
(1995) 02 AP CK 0021
In the Andhra Pradesh High Court
Case No : IT Case No. 19 of 1990

Commissioner of Income Tax

APPELLANT

Vs

Moghul Durbar

RESPONDENT

Date of Decision : 07-02-1995

Acts Referred:

Income Tax Act, 1961 — Section 256(2), 69

Citation : (1996) 130 CTR 200 : (1995) 216 ITR 301 : (1996) 85 TAXMAN 27

Hon'ble Judges : S.S. Mohammed Quadri, J; S. Parvatha Rao, J

Bench : Division Bench

Advocate : S.R. Ashok, for the Appellant; None, for the Respondent

Judgement

S. Parvatha Rao, J.—On the Tribunal refusing to state the case, the Revenue in this petition, under s. 256(2) of the IT Act, 1961, seeks the following three questions of law referred for the opinion of this Court :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in deleting the addition of Rs. 1,50,000 from the income of the assessee-firm ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that there is no necessity for the assessee to show the source for the deposits ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that in order to bring the entire claim under the provisions of s. 69, the Department should prove that the assessee-firm should be capable of earning equivalent amount either in the previous years or having assets worth more than that amount in order to enable the assessee to either sell or pledge them to realise an amount of more than the addition in question ?"

2. The facts necessary for appreciating whether these questions arise out of the order of the Tribunal are as follows : The assessee is a partnership firm of three

brothers under a partnership deed dt. 29th Dec., 1979. It ran a non-vegetarian restaurant by name "Moghul Durbar" from 23rd May, 1980, during the previous year ending 31st March, 1981, relevant to the asst. yr. 1981-82 which was the first year of its business. For that assessment year, the assessee returned an income of Rs. 68,574 by its return dt. 28th Aug., 1981. The ITO, by his order dt. 18th July, 1984, assessed the assessee-firm determining its total income as Rs. 5,17,690 which included income of Rs. 2,00,000 from other sources in the shape of short-term deposits in the names of four persons, namely :

Rs. 1. Sunder G. Chellani 50,000 2. Hassan Ali 50,000 3. Smt. Sakina Kaka 50,000 4. Smt. Izzat Khanum 50,000

3. On appeal, the CIT(A)-I, Hyderabad, sustained the addition of Rs. 1,50,000 and deleted that relating to Smt. Izzat Khanum. On further appeal by the assessee to the Tribunal, the Tribunal held that there was no justification for treating even that amount of Rs. 1,50,000 to be the income of the assessee. The Tribunal found that each of these persons, i.e., Sunder G. Chellani, Hassan Ali and Smt. Sakina Kaka, had taken fixed deposits of Rs. 50,000 on 13th Feb., 1981, from the State Bank of Hyderabad and that the said fixed deposits were initially for 45 days and subsequently renewed for a period of 36 months w.e.f. 28th March, 1981. They pledged their fixed deposits in order to enable the assessee to have an overdraft facility. The Tribunal observed that these persons were identified and they had permanent addresses and that they were also examined by the ITO and that their sworn statements were also taken. The assessee filed a letter from the manager of the bank wherein it was stated that the fixed deposits were taken by four persons named therein and that at their request the fixed deposits were paid prematurely and that the proceeds were credited in the overdraft account of the assessee. It is their case that they were repaid the amounts subsequently. The Tribunal observed that Smt. Sakina Kaka was the wife of Mr. Rasool, one of the partners of the assessee-firm, and that Sri Hasan Ali and Sunder G. Chellani were outsiders unconnected with any of the partners of the assessee-firm. After consideration of the material on record, the Tribunal found that there was no reason why they should be disbelieved when they gave statements on oath even though their statements in general gave an impression that they did not disclose their own source of investments to a certain extent by clinching evidence. The Tribunal finally held that there was no reason to disbelieve that the amount deposited in fixed deposits in the names of Sri Sunder G. Chellani and Sri Hasan Ali did not belong to them but belonged to the assessee as held by the ITO. As regards the fixed deposit made by Smt. Sakina Kaka, the Tribunal held that her explanation was plausible and could not be termed as false or unnatural and that her claim from the beginning was that she purchased the fixed deposit with the monies of her father and that she was repaid the entire amount subsequently by her husband. The Tribunal also observed that according to the submissions before the CIT(A), the creditors were all paid from out of the withdrawals made by the partners in the accounting year ending with 31st March, 1984. Even the CIT(A) only held : "the ITO perhaps was

justified in taking the view that these deposits represented the unexplained investments of the assessee".

4. We are also of the view that no referable question of law arises on the Tribunal's reading of s. 69 of the IT Act, 1961, as it was in force then. The Tribunal only held that even if the explanation of the assessee was rejected, s. 69 conferred only a discretion to the ITO to deal with the investments as income of the assessee because the word used was "may" and not "shall" in the said section.

5. The Tribunal finally concluded as follows :

"Under the circumstances, we hold firstly that the Revenue was not able to prove that the apparent is not real, that the persons in whose names the fixed deposits stand are only benamidars for the assessee-firm and, secondly, the Revenue also failed to prove that the assessees were capable of saving so much money either in the preceding assessment year relevant to the asst. yr. 1981-82 or in the immediately preceding assessment year beginning from 1979-80. Therefore, even assuming that the sworn statements given by the above three FDR holders are held to be not acceptable, even then there is no justification to treat Rs. 1,50,000 to be the income of the assessee. Hence, we delete this addition."

These findings by the Tribunal are findings of fact and they are not questioned by the Department. When these findings are accepted, we do not see how these questions of law, sought to be referred, arise. In the circumstances, we find that the Tribunal rightly refused to refer the questions.

6. The Income Tax case is, therefore, dismissed.