
(2010) 08 KAR CK 0115

In the Karnataka High Court

Case No : ITRC No"s. 101 to 103 and 119 of 1999

Commissioner of Income Tax

APPELLANT

Vs

K.S. Dattatreya

RESPONDENT

Date of Decision : 10-08-2010

Acts Referred:

Income Tax Act, 1961 — Section 132 (4), 68

Citation : (2011) 241 CTR 227 : (2011) 3 KCCR 260 SN : (2011) 197 TAXMAN 151

Hon'ble Judges : N. Kumar, J;H.S. Kempanna, J

Bench : Division Bench

Advocate : M.V. Seshachala, for the Appellant; K.N. Phanindra, for the Respondent

Final Decision : Allowed

Judgement

1. This (ITRC No. 119/99) reference is at the instance of the revenue, by the Tribunal.

2. The questions of law referred are as under:

1. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the amount of Rs. 1.35 lakhs should be assessed in the hand of Venkatesh Dutt or in the hands of the Assessee or any other person ?

2. Whether on the facts and in the circumstances of the case, the ITAT was right in law in holding that the Commissioner of Income Tax (Appeals) has no jurisdiction to consider the genuineness of the cash credit in the name of Raj Naik?

3. Whether on the facts and in the circumstances of the case, ITAT was right in law in setting aside the enhancement made by the CIT(A) as illegal ?

3. The Assessee is an individual having agricultural operations and also a share of income as partner from six different firms mostly engaged in liquor business

as excise contractors. There was a search and seizure operations in the residential premises and business premises of the Assessee on 7-6-1985 which resulted in discovery of a bank pass-book of the Assessee with Canara Bank, Langford Town Branch, showing inter alia, the following credits on three different dates in the month of May 1985:

on 2-5-1995 - Rs. 50,00,000.00

on 13-5-1995 - Rs. 50,00,000.00

on 16-5-1995 - Rs. 35,00,000.00

Total

Rs. 1,35,00,000.00

4. In the statement recorded during the course of the search, the Assessee stated that he was not aware of the sources of the money but that his son K. Venkatesh Dutt had arranged the fund and knew everything about it. The credit entries were found to be realisation of demand draft in favour of the Assessee purchased by one P.J. Fernandez, 133, Brigade Road, Bangalore. The Assessee even went on to say that his son K. Venkatesh Dutt arranged and that he remembered to have signed a document. When contacted, P.J. Fernandez, originally confirmed that he advanced the amounts by borrowing from Sri Srikanta Dutta Wodeyar. Sri Wodeyar also confirmed this. However, on 5-7-1985 in the course of a statement recorded u/s 132(4), P.J. Fernandez categorically denied that he advanced the sum of Rs. 1.35 crores to the Assessee. He added that he only lent his name to the Assessee to help him. Sri Wodeyar also reiterated from his earlier stand. The statement of P.J. Fernandez recorded on 5-7-1985 was shown to the Assessee on 18-1-1988. The Assessee's son, K. Venkatesh Dutt was also confronted with the said statement. K. Venkatesh Dutt in his statement on 18-8-1986 stated that his father only knew about the loans. In those circumstances, the Assessing Officer held that the explanation offered by the Assessee is not satisfactory. Even in the statement filed with the return, the sum of Rs. 1.35 crores is shown as credits from P.J. Fernandez. Even in letter dated 24-2-1989, it is stated that the amounts were received from P.J. Fernandez. However, it was stated that the sum of Rs. 1,35,00,000 received from P.J. Fernandez and credited in the books of the Assessee is being offered as income of M/s. Intercorp Associates in the hands of K. Venkatesh Dutt. From the aforesaid material, it is clear that the amount of Rs. 1.35 crores appeared as a credit in the books of the Assessee and he offered no valid or reasonable explanation as to the source. Therefore, the Assessing Officer was of the view that Section 68 of the Income Tax Act, 1961 for short, "the Act" is attracted to the facts of the case. Therefore the said amount was treated as an income and accordingly taxed. Aggrieved by the said order, the Assessee preferred an appeal.

5. The first appellate authority after careful scrutiny of the statements of the Assessee, P.J. Fernandez, Sri Srikanta Dutta Narasimharaja Wodeyar and K.

Venkatesh Dutt, came to the conclusion that the explanation offered in respect of these Rs. 1.35 crores found as credits in the Appellant's bank pass-books is unsatisfactory. Therefore, although it is not clear as to whom these monies belongs to or as where they came from, in the absence of any cogent evidence for the same, the deeming provisions of Section 68 are applicable and the addition of Rs. 1.35 crores in the hands of the Appellant is therefore confirmed. Aggrieved by the said order, the Assessee preferred an appeal before the Tribunal.

6. The Tribunal, on consideration of the above material came to the conclusion that the version of the Assessee and his son that the entire money amounting to Rs. 1.35 crores belong to Venkatesh Dutt and represented unaccounted income of various businesses carried on by him in film, financing loan as well as in the bill discounting line, is a quite plausible one and seems also to be believable. On the other hand, simply because of the fact that the money ultimately got credited in the bank account of the Assessee, for a temporary period, it cannot be said that the money represented the unaccounted income of the Assessee especially when there are no indications even, not to speak of any evidence about such a stand. Further it held that the same amount has already been taxed in the hands of Venkatesh Dutt. It is the same Assessing Officer who completed the assessment of the Assessee and Venkatesh Dutt on the same day and the amount of Rs. 1.35 lakhs was assessed in the hand of K. Venkatesh Dutt not on a protective basis. The Assessing Officer was aware of the pros and cons relating to the assessment proceedings of both the Assessee and his son and the conscious act on the part of the Assessing Officer in choosing to assess the amount of Rs. 135 lakhs in the hands of Venkatesh Dutt in a substantive manner would certainly preclude him from assessing the same amount once more in the hands of the Assessee. The Assessee can be considered to have discharged even the stronger onus of proving the source of the money claimed to be from his son. Hence although the credits appeared in the bank account of the Assessee in its view, the Assessee cannot be held to be liable to be assessed in respect of this amount by application of the provisions of Section 68. Therefore, the order of the authorities was reversed by directing deletion of addition of Rs. 1.35 lakhs in the hands of the Assessee. Aggrieved by the said order of the Tribunal, the revenue is in appeal.

7. The learned Counsel for the revenue assailing the impugned order passed by the Tribunal contended that the statement recorded by the Assessing Officer of the aforesaid four persons are totally inconsistent with each other. Everyone of them have disowned the money which is reflected in the pass-book as well as the books of account of the Assessee. The Tribunal appears to have been influenced by the fact that the very same amount is assessed at the hands of the son of the Assessee and therefore it has proceeded to set aside the orders of the authorities deleting the aforesaid addition of income. As a matter of fact, the said amount is not assessed in the hands of the Assessee's son. In fact, in the original return filed by the Assessee's son, he did not include this amount at all. He filed a revised return including the said amount. Thereafter, he wanted to withdraw the

said revised return. When it was not permitted, he preferred an appeal. The appellate authority set aside the order and remanded the matter to the Assessing Officer for fresh enquiry. Against the said order, the revenue preferred an appeal to the Tribunal. The Assessee preferred cross-objections. The revenue withdrew the appeal. But the cross objections were considered and it came to be allowed. Against the said order, the revenue preferred an appeal before this Court. The appeal came to be dismissed by this Court on the ground that the aforesaid amount do not belong to the Assessee's son, either it belongs to the Assessee herein or the partnership firm by name M/s. Intercorp Associates. The said amount cannot be assessed in the hands of the Assessee's son. Therefore it held that the Assessee has the right to withdraw the revised return showing the aforesaid amount as his income. In these circumstances, the finding recorded by the Tribunal is patently erroneous and requires to be set aside.

8. Per contra, the learned Counsel for the Assessee contended that it is not permissible for this Court to look into the order passed by the Tribunal in an appeal preferred by the Assessee's son or order passed by this Court against the said order. When once the Assessee offered explanation to the effect that this amount is arranged as loan by his son, Section 68 is not attracted, The revenue instead of assessing the said amount in the hands of his son should not prosecute the Assessee by assessing the said amount in his hands. The Tribunal rightly set aside the order passed by the Assessing Officer as well as the first appellate authority and the said order do not call for interference.

9. From the aforesaid facts it is clear that the Assessee is an agriculturist and partner in five firms which are carrying on the business in liquor. Assessee is also an excise contractor. The material on record discloses that he needed money for depositing one month's kist in excise auction bids for the relevant excise year. Admittedly, he had no funds Rs. 1.35 crores was credited to his account on 2-5-1995, 13-5-1995 and 16-5-1995 in the Canara Bank, Langford Town Branch. In the return filed u/s 139 of the Act, he did not disclose the said amount. There was a search of the residential and business premises of the Assessee on 7-6-1985. At that time the bank pass book of the Assessee in Langford Town Branch of Canara Bank was seized. The said pass book disclosed the aforesaid deposits. Thereafter, the Assessee's statement was recorded. He stated that the said credits were loan taken by means of demand drafts from one P.J. Fernandez, 133, Brigade Road, Bangalore, the said loan was arranged by his son Sri Venkatesh Dutt. He remembered to have signed the document. When contacted P.J. Fernandez originally confirmed that he advanced amounts by borrowing money from one Sri Srikanta Dutta Wodeyar. Sri Wodeyar also confirmed the same. However, on 5-7-1985 in the course of the statement recorded u/s 132(4) Sri P.J. Fernandez categorically denied that he advanced a sum of Rs. 1.35 crores to the Assessee. He stated that he only lent his name to the Assessee to help him. Sri Wodeyar also promptly went back from his earlier statement. Initially K. Venkatesh Dutt Assessee's son on enquiry stated his father only knew about the said loans. Subsequently, he stated that the said money has come from M/s

Intercorp Associates. Later he changed the statement stating that he has to consult his father about the source of the said amount. It is in this context the affidavit filed by the Assessee assumes importance. The Assessee has sworn to an affidavit on 29-3-1989 declaring on oath that the aforesaid three entries are shown as credits in his books of account. They have been shown as received from P.J. Fernandez and the same is shown in his books. Further, it is stated that the said amounts represent the income earned by M/s. Intercorp Associates, one of the concerns of his son Venkatesh Dutt. Further, he has stated that all amounts were brought in as credits in the name of P.J. Fernandez in his books as there were legal complications with State Bank of India in regard to deposits of Intercorp Associates. Finally he confirmed that Rs. 1,35,00,000 represents the income of Intercorp Associates, Bangalore, a concern of his son Sri Venkatesh Dutt and the said income has been offered by him for taxation in his accounts.

10. The Assessing Officer as well as the Commissioner of Appeals on careful scrutiny of the statements of all the four persons on different dates came to the conclusion that their stand is totally inconsistent and the explanation offered by the Assessee is unsatisfactory and, therefore, it cannot be accepted. Therefore, invoking Section 68 of the Act, the said amount was held to be taxable in the hands of the Assessee. It is in this regard it is necessary to notice the law on the point.

11. Section 68 of the Act reads as under:-

Cash Credits 68. Where any sum is found credited in the books of an Assessee maintained for any previous year, and the Assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to Income Tax as the income of the Assessee of that previous year.

In order to attract Section 68 of the Act, twin conditions have to be fulfilled. They are -

(1) A sum is to be found credited in the books of an Assessee maintained for any previous year, which is not offered to tax.

(2) When asked to explain the return and source of the income,

(a) The Assessee offers no explanation or

(b) The explanation offered is not satisfactory, in the opinion of the Assessing Officer.

The initial burden lies on the Department to prove that the said receipt is in the nature of income and it is within the taxing provision. Then the burden shifts on to the Assessee to show that it is not taxable because it falls within the exception provided under the Act. When a sum is found credited in the books of the Assessee, which is not disputed, it is a prima facie evidence against the Assessee. If the Assessee fails to rebut the said evidence, the same can be used

against the Assessee by holding that it was a receipt of an income nature and brought to tax.

11.1 The Apex Court in the case of *Sumati Dayal v. CIT* (1995) 214 ITR 80180 Taxman 89 interpreting Section 68 has held as under:-

It is no doubt true that in all cases in which a receipt is sought to be taxed as income, the burden lies on the Department to prove that it is within the taxing provision and if a receipt is in the nature of income, the burden of proving that it is not taxable because it falls within exemption provided by the Act lies upon the Assessee. But, in view of Section 68, where any sum is found credited in the books of the Assessee for any previous year the same may be charged to Income Tax as the income of the Assessee of that previous year if the explanation offered by the Assessee about the nature and source thereof is, in the opinion of the Assessing Officer, not satisfactory. In such a case there is, *prima facie*, evidence against the Assessee, viz., the receipt of money, and if he fails to rebut, the said evidence being un rebutted, can be used against him by holding that it was a receipt of an income nature. While considering the explanation of the Assessee the Department cannot, however, act unreasonably.

11.2 Again the Supreme Court in the case of *Commissioner of Income Tax Vs. P. Mohanakala*, held as under:-

It is true that even after rejecting the explanation given by the Assessee if found unacceptable, the crucial aspect whether on the facts and circumstances of the case it should be inferred the sums credited in the books of the Assessee constituted income of the previous year must receive the consideration of the authorities provided the Assessee rebut the evidence and the inference drawn to reject the explanation offered as unsatisfactory. It needs be noticed that Section 68 itself provides, where any sum is found credited in the books of the Assessee for any previous year the same may be charged to Income Tax as the income of the Assessee of the previous year if the explanation offered by the Assessee about the nature and source of such sums found credited in the books of the Assessee is in the opinion of the Assessing Officer not satisfactory. Such opinion formed itself constitutes a *prima facie* evidence against the Assessee, viz., the receipt of money, and if the Assessee fails to rebut the said evidence the same can be used against the Assessee by holding that it was a receipt of an income nature. In the case in hand, the authorities concurrently found the explanation offered by the Assessee unacceptable.

12. It is in this background of the aforesaid statutory provisions and the interpretation placed on the same by the Apex Court, we have to find out whether the Tribunal was justified in interfering with the order passed by the Appellate Authority as well as the Assessing Officer.

In the affidavit filed by the Assessee on 29-3-1989 he has categorically admitted the credit of the amounts of his books of account. In the explanation offered he pleaded complete ignorance about the source of the receipt of the amount by

stating that it is his son who arranged the funds. He further stated that the said funds have come from one P.J. Fernandez. P.J. Fernandez in turn stated that he is only a name lender and actual amount has come from Wodeyar. Sri Wodeyar disowned the amount. All the three persons have been inconsistent with their stands. They have given go-bye to their earlier stands. The credit of the said amount in the name of the Assessee is admitted. Utilisation of the said amount for deposit of one month kist amount is not in dispute. Assessee is a businessman. As he did not have money it is his case that his son has arranged for the said funds. As his son also has given a go-bye to the earlier stand and the person who actually credited the said amount to the bank account of the Assessee has also gone back on his admissions, disowning the said amount. Though this amount is credited to the account of the Assessee he is unable to explain the nature and source of the said amount. Assessing Officer as well as the first Appellate Authority on careful scrutiny of the statements of the aforesaid four persons recorded at various stages including the affidavit of the Assessee came to the conclusion that the explanation offered by the Assessee is unreasonable, unsatisfactory and, therefore, the sum so credited was charged to Income Tax. Though the Tribunal has the jurisdiction to interfere with the said finding of fact, its order should be based on legal evidence. It seems to have been carried away by the arguments, made by the counsel for the Assessee, which was not supported by any material on record, and interfered with the finding of fact recorded by the Appellate Authority which was based on material on record. In fact, the Tribunal was not sure of its finding when it expressed its opinion by saying that from the facts and the statements of various parties it appears to us that the version of the Assessee and his son that the entire money amounting to Rs. 1.35 lakhs belong to Sri Vekatesh Dutt and represented unaccounted income of various businesses carried on by him in the film financing line as well as in bill discounting line, is a quite plausible one and seems also to be believable. There is absolutely no material in support of the said reasoning. As stated earlier it is based on the arguments only and, therefore, the Tribunal was not justified in so lightly interfering with the finding of fact recorded by the first Appellate Authority which was based on legal evidence. Yet another reason given by the Tribunal is that the said amount is already assessed at the hands of the Assessee's son which again is without any basis. In fact the said amount is not offered to tax by any one of them, as all of them disowned the said amount. Therefore, the Tribunal was in total error in interfering with the finding of fact and holding that the explanation offered by the Assessee is reasonable and acceptable.

13. We are satisfied from the material on record there is a concerted attempt by the father and the son to suppress income and one is trying to put the blame on the other. In the process both of them are not willing to offer the said income for tax under the Act. As the said amount was credited to the bank account of the Assessee which is also reflected in the statement of books of the Assessee and the explanation offered by him is not consistent, subsequently the said amount is

not repaid and there are contradictions in his statement and the statement of his son, apart from other two persons from whom the money is said to have flown, we are satisfied that all the ingredients of Section 68 are attracted. The burden of showing the nature and source of income was squarely on the Assessee. In the facts of the case he has miserably failed to prove the said fact. Therefore, the impugned order passed by the Tribunal cannot be sustained and accordingly it is set aside. The first substantial question of law framed in this regard is answered in favour of the revenue and against the Assessee.

14. This second and third substantial questions of law relates to the order of the Tribunal setting aside the enhancement made by the first Appellate Authority which arisen as under:-

In the course of search in the case of Assessee's son, Shri K. Venkatesh Dutt on 23-2-1988, an account book of the Assessee for the year ending 31-3-1986 was seized. Apart from the alleged loan of Rs. 1.35 crores from P.J. Fernandez in May 1985, certain other loans in the form of drafts were taken by the Assessee. The loans stated to have been taken in the form of drafts were found returned on the same day. A letter was issued to the Assessee asking for evidence in respect of these loans. A letter dated 27-3-1989 along with xerox copies of confirmation letters from the parties mentioned above were filed. As the assessment was getting barred by limitation on 31-3-1989 and as the creditors were found to be stationed at distant places like Bidar, Raichur and Gulbarga, the assessment was completed without enquiring into these credits. Thereafter, ACIT was directed to enquire into these credits and report on the same. From the said enquiry report it appears that one of the credits on 17-6-1985 of Rs. 40 lakhs in the name of Rajan Patel appeared to be not genuine. The Assessee was called upon to explain the credit of Rs. 40 lakhs. Though the name of the party was shown as Rajan Patel, it was one B. Rajanna who was the creditor. However, the said Rajanna denied having lent a sum of Rs. 40 lakhs to the Assessee. In fact he denied any relationship with the Assessee. He was offered for cross-examination. He was cross-examined. Nothing was elicited in the course of cross-examination with regard to lending of Rs. 40 lakhs. Therefore, the Appellate Authority held that the Assessee has not satisfactorily able to prove the source or even give a satisfactory explanation as to the credit of Rs. 40 lakhs appearing in his books in the name of Shri Rajan Patel. The presumption of Section 68 was invoked and the said amount was added to the income of the Assessee and taxed. The Assessee challenged the said finding of the first Appellate Authority before the Tribunal contending in the appeal filed by the Assessee, the Appellate Authority had no jurisdiction to enhance the tax by adding the aforesaid income. The Tribunal held that the Commissioner of Appeals did not have jurisdiction to make this enhancement as the Assessee did not show this amount in the return of income filed by him or in any of the accompanying statements. In the assessment order also, the Assessing Officer did not make any mention of or even reference to this credit item of Rs. 40 lakhs standing in the name of Shri Rajan Patel or Shri B. Rajanna, whatever may be his actual name. Relying on

Explanation to Section 251 of the Act it held that the Appellate Authority has no jurisdiction to travel beyond the subject-matter of the assessment or beyond the record, i.e., the return of income and the assessment order and his power of enhancement relates only to the income which has been subjected to the process of assessment. After referring to the judgment of the Madhya Pradesh High Court, it was held, any matter arising out of the proceedings in Explanation to Section 251(1) means only such matters which were either specifically disclosed by the Assessee in the return of income filed by him or any accompanying statements or mentioned by the Assessing Officer in the assessment order and, therefore, the Appellate Authority was in total error in making the enhancement as it is without jurisdiction it was set aside.

15. Challenging the said finding in this appeal, the learned Counsel for the revenue contended that, having regard to the language of Section 251, the Appellate Authority in an appeal against the order of assessment has the power to confirm, reduce, enhance or annul the assessment order. Even though this particular aspect was not the subject-matter of return filed by the Assessee, in the proceedings initiated by him, he had issued notice calling upon the Assessee to explain these receipts. As the limitation to pass assessment order was nearing, without going into the said question, assessment order was passed. It is in this context the Appellate Authority gave an opportunity to the Assessee to substantiate their claim and thereafter it has passed the order enhancing the addition in respect of one item as the explanation offered was unsatisfactory. Therefore, it is not a case of extraneous facts which are not part of the assessment proceedings which is made the basis for enhancement. It was part of the assessment proceedings which was taken into consideration by the Appellate Authority and enhancement was made. The approach of the Tribunal is erroneous and is against the settled legal principle.

16. Per contra, learned Counsel for the Assessee supported the impugned order.

17. The judgment of the Tribunal is based on the judgment of the Madhya Pradesh High Court in the case of CIT v. Nirbheram Dalura (1981) 127 ITR 4915 Taxman 84. where it was held that, the proceedings before the ITO are limited to the matters expressly or impliedly raised by the Assessee and the ITO and the proceeding done by him of these matters. The Explanation does not authorize consideration of any matter by the AAC, which was not raised or processed before the ITO. In fact, the aforesaid judgment is reversed by the Apex Court in the case of Commissioner of Income Tax, M.P., Bhopal Vs. M/s. Nirbheram Deluram, where it was held as under:-

3. Having regard to the decision in Jute Corporation of India Ltd. (supra), it must be held that the High Court was in error in holding that the appellate power conferred on the AAC u/s 251 was confined to the matter which had been considered by the ITO and the AAC exceeded his jurisdiction in making an addition of Rs. 2,30,000 on the basis of the other 10 items of hundis which had not been explained by the Assessee. This means that even if question No. 2 is

answered in the affirmative, question Nos. 1 and 3 must be answered in the negative. The appeal is, therefore, allowed, the impugned judgment of the High Court so far as it relates to question Nos. 1 and 3 is set aside and said questions are answered in the negative i.e., in favour of the revenue and against the Assessee.

17.1 In coming to the said conclusion the Apex Court relied on the judgment in the case of Jute Corporation of India Ltd. v. CIT[1990] 53 Taxman 85 where the law has been declared as under:-

The above observations are squarely applicable in the interpretation of Section 251(1)(a) of the Act. The declaration of law is clear that the power of the AAC is coterminous with that of the ITO, and if that is so, there appears to be no reason as to why the appellate authority cannot modify the assessment order on an additional ground even if not raised before the ITO. No exception could be taken to this view as the Act does not place any restriction or limitation on the exercise of appellate power. Even otherwise, an appellate authority while hearing the appeal against the order of a subordinate authority, has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitation, if any, prescribed by the statutory provisions. In the absence of any statutory provision, the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter. There appears to be no good reason and none was placed before us to justify curtailment of the power of the AAC in entertaining an additional ground raised by the Assessee in seeking modification of the order of assessment passed by the ITO.

17.2 In fact it is also useful to refer to the judgment of the Bombay High Court which has been approved by the Apex Court in the case of Narrondas Manordass, Bombay Vs. Commissioner of Income Tax, Central, Bombay, where Chagla, C.J. held as under:-

It is clear that the AAC has been constituted a revising authority against the decision of the ITO; a revising authority not in the narrow sense of revising what is the subject-matter of the appeal, not in the sense of revising those matters about which the Assessee makes a grievance, but a revising authority in the sense that once the appeal is before him he can revise not only the ultimate computation arrived at by the ITO but he can revise every process which led to the ultimate computation or assessment. In other words, what he can revise is not merely the ultimate amount which is liable to tax, but he is entitled to revise the various decisions given by the ITO in the course of the assessment and also the various incomes or deductions which came in for consideration of the ITO.

Therefore Section 251 of the Act has been the subject-matter of interpretation by the Apex Court in several decisions. In this background a closer look at the Section 251, and the words in the section make the legislative intent clear and unambiguous.

Section 251 of the Act reads as under:

(1) In disposing of an appeal, the [Commissioner (Appeals)] shall have the following powers-

(a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment.

(aa) to (c)**

(2) The [Commissioner (Appeals)] shall not enhance an assessment or a penalty or reduce the amount of refund unless the Appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

Explanation.-In disposing of an appeal, the (Commissioner (Appeals)] may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the [Commissioner (Appeals)] by the Appellant.

Therefore, the scope of the power of the Commissioner (Appeals) is too wide. The appellate authority has plenary powers in disposing of an appeal. An appeal is a continuation of the process of assessment and an assessment is but another name for adjustment of the tax liability to accord with the taxable event in the particular taxpayer's case. The Commissioner (Appeals) under the taxing enactment sits in appeal, only in a manner of speaking. What it does, functionally, is only to adjust the assessment of the Appellant in accordance with the facts on the record and in accordance with the law laid down by the Legislature. In a tax appeal, the appellate authority is very much committed to the assessment process. The Commissioner (Appeals) can itself enter the arena of assessment, either by pursuing further investigation or causing further investigation to be done. It can do so on its own initiative, without being prodded by any of the parties. It can enhance the assessment, taking advantage of the opportunity afforded by the taxpayer's appeal, even though the appeal itself has been mooted only with a view to a reduction in the assessment. The scope of his powers is conterminous with that of the Income Tax Officer. He can do what the Income Tax Officer can do and can also direct him to do what he has failed to do. These are special and exceptional attributes of the jurisdiction of a tax appellate authority. These attributes underline the truth that the appellate authority is no different, functionally and substantially, from the assessing authority itself. The Commissioner (Appeals) has been constituted as a revising authority against the decision of the ITO, a revising authority not in the narrow sense of revising what is the subject-matter of the appeal, not in the sense of revising those matters about which the Assessee makes a grievance, but a revising authority in the sense that once the appeal is before him he can revise not only the ultimate computation arrived at by the ITO but he can revise every process which led to the ultimate computation or assessment. He is entitled to revise the various decisions given by the ITO in the course of assessment and also the various incomes or deductions which came in for consideration of the ITO. The

Commissioner (Appeals) can modify the assessment order on an additional ground even if not raised before the ITO. The Act does not place any restriction or limitation on the exercise of appellate power. It has all the powers of the original authority may have in deciding the question before it subject to the restrictions or limitation, if any prescribed by the statutory provisions. In the absence of any statutory provision, the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter.

18. In the instant case, it is not in dispute that the Assessing Officer issued a notice to the Assessee calling upon him to explain the amounts which he had received by way of drafts. The explanation was offered giving the names of persons from whom the said amounts were received. However, all of them were residing at different places in the country. The Assessment Officer could not enquire into the same, as the period prescribed for completing the assessment was coming to an end. Therefore, he proceeded to pass an assessment order without expressing his opinion on the aforesaid loans. It is in this context, the said loans were the subject-matter of the proceedings before the Assessing Officer. He did not pass any order. In those circumstances, the first Appellate Authority gave an opportunity to the Assessee to explain those receipts, called upon the Assessing Officer to hold an enquiry and submit a report. In the report submitted it became evident that except the aforesaid payment of Rs. 40 lakhs in respect of all other payments, the creditors stood by the said payment. Only in respect of this disputed payment, in the first place there is a difference in the name. After the person was identified he gave a statement denying the said payment, denied knowing the Assessee at all. Assessee was given an opportunity to cross-examine the said Rajanna who was extensively cross-examined. It is after all this exercise, the Appellate Authority held that the explanation offered by the Assessee is not satisfactory and, therefore, he has failed to disclose the nature and source of income and, Section 68 is attracted. Therefore, it cannot be said that the Appellate Authority had no jurisdiction to go into the said matter, add the said income and enhance the tax. The Tribunal was wholly in error in its approach insofar as the jurisdiction of the Appellate Authority is concerned. As the judgment relied on by the Tribunal is set aside by the Apex Court, the order passed by the first Appellate Authority is valid and legal and the same is restored. Thus, the substantial question of law is answered in favour of the revenue and against the Assessee. Accordingly, the appeal is allowed. Reference is answered accordingly.

19. ITRC Nos. 101-103/1999 are by the revenue challenging the order of the Tribunal cancelling the levy of penalty u/s 271(1)(c) on the ground when the tax liability itself is cancelled, the question of imposing penalty would not arise. Now that the connected appeal is allowed, the tax liability is upheld, consequently the impugned order in this appeal is to be set aside and the matter is to be remanded back to the Tribunal for fresh consideration in the light of the decision rendered by us in the connected appeal.

Therefore, all the three appeals are allowed and the question of penalty is remanded to the Tribunal for fresh consideration in the light of the judgment rendered in the connected appeal.

No costs.