

(1988) 07 CAL CK 0056

In the Calcutta High Court

Case No : Income-tax Reference No. 78 of 1979

Commissioner of Income Tax

APPELLANT

Vs

Kashinath Dutta

RESPONDENT

Date of Decision : 12-07-1988

Acts Referred:

Income Tax Act, 1961 — Section 256, 68

Citation : (1989) 77 CTR 235 : (1989) 180 ITR 221 : (1989) 45 TAXMAN 4

Hon'ble Judges : K.M. Yusuf, J;Ajit K. Sengupta, J

Bench : Division Bench

Judgement

A.K. Sengupta, J.—At the instance of the Commissioner, West Bengal-IV, the following question of law has been referred to this court u/s 256(2) of the Income Tax Act, 1961 ("the Act"), for the assessment year 1967-68 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the assessee is entitled to claim the benefit of intangible additions or additions in respect of un explained loans made in the assessments of the firms, wherein the assessee is a partner, to explain the source of cash credits of Rs. 35,601 and in that view reducing the addition by Rs. 20,000 ?"

2. The facts relating to this reference are stated hereinafter.

3. In the relevant assessment for the assessment year 1967-68, the total income of the assessee was computed at Rs. 1,21,670 inclusive of Rs. 47,374. He was a partner of five firms, namely, Biswanath Dutta, Biswanath Dutta and Co., Biswanath Cold Storage, Kashinath Cold Storage and Ashutosh Cold Storage.

4. In the course of the assessment proceedings, the Income Tax Officer noticed in the assessee's personal account with Biswanath Cold Storage a credit of Rs. 11,713. This sum was claimed to represent the assessee's share in the intangible addition of Rs. 50,000 in the assessment of the said firm. This was not acceptable to the Income Tax Officer inasmuch as the said credit was not given

by the firm in the assessee's capital account nor did he maintain any books for such account. Consequently, the sum of Rs. 11,713 was held to be the concealed income of the assessee from some undisclosed sources.

5. The balance of Rs. 35,601 was declared in Part II of the relevant return of income claiming the same to be not taxable. The Income Tax Officer found it stated there that in the books of account of Kashinath Cold Storage, certain deposits in the names of third parties amounting to Rs. 33,900 were claimed to represent the assessee's own money. It was also claimed therein that the said deposits were made out of past taxed income. Similarly, the sum of Rs. 1,000 was found to be appearing in the capital account of the assessee in the books of Ashutosh Cold Storage and the assessee was found to have claimed it in Part II of the said return to have been credited out of past taxed income. The Income Tax Officer rejected this contention on the ground that there was no evidence and that the assessee ever maintained any personal books of account. But as the latter himself had declared in the return the said sums as his income, the Income Tax Officer included the entire amount of Rs. 35,601 as the assessee's concealed income from other sources. Altogether Rs. 47,314 was figuring in the assessment.

6. In appeal, the Appellate Assistant Commissioner upheld the addition of the entire amount. It was contended before him on behalf of the assessee that in the assessment of Biswanath Cold Storage, a sum of Rs. 50,000 was included after being disclosed by the said firm as representing bogus hundi loans. The disputed amount of Rs. 11,713 was claimed to represent the assessee's share in the said sum of Rs. 50,000. According to the Appellate Assistant Commissioner, unless the said sum of Rs. 50,000 was allocated among the partners, the assessee, being a partner, should not be deemed to be in possession of an equivalent amount representing his share of the firm's assessed income. The addition was, therefore, upheld.

7. As regards the balance, the Appellate Assistant Commissioner, after discussing the materials extensively, refused to admit the assessee's claim to the effect that the disputed amounts represented the latter's share in the intangible additions in the assessment of the two firms made in respect of it in the earlier assessment years. According to him, no intangible additions were made in the case of the assessee in the past assessments. The intangible additions for which the appellant claimed credit were allegedly made in the case of other assesseees and those assesseees had not made any claim that the intangible additions had placed money in their hands. The other assesseees had not brought any cash credits in their books and they have not divided any such cash and given a part thereof to the assessee. It was also observed that the firm in which the deposits were made by the assessee during the relevant year had no intangible additions in its own case in the past assessments. Consequently, the addition of Rs. 35,601 was upheld.

8. Being aggrieved by the decision of the Appellate Assistant Commissioner, the assessee preferred an appeal to the Tribunal. With regard to the addition of Rs.

11,716 (not being the subject-matter of this reference), the Tribunal found the same to represent the assessee's share in, the hundi loans of Rs. 50,000 appearing in the books of Biswanath Cold Storage for the assessment year 1961-62 which were admittedly the income of the said firm. It was found that, as at the end of 1373 B. S. relevant to the assessment year 1967-68, the said sum of Rs. 50,000 was distributed amongst the four partners in their respective profit-sharing ratio and credited in their respective capital accounts. Since the same amount could not be assessed twice as income, the Tribunal deleted the addition of Rs. 11,713.

9. In regard to the disputed sum of Rs. 35,601, it was the assessee's case before the Tribunal that he was entitled to the benefits of intangible additions made in the past assessments of the three firms out of the five firms of which he was the partner in the ratio of his share in the said three firms, for the purpose of explaining the nature and sources of the deposits either in his name or in the names of others which was owned up by him in the course of the assessment proceedings. The deposits were appearing in the books of Kashinath Cold Storage and Ashutosh Cold Storage. The intangible additions in the share of the assessee were claimed at Rs. 37,590 (Biswanath Cold Storage Rs. 15,154, Biswanath Dutta and Co. Rs. 5,570 and Biswanath Dutta Rs. 16,866).

10. On the other hand, the departmental representative referred to the assessee's declaration in Part II of the return and particularly to the fact that the sum of Rs. 34,600 included Rs. 33,900 representing loans in the names of seven parties appearing in the books of Kashinath Cold Storage. According to him, the respective firms in whose assessments the additions were made did not credit intangible additions in the assessee's share in his account nor was there any evidence to link up the intangible additions to the deposits. It was also contended on behalf of the Revenue that there was a time-lag between the assessment years in which the intangible additions were appearing and the dates of deposits.

11. The Tribunal, on a consideration of the facts and circumstances, held that the assessee is entitled to claim the benefit of intangible additions or additions in respect of unexplained loans made in the assessment of the firms.

12. Keeping in view the time-lag and the quantum of drawings, the Tribunal was of the opinion that the assessee should have been given at least the benefit of Rs. 20,000 out of the intangible addition of Rs. 37,390 to explain the source of cash credits of Rs. 35,601. The only question is whether the assessee is entitled to claim the benefit of intangible additions or additions in respect of unexplained loans made in the accounts of the firms.

13. In *Anantharam Veerasinghaiah and Co. Vs. Commissioner of Income Tax , Andhra Pradesh*, , the Supreme Court considered the nature and character of intangible additions and held thus :

"... it can hardly be denied that when an "intangible" addition is made to the

book profits during an assessment proceeding, it is on the basis that the amount represented by that addition constitutes the undisclosed income of the assessee. That income, although commonly described as "intangible", is as much a part of his real income as that disclosed by his account books. It has the same concrete existence. It could be available to the assessee as the book profits could be."

14. Whether or not unexplained cash deficits and cash credits can be reasonably attributed to a pre-existing fund of concealed profit is a question to be decided by the Tribunal on a consideration of the relevant facts. The contention of the Revenue is not that the Tribunal did not take into account all the relevant facts. The main contention was that the intangible additions made in the accounts of the firm might not have been available with the partners. The Tribunal held that the firms were assessed as unregistered firms. The capital of the unregistered firm including its profits was reduced to the extent of its taxability. The Tribunal was, therefore, of the view that it was not necessary that the firm should distribute the intangible additions made in the assessments amongst the partners in its books of account for entitling its partners to claim the benefit of the intangible addition. It may be mentioned that the finding of the Tribunal has not been challenged as perverse.

15. For the reasons aforesaid, we answer the question in this reference in the affirmative and in favour of the assessee.

16. There will be no order as to costs.

K.M. Yusuf, J.

17. I agree.