
(2000) 08 CAL CK 0012

In the Calcutta High Court

Case No : Income-tax Reference No. 47 of 1995

Commissioner of Income Tax

APPELLANT

Vs

J.P. Goal

RESPONDENT

Date of Decision : 14-08-2000

Acts Referred:

Income Tax Act, 1961 — Section 119(3), 132, 132(11), 132(5), 143(3)

Citation : (2001) 167 CTR 180 : (2001) 247 ITR 555

Hon'ble Judges : Y.R. Meena, J;J. Banerjee, J

Bench : Division Bench

Advocate : J.P. Khaitan and C.S. Das, for the Appellant;P.K. Mallick and D. Dev, for the Respondent

Judgement

Y.R. Meena, J.—On an application u/s 256(2) of the Income Tax Act, 1961, this court has directed the Tribunal to refer the following questions for the opinion of this court. The question referred at the instance of the Revenue reads as under :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in setting aside the order of the Commissioner of Income Tax u/s 263 of the Income Tax Act, 1961, and restoring the original assessment order ?"

2. The questions referred at the instance of the assessee read as under :

"(1) Whether, on the facts and in the circumstances of the case, and in view of the order dated August 29, 1984, passed by the learned Commissioner of Income Tax, the Tribunal was justified in holding that the principle of promissory estoppel was not applicable to the said order and as such the same was not binding on the Commissioner of Income Tax who subsequently passed order u/s 263 of the Income Tax Act, 1961 ?

(2) Whether, on the facts and in the circumstances of the case, the order passed u/s 263 of the Income Tax Act, 1961, cancelling the assessment with a direction to make a fresh assessment by holding the said assessment to be erroneous in so far it was prejudicial to the interests of the Revenue was legal and valid as the

said assessment was completed under the order of the earlier Commissioner of Income Tax himself ?

(3) Whether, on the facts and in the circumstances of the case it was legal and valid for the learned Commissioner of Income Tax u/s 263 of the Act to hold the earlier order of the Commissioner as illegal and without jurisdiction on the basis of which the assessment in question was completed and the said assessment to be erroneous and prejudicial to the interests of the Revenue ?"

3. On a scrutiny of the assessment for the assessment year 1981-82, the Commissioner of Income Tax was of the view that the assessment order for the assessment year 1981-82 is erroneous and prejudicial to the interests of the Revenue. Therefore, he issued the show-cause notice to the assessee u/s 263 of the Act of 1961. On receipt of reply to that show-cause notice, the Commissioner of Income Tax has considered the reply and in his opinion the assessment order of the Income Tax Officer u/s 143(3) of the Income Tax Act, 1961, for the assessment year 1981-82 is erroneous and prejudicial to the interests of the Revenue. He cancelled that order with the direction to make the fresh assessment order in the light of the discussion made in his order that is the order of the Commissioner of Income Tax. That order has been challenged by the assessee, before the Tribunal. After considering the various submissions of both the sides, the Tribunal has restored the order of the Income Tax Officer.

4. In appeal before us learned counsel for the Revenue, Mr. Mallick submits that the Tribunal has not properly appreciated the facts and when no inquiry was made by the Income Tax Officer, the Commissioner of Income Tax has rightly set aside the assessment order for the assessment year 1981-82. Not only that, the assessee has also changed his stand, which he has taken at the time of raid, on cash Rs. 5,09,000 found at the time of the raid.

5. Learned counsel for the assessee, Mr. Khaitan, submits that the material found at the time of the raid has been properly explained and the Tribunal has considered all the items, in detail with supporting evidence and then only come to the conclusion that there is nothing wrong in the order of the Income Tax Officer. He has thoroughly investigated the case and he has also complied with the direction of the then Commissioner of Income Tax for investigation and in compliance with his direction the assessment was made. So far as cash of Rs. 5,09,000 is concerned there was some misunderstanding. The cash was for payment to one Bishan Dayal Goel and from where the cash was received its source has been explained, the creditors have been examined and they have confirmed the loan to Goel Industries, wherein the assessee-Hindu undivided family is one of the partners.

6. The assessee filed its return of income for the assessment year under appeal disclosing a total income of Rs. 42,170. This was, however, revised by a return filed on March 2, 1984 to Rs. 42,160. The return was further revised and the income disclosed was Rs. 1,20,400. The income was assessed at Rs. 1,21,550.

7. On a scrutiny of the assessment proceedings for the assessment year 1981-82 in the case of this assessee, the Commissioner of Income Tax noticed that there was a search u/s 132 of the Income Tax Act, 1961, at the premises of the assessee and during the search, the search party seized cash of Rs. 5,09,000, primary gold of Rs. 1,23,178, silver bars Rs. 23,976, six pieces guineas worth Rs. 6,500 and jewellery and ornaments valued at Rs. 82,736. According to the Commissioner of Income Tax, the Assessing Officer has not properly verified the facts, therefore, the order of the Income Tax Officer was erroneous and prejudicial to the interests of the Revenue.

8. Before the Tribunal the argument put forth was that when the assessment u/s 143(3) was made as per the directions of the Commissioner of Income Tax which was given in a letter dated August 29, 1984, the successor-Commissioner of Income Tax cannot question that assessment u/s 263 of the Act. Counsel for the assessee also advanced the argument before the Tribunal that the doctrine of promissory estoppel should be invoked. The argument was also advanced that in view of the provisions of Section 119, Sub-section (3) of the Act when the Assessing Officer has made the assessment as per instructions of the Commissioner of Income Tax in writing, that order cannot be said erroneous. Both the arguments were negated by the Tribunal and the Tribunal has taken the view that in spite of the direction of the Commissioner of Income Tax, the assessment was made u/s 143(3) can be revised u/s 263 of the Act by the successor of the then Commissioner of Income Tax.

9. On the merits the Tribunal has considered elaborately all the arguments and details explaining the assets seized during the search. The Tribunal noticed that the Commissioner of Income Tax has considered the cash found during the course of search and also referred to the decision of the Income Tax Officer on the primary gold but has not made any comment on the guineas and silver bars. The Tribunal, therefore, took the view that the Commissioner of Income Tax did not want to say that the assessment order was erroneous on account of these two items. The Tribunal also noticed that the inclusion of amounts in the bank account of some other persons has not been referred to in the show-cause notice issued on May 20, 1985, and July 1, 1986. Therefore, there was no opportunity to the assessee to explain regarding the amounts in the bank accounts of some other persons regarding silver bars and guineas, reply was filed.

10. In the reply to the show-cause notice u/s 263 it is explained that the silver bars are assessed by the Assessing Officer in the hands of the wife of the karta of the assessee-Hindu undivided family for the assess- merit year 1981-82, though the assessee claimed before the Assessing Officer that the source of the silver bars or guineas has been explained. That was not accepted by the Assessing Officer and the value of those silver bars was treated the income of the assessee's wife and assessed in the hands of the assessee's wife.

11. The amount in the bank accounts were not standing in the names of the assessee but they were in the name of some other persons. The case of the

Commissioner of Income Tax was that these are the benami accounts of the assessee. The Tribunal found that when no material was brought on record how can it be said that these are the benami accounts of the assessee. Therefore, the Tribunal found that on that account it cannot be said that the assessment for the year 1981-82, u/s 143(3) was erroneous.

12. In the last, the Tribunal has considered the two big items, that is cash of Rs. 5,09,000 found at the time of search and primary gold weighing 784.500 grams valued at Rs. 1,23,178.

13. The assessee has submitted before the Tribunal that though before passing an order u/s 132(5), the assessee explained the source of this amount but it was not accepted, again in appeal before the Commissioner of Income Tax u/s 132(11) the details of the cash and primary gold were explained but that was also not accepted.

14. In the regular assessment u/s 143(3), the required details were furnished and source of the cash of Rs. 5,07,220 was explained that has been given at pages 61-62 of the paper book in an order of the Tribunal. The Tribunal also found that this amount was for payment to Bishan Dayal Goel a proprietor of a firm, Steel Trading Company, for supply of the steel.

15. The Tribunal has considered all these details and materials on record produced before it regarding cash of Rs. 5,07,220 and primary gold worth Rs. 1,23,178 and finally held that the conclusion on the basis of the material on record, it cannot be said that the order of the Income Tax Officer was erroneous nor prejudicial to the interests of the Revenue. The relevant portion of the order of the Tribunal reads as under :

"The explanation for possession of the primary gold was that the karta of the assessee had got his wife's jewellery given at the time of marriage, melted at Delhi through his father-in-law and had kept the primary gold thus obtained with him for the purpose of making new jewellery at Calcutta. In the summary order passed u/s 132(5), these explanations were not accepted. An appeal was filed u/s 132(11) to the Commissioner of Income Tax. In the appeal proceedings also the assessee furnished a detailed explanation both for the cash and the primary gold. It was explained before the Commissioner of Income Tax in proceedings u/s 132(11) that the cash was drawn from Goel Industries, a firm in which the assessee-Hindu undivided family was a partner, on September 5, 1980, for payment to Bishan Dayal Goel of Steel Trading Company for supplied. The amount was received by Goel Industries from various persons as stated earlier (page 77 of the paper book). In support of these receipts, cash book extracts of Goel Industries for the period August 14, 1980, to November 14, 1980, were also filed. Letters of confirmation from the persons who gave the monies were also furnished. They are to be found at pages 154 to 158 of the paper book. Statements were taken from the employees/partners/proprietors of the concerns which gave monies to Goel Industries. These statements are found at pages 144

to 152 of the paper book. All the persons have affirmed having given monies to Goel Industries. These statements were taken in the months of February and December, 1983, earlier to the issue of the instruction by the Commissioner of Income Tax on April 29, 1984. The order-sheet entries in the case of Goel Industries, a certified copy of which was filed before us as part of the paper book at pages 140 to 148, for the assessment year 1981-82, clearly show the detailed enquiry undertaken by the Income Tax Officer to ascertain the truth of the assessee's version regarding the receipt of monies by the firm, Goel Industries, from various persons for paying Steel Trading Corporation. At the time the statements from these persons were taken, the assessee had not approached the Commissioner of Income Tax and the latter was nowhere in the picture. Regarding the primary gold the assessee's version was considered by the Assessing Officer in the proceedings u/s 132(5) as well as by the Commissioner of Income Tax in appeal u/s 132(11). Both of them did not accept the assessee's explanation for the acquisition of the primary gold. Even the Commissioner of Income Tax who issued instructions vide letter dated August 29, 1984, did not accept the assessee's explanation, but held that the assessee is assessable in respect of the same. He, however, directed that the entire value of Rs. 1,23,178 be spread over and assessed in two assessment years 1980-81 and 1981-82. Though this part of his instructions is seemingly in favour of the assessee, in fact it is seen from the returns for the assessment years 1980-81 and 1981-82 (pages 30 and 31 of the paper book) that in respect of both the years the income declared was more than Rs. 1 lakh and it may not really matter whether the entire primary gold is assessed in one year or more than one year. At any rate, the Assessing Officer by spreading the value of the primary gold over two assessment years for the purpose of assessment cannot be said to have committed an error, nor can he be stated to have acted to the prejudice of the Revenue. It is not as if the value of the primary gold has not been brought to tax in the assessee's hands at all. Reverting to the cash seized by the Department, the way in which the case has proceeded from the date of search, as narrated above with reference to the relevant portions of the paper book, clearly shows that a detailed enquiry had been held by the Assessing Officer of his own accord, even before the assessee moved a petition to the Commissioner of Income Tax on April 20, 1984. It may be that another Assessing Officer might have come to a different conclusion regarding the genuineness of the amounts stated to have been received by Goel Industries from various persons or regarding the year of assessability of the primary gold in the hands of the assessee. But that is far different from saying that the Assessing Officer had not held any enquiry before completing the assessment in the manner in which he did. The successor-Commissioner of Income Tax in the order u/s 263 has himself held that notwithstanding the instructions issued by the predecessor-Commissioner of Income Tax, the assessment order is one passed by the Assessing Officer only for which he alone should take responsibility. In fact we find from the extracts of the order-sheet in the case of Goel Industries for the assessment year 1981-82 that even after the predecessor-Commissioner of Income Tax issued instructions on

August 29, 1984, the Assessing Officer had carried out detailed enquiries and verification of the assessee's contentions and this is borne out by the entries made therein on October 29, 1984, November 12, 1984, December 12, 1984, February 4, 1985, February 11, 1985, February 18, 1985, February 20, 1985, February 22, 1985, February 25, 1985 and February 28, 1985. A perusal of these entries further shows that the Assessing Officer continued the scrutiny of the seized books of account even after the issue of instructions by the Commissioner of Income Tax on August 29, 1984. It cannot, therefore, be stated that the Assessing Officer had blindly followed the instructions of the Commissioner of Income Tax vide letter dated August 29, 1984. Even ignoring, as held by the Commissioner of Income Tax in his order u/s 263, the instructions issued by the predecessor-Commissioner of Income Tax on August 29, 1984 we are still left with the impression, that the criticism that the assessment has been completed without enquiry or verification is unjustified and if we may say so, with respect, uncharitable. The material produced before us does not bear out the criticism and is positively against such a conclusion."

16. It is true that the explanation of the assessee was not accepted before passing orders u/s 132(5) and the order u/s 132(11) of the Act of 1961, but that does not bar the assessee to produce the relevant material before the Assessing Officer in a regular assessment u/s 143(3) of the Act. When those details are furnished the enquiries were made in detail as referred to by the Tribunal referring to various pages of the paper book submitted before the Tribunal and, ultimately, the Tribunal came to the conclusion that the order of the Income Tax Officer was not erroneous. Detailed inquiry was made not only by the Assessing Officer on his own but detailed enquiry was made also as per the direction of the then Commissioner of Income Tax vide his letter dated August 29, 1984, addressed to the Assessing Officer.

17. Whether the proper inquiry was made by the Assessing Officer, whether the assessee has explained the income found on the basis of seized material is a basic question of fact and if a possible view has been taken for finding of the fact, though the other view is possible, it cannot be said that the finding of the Tribunal is perverse. In our opinion, the Tribunal has not taken the impossible view on finding of facts, on the material available, that the assessee has explained the income based on the seized material and there was a detailed inquiry by the Assessing Officer before completing the assessment for the assessment year 1981-82.

18. Considering these facts we answer the question referred, at the instance of the Revenue, in the affirmative, that is, in favour of the assessee and against the Revenue.

19. Learned counsel for the assessee submits that in case the question referred at the instance of the Revenue answered in the affirmative, the questions referred at the instance of the assessee need not be answered. As we have answered the question referred at the instance of the Revenue in the affirmative,

that is, in favour of the assessee and against the Revenue, we decline to answer the questions referred at the instance of the assessee.

20. The reference application is disposed of as aforesaid.