benami of the assessee.

7. The fact that G.M. Dharia had a considerable role in managing the affairs of the firm was not disputed and in the assessment of the firm which was completed on February 24, 1984, as an unregistered firm it was held that the firm was a bogus one and all the partners were benamidars of G.M. Dharia. This finding was not contested by the firm by challenging the said order. Contribution of capital may be one of the factors but the management of the business is another factor. It was found that the business was managed by Sri G.M. Dharia with other partners who had no experience and income of Rs. 51,000 was derived with a capital of Rs. 10,000. The decision given in the case of Commissioner of Income Tax Vs. Standard Mercantile Co., , is based on the particular facts of that case and has no application to the facts of the present case. Once it is considered that the firm was a bogus one, then the person who was managing or controlling the affairs of that firm alone can be considered as the person to whom the income can be considered to belong. The firm was found as not genuine. Signing the instrument by G.K. Joshi for B.G. Shankeshwari also shows that the partners were dummies. The cumulative effect of all the circumstances recorded by the Tribunal is that the firm is bogus and a spurious trading concern. The order of refusal of registration in which the firm was held bogus and the income was considered of G.M. Dharia was not challenged. Sufficient material existed on record. A close intimate nexus between G.M. Dharia and Shree Trading Corporation was established.

8. Normally a finding of benami recorded by Tribunal is of fact but here the

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Tribunal has considered the firm as bogus and spurious. Nothing has come on record to prove that the partners of Shree Trading Corporation were not benamidars of G.M. Dharia. Simply on the basis of investment a different view could not have been taken. The finding of the Tribunal is perverse. As such we are of the view that the Tribunal was not right in law in holding that Shree Trading Corporation (firm) could not be considered to be a benami of the assessee and further it was not right in law in holding that the income derived by Shree Trading Corporation could not be included in the individual assessment of the assessee.

9. Accordingly, the reference is answered in favour of the Department and against the assessee.

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