
(1970) 02 AP CK 0004

In the Andhra Pradesh High Court

Case No : Case Referred No. 3 of 1968

Commissioner of Income Tax

APPELLANT

Vs

Krishna Mining Co.

RESPONDENT

Date of Decision : 27-02-1970

Acts Referred:

Income Tax Act, 1922 — Section 13, 6, 66, 66(2)

Citation : (1972) 83 ITR 860

Hon'ble Judges : Madhava Reddy, J;Chinnapa Reddy, J

Bench : Division Bench

Advocate : T. Anantababu, for the Appellant; M. Uttamreddy and K. Venkatramana Reddy, for the Respondent

Judgement

Chinnappa Reddy, J.—The assessee is a firm carrying on business in mica. In the assessment year 1958-59 the Income Tax Officer noticed that there was a sudden fall in the production of cut mica during the months of September, October and November, for which there was no satisfactory explanation by the assessee. On the basis of the figures for the previous and subsequent months as disclosed by the books of the assessee, the Income Tax Officer came to the conclusion that the production of cut mica was understated and estimated the value of such deficit production at Rs. 1,20,000. The Income Tax Officer also noticed that there were three cash credits on June 11, 1957, June 25, 1957, and August 6, 1957, amounting to Rs. 60,000. The assessee's explanation that these amounts were borrowed from one Arjundas Pokardas was not accepted by the Income Tax Officer. The Income Tax Officer also disallowed a sum of Rs. 1,350 said to have been paid to Arjundas Pokardas by way of interest. He treated the sum of Rs. 61,350 as the income of the assessee from " other sources ". He thus added a total sum of Rs. 1,81,350 to the income returned by the assessee. On appeal by the assessee, the Assistant Commissioners upheld the finding of the Income Tax Officer, but thought that the addition of Rs. 1,20,000 and the addition of Rs. 61,350 may be merged. He said :

"In the alternative, it is argued by the representative that as an addition of Rs. 1,20,000 has been made as value of deficit yield of mica, these two additions may be merged and separate additions are not necessary. I think this claim is justified, and, hence, this addition of Rs. 60,000 together with interest thereon will be deleted. The assessee gets a relief of Rs. 61,350,"

2. Both the department and the assessee preferred appeals to the Income Tax Appellate Tribunal. The Tribunal held that the yield of cut mica during the months of September, October and November was not correctly brought out in the books of the assessee and that an estimate was called for. The Tribunal estimated the value of the deficit yield at Rs. 60,000. The Tribunal also found that the alleged borrowals from Arjundas Pokardas were not true and that the cash credits represented income receipts. At the end of paragraph 14 of its order the Tribunal recorded the following finding:

" The result is that the source of this money is unexplained and it has to be added as income from undisclosed sources. "

3. The Tribunal then went on to consider the question whether the sum of Rs. 60,000 representing the deficit yield and the sum of Rs. 60,000 representing the cash credits should be separately added or merged into one another. The Tribunal stated that there was "some truth in the argument" of the department that the cash credits which occurred in June, July and August could not relate to the profits arising out of the suppressed production, but nonetheless held that the amounts need not be separately added. The Tribunal said:

" The basic finding we have given is that the results disclosed by the assessee cannot be accepted. Though we have attempted to locate where and when this suppression occurred it can only be in the nature of a guess and cannot be treated as conclusive for all the purposes. Unless the circumstances are clear and compelling to show that the monies did not come from the business, they need not be added separately. In a case of this type where the assessee is a firm, where there is no other ostensible business or source and where the correctness of the books of account and the results disclosed thereby are found not acceptable, it is only reasonable to consider the cash credits as attributable to the concealed income from the business, i.e., undisclosed income from the disclosed source, rather than as an item of income from undisclosed sources. In this view, the decision of the Supreme Court in KALE KHAN MOHAMMAD HANIF Vs. COMMISSIONER OF Income Tax, MADHYA PRADESH AND BHOPAL., , relied upon by the departmental representative, does not help him. We, therefore, agree with the Appellate Assistant Commissioner that a separate addition is not called for in respect of the cash credit. "

4. The department requested the Tribunal to state a case and refer the following two questions to the High Court for its decision :

(1) Whether, on the facts and in the circumstances of the case, was there any material for the Tribunal to come to the conclusion that the source for the credits

of Rs. 60,000 appearing in the account of Arjundas Pokardas was from disclosed sources, viz., business ?

(2) Whether, on the facts and in the circumstances of the case, was the Appellate Tribunal correct in law in holding that the cash credits were attributable to the concealed income from business when it was not the assessee's case that there was suppression of business income and when it was unable to conclude that the suppression of production occurred before September to November in the previous year ? "

5. The principal question raised by the department before the Tribunal when requesting the latter to state a case was whether the Tribunal having found that the cash credits were unexplained, was justified in holding that there should be only one addition of Rs. 60,000 notwithstanding the fact that the suppression of yield occurred during a period much later than the period during which the cash credits appeared. The Tribunal was of the opinion that the question raised by the Commissioner was a question of law but that the first question suggested by the Commissioner was sufficient to cover the issue between the parties. The Tribunal stated :

" The only question that is raised by the Commissioner is whether the Tribunal having held that the cash credits were unexplained, it was justified in holding that there should be only one addition of Rs. 60,000 notwithstanding that the indications were that the suppression of business income had occurred during a period much later than the period during which the cash credits appeared. We think that the question as raised by the Commissioner is certainly a question of law. However, we do not think that it is necessary to refer two separate questions, for the second question is completely covered by and is only an expansion of the argument of the department's stand on question No. 1. We are, therefore, of the opinion that question No. 1 as posed in the Commissioner's applications arises out of the order of the Tribunal and should be referred to the High Court. "

6. We are of opinion that while the statement of case contains all the necessary facts and particulars the question as formulated and referred by the Tribunal does not bring out the real issue between the parties. We think it is necessary to reformulate the question as follows:

" Whether, on the facts arid in the circumstances of the case, the Tribunal was justified in holding that one addition of Rs. 60,000 need only be made ?"

7. The learned counsel for the department submitted that the Tribunal was in error in treating the cash credits as income from business instead of income from undisclosed sources. He pointed out that at one stage the Tribunal itself found that it was income from undisclosed sources. He urged that the finding that it was income from business was vitiated by the onus being wrongly laid on the department. He further contended that, in any case, the cash credits could not be related to the suppressed production and, therefore, both the items should be

added to the income returned by the assessee.

8. The learned counsel for the assessee contended that it was only where the Tribunal was unable to bring the cash credits under any other head that they could be brought under the head of "Income from other sources". Where there was some material to bring it under the head "Profits and gains of business", a finding by the Tribunal that it was income from business would be a finding of fact. He urged that the fact that the cash credits found a place in the business accounts of the assessee and the fact that the assessee was a firm and not an individual are relevant facts on the basis of which the Tribunal was entitled to arrive, at the conclusion that the cash credits represented income from business and not income from other sources.

9. In *A. Govindarajulu Mudaliar Vs. Commissioner of Income Tax, Hyderabad*, , the Supreme Court observed:

"There is ample authority for the position that where an assessee fails to prove satisfactorily the source and nature of certain amount of cash received during the accounting year, the Income Tax Officer is entitled to draw the inference that the receipts are of an assessable nature."

10. In *KALE KHAN MOHAMMAD HANIF Vs. COMMISSIONER OF Income Tax, MADHYA PRADESH AND BHOPAL.*, , the Supreme Court said :

"It is well-established that the onus of proving the source of a sum of money found to have been received by the assessee is on him. If he disputes liability for tax, it is for him to show either that the receipt was not income or that if it was, it was exempt from taxation under the provisions of the Act. In the absence of such proof, the Income Tax Officer is entitled to treat it as taxable income."

11. The Supreme Court then proceeded to state that the taxing authorities were not precluded from treating the amounts of the credit entries as income from undisclosed sources simply because the entries appeared in the books of a business whose income they had previously computed on a percentage basis.

12. In *Smt. Srilekha Banerjee and Others Vs. Commissioner of Income Tax, Bihar and Orissa*, , the Supreme Court observed:

"The very words "an undisclosed source" show that the disclosure must come from the assessee and not from the department."

13. In *Commissioner of Income Tax, Uttar Pradesh Vs. Devi Prasad Vishwanath Prasad*, , the Supreme Court stated :

"There is nothing in law which prevents the Income Tax Officer in an appropriate case in taxing both the cash credit, the source and nature of which is not satisfactorily explained, and the business income estimated by him u/s 13 of the Income Tax Act, after rejecting the books of account of the assessee as unreliable ... Where there is an unexplained cash credit, it is open to the Income Tax Officer to hold that it is income of the assessee and no further burden lies on

the Income Tax Officer to show that that income is from any particular source. It is for the assessee to prove that even if the cash credit represents income it is income from a source which has already been taxed."

14. It is clear from these decisions that the onus of establishing the nature of a cash credit is on the assessee and, if he fails to offer a reasonable explanation, the Income Tax Officer may presume that it represents an "income receipt". So too, the onus of proving that such income receipt does not fall under the head "income from other sources" is on the assessee. If the assessee does not place any satisfactory material before the Income Tax Officer to enable him to arrive at a contrary conclusion, the Income Tax Officer may presume that the cash credit falls under the head "income from other sources". The presumption that an unexplained cash credit is an income/ receipt and the further presumption that it falls under the head "income from other sources" are presumptions which flow naturally from the circumstances that all facts which can establish the nature and source of the cash credit are peculiarly within the knowledge of the assessee. It may be that the onus of displacing the presumptions may be heavy in some cases and light in others, depending on the facts and circumstances of the case. But, the presumptions are there and the burden of rebutting the presumptions is on the assessee. In *Parimisetti Seetharamamma Vs. Commissioner of Income Tax, Hyderabad*, their Lordships of the Supreme Court pointed out that a conclusion recorded by the Income Tax Appellate Tribunal by wrongfully throwing the burden of proof on the assessee cannot be regarded as binding upon the High Court u/s 66 of the Income Tax Act. It follows, conversely, that a conclusion recorded by the Tribunal by wrongfully throwing the burden of proof upon the department cannot also be regarded as binding upon the High Court in a reference u/s 66 of the Income Tax Act. In the present case, while the authorities are clear that the burden of proving that the cash credits do not come under the head "income from other sources" was on the assessee, the Tribunal squarely threw the burden on the department and said :

" Unless the circumstances are clear and compelling to show that the monies did not come from the business they need not be added separately. In a case of this type where the assessee is a firm, where there is no ostensible business or source and where the correctness of the books of account and the results disclosed thereby are found not acceptable, it is only reasonable to consider the cash credits as attributable to the concealed income from the business, i.e., undisclosed income from the disclosed source, rather than as an item of income from undisclosed sources."

15. The Tribunal clearly misdirected itself in placing the onus of establishing that the income came under one head or the other on the department. The finding of the Tribunal is therefore not binding on us. We are satisfied that the circumstances pointed out by the learned counsel for the assessee, namely, that the cash credits appeared in the books of the assessee and that the assessee is a firm are not sufficient to displace the presumption that the cash credits represent

income from other sources. We are also of the view that while the question whether a cash credit represents an income receipt or a capital receipt may perhaps be a question, whether it falls under one or other of the heads of income specified in Section 6 of the Income Tax Act, 1922, is undoubtedly a mixed question of fact and law and the High Court is not bound by the conclusion of the Tribunal. We are not prepared to agree with the learned counsel for the assessee that the question is one of fact.

16. The learned counsel for the assessee relied on a decision of their Lordships of the Supreme Court in *Lakshmichand Baijnath Vs. The Commissioner of Income Tax, West Bengal*, . The question referred by the Tribunal to the High Court was whether the taxing authorities could legally hold that an amount of Rs. 2,30,346 which represented certain unexplained cash credits was undisclosed profits of the assessee. The question was answered by the High Court in favour of the department and their Lordships of the Supreme Court affirmed the judgment of the High Court. Before their Lordships of the Supreme Court a further question was sought to be raised that the amount could not be subjected to the levy of excess profits tax without a further finding that the amount represented a business income. Their Lordships, while pointing out that the question was not one of the questions referred u/s 66(2), observed :

" When an amount is credited in business books it is not an unreasonable inference to draw that it is a receipt from business."

17. Their Lordships did not intend to lay down that such an inference was legitimate and inevitable in all cases. It must depend on the facts and circumstances of the case having regard to the onus and presumption to which we have already referred.

18. Earlier, we referred to the decisions of their Lordships of the Supreme Court in *Kale Khan Mohammad Hanif v. Commissioner of Income Tax and Commissioner of Income Tax v. Devi Prasad Vishwanath Prasad*, where it was pointed out that it was open to an Income Tax Officer in an appropriate case to tax both the cash credit, the source and nature of which was not satisfactorily explained and the business income estimated by him u/s 13 of the Income Tax Act. Therefore, the mere fact that in the present case the Income Tax Officer estimated the income of the assessee would not preclude him from adding the cash credit to the income as estimated by him. In the present case the Income Tax Officer accepted the results shown in the books of the company for all the months except September, October and November during which period there was an unexplained fall in the production of cut mica. The yield of cut mica had to be estimated only for the months of September, October and November. The cash credits appeared in the months of June, July and August and, therefore, could not possibly be connected with the suppressed yield of cut mica in the months of September, October and November. If the cash credits had appeared in the later months it might have been permissible for the Tribunal to treat the cash credits as representing the income from the suppressed yield of cut mica. But the cash

credits appeared in an earlier period and, therefore, could not relate to the suppressed yield of mica. The Tribunal also recognized the force of this circumstance, but put a gloss upon it stating that their basic finding was that the results disclosed by the assessee could not be accepted and that any attempt by them to locate where and when the suppression occurred would only be in the nature of a guess. As pointed out by us the suppression, according to their finding, was only in the months of September, October and November while the cash credits appeared in the months of June, July and August. We have no hesitation in coming to the conclusion that the amount of Rs. 60,000 representing cash credits and the amount of Rs. 60,000 representing suppressed yield of mica should be separately added. We, therefore, answer the question as reformulated by us in favour of the department. The department is entitled to its costs. Advocate's fee Rs. 250.