
(1978) 08 AHC CK 0070

In the Allahabad High Court

Case No : Income-tax Reference No. 511 of 1974

Commissioner of Income Tax

APPELLANT

Vs

Neemar Ram Badlu Ram

RESPONDENT

Date of Decision : 24-08-1978

Acts Referred:

Income Tax Act, 1961 — Section 147, 148, 256(2)

Citation : (1979) 11 CTR 253 : (1980) 122 ITR 68

Hon'ble Judges : Satish Chandra, C.J; M.B. Farooqi, J

Bench : Division Bench

Advocate : Ashok Gupta, for the Appellant; D.C. Chaturvedi, for the Respondent

Judgement

M.B. Farooqi, J.—In compliance with the order of this court u/s 256(2) of the I.T. Act, 1961 (shortly, the "Act"), the Income Tax Appellate Tribunal, Allahabad Bench, has submitted a statement of the case and referred the following questions for our opinion :

"1. Whether, on the facts and in the circumstances of the case, there was any evidence on record for the Tribunal's finding that the assessee should be assessed only on the difference of the peak unaccounted money from year to year ?

2. Whether, on the facts and in the circumstances of the case, there is material in support of the Tribunal's decisions :

(a) that the additions in respect of extra profit in each of the years under appeal would be nil in the years in which the addition on the basis of the difference in the peak unaccounted money used from year to year exceeds the extra profit : and

(b) that where the extra profit addition is more than the addition on account of the difference in peak credits, the bigger of the two would remain as the addition ? "

2. The assessee firm is a dealer in kirana, supari and foodgrains. For the assessment year 1964-65, the assessee filed the return and declared an income of Rs. 30,969. While examining the books of accounts for the relevant year, the ITO discovered that the assessee had inflated the total on the liabilities side of its balance-sheet. Upon close examination it was further discovered that there were a large number of mistakes in the totals of the cash book and at many places the assessee had deliberately inflated the total on the credit side and deflated the total on the debit side of the cash book to suit his convenience. The ITO also found that the assessee had followed similar practice in the account books maintained for the earlier years relevant to the assessment years 1960-61 to 1963-64. The ITO noticed that the accounts for these years bristled with other irregularities as well. Accordingly, he reopened the assessment proceedings u/s 147/148 of the Act for the assessment years 1960-61 to 1963-64 also. The ITO computed the total difference for the various years as under :

Assessment year

Total difference

Rs.

1960-61

2,17,092

1961-62

3,39,152

1962-63

3,69,037

1963-64

3,81,855

1964-65

4,70,231

3. These amounts were, inter alia, added to the income of the assessee for the respective years and the assessments were completed accordingly. In appeal, the AAC upheld the orders of the ITO. Before the AAC the contention of the assessee mainly was, firstly, that the balance-sheet excess of assets over the liabilities in one year should be available to explain similar excess in the following year, and, secondly, that the peak credits should be reduced by the amounts added as extra profits. The AAC rejected the contention. He, inter alia, observed:

"The appellant has been introducing and withdrawing the cash by resorting to the device of inflating or deflating the totals merely. This in itself as well as the silence on the part of the appellant regarding the correct state of affairs

precludes any reconstruction of the picture. Unless the appellant comes out with full facts that the trade creditors outside the books of account of the earlier year continue in the succeeding year or there has not been fresh introduction of cash in a particular year, it cannot be given the benefit of set-off. As things are, it has failed to prove that the corresponding liabilities of the excess assets were not paid off in the succeeding year. In case liabilities missing from the balance-sheet were paid off, total of the excess in the succeeding years has "to be added."

4. The assessee took the matter in further appeal to the Tribunal. The Tribunal observed that there was no dispute about the figures of difference in the balance-sheet, i.e., excess of assets over the actual liabilities, the (sic) accounted moneys used in the business from year to year and the additions by way of extra profits to be made each year. According to the Tribunal, the assessee's categorical statement that unaccounted moneys used in the business and the balance-sheet excess of assets over liabilities represented the assessee's own moneys justified the inference that the two items were not separate, but fall in the same category, i.e., unaccounted money used in the business. The Tribunal held that the unaccounted money so used was not capable of bifurcation on the ground that it was used in different names or in a different manner. The Tribunal also did not agree with the departmental authorities that, merely because the assets in the balance-sheet changed from time to time, the difference could not be available for explaining a similar difference in the subsequent years. It was held that the accounts provided a complete answer to the department's queries. If a particular asset was sold and in its place new assets were purchased, that did not mean that fresh unaccounted money was used; it could be the same money and the assessee was certainly not to be taxed on the change of investment every time. On the broad proposition of law whether the department was legally competent to make additions on account of unexplained cash credit and by way of extra profits, the Tribunal expressed the view that in appropriate cases it could be so done, but observed that it will be never possible for an assessee to provide direct evidence to show that the additions by way of extra profits have" been responsible partly for the use of unaccounted moneys. The Tribunal expressed the view that the assessee's statement that it had no other known source of income and the department's acceptance of that position, in its opinion, constituted a good circumstantial evidence in favour of the assessee. Accordingly, the Tribunal held that the additions in each of the years under appeal should be nil for the years in which the addition on the basis of difference in the peak money used from year to year exceeded the extra profit and where the extra profit addition was more than the addition on account of the peak credits, the bigger of the two should remain as the addition.

5. The argument of the learned counsel for the department is that the findings of the Tribunal are merely speculative. It is true that there is no direct evidence to establish a connection between the unaccounted moneys and excess assets or between the unaccounted money and the extra profits withheld from the books from year to year. But that, by itself, would not render artificial the connection

between them found by the Tribunal. Un-disputably, the Income Tax authorities found that, in all the five years, the correct total of the assets exceeded the correct total of the liabilities in the account books of the assessee and that this difference was mainly attributable to the closing stock which formed the bulk of the assets of the assessee in each year. Then there was the statement of the assessee that the unaccounted moneys used in the business was nothing but the excess of the assets over the liabilities from year to year. From these circumstances, the Tribunal inferred that there was a connection between the excess assets and unaccounted moneys used in the business from year to year and observed:

"If a particular asset is sold and in its place a new asset is purchased, that does not mean that fresh unaccounted money has been utilised; it is the same money that has changed face. An assessee cannot certainly be taxed on the change of investment every time."

6. In the circumstances, the inference drawn by the Tribunal that there was a connection between unaccounted money and excess assets discovered in the business from year to year cannot be said to be perverse or unreal. Clearly there is evidence to sustain it. That is equally true about the other inference drawn by the Tribunal that there was a connection between the unaccounted money and the extra profits withheld from the account books from year to year. That inference is based upon the testimony of the assessee. The assessee stated that it has no other source of income and the department accepted that position. Therefore, if the Tribunal inferred that there was a connection between the unaccounted money used in the business and the extra profits withheld from the books, from year to year, the inference cannot be said to-be groundless. In this view, we are unable to hold that the findings of the Tribunal are speculative. In our opinion, they are fully supported by the material on record.

7. We, therefore, answer the questions referred to us in the affirmative, in favour of the assessee and against the department. The assessee shall be entitled to costs which are assessed at Rs. 200.