
(1994) 07 RAJ CK 0030

In the Rajasthan High Court

Case No : Income Tax Reference No. 16 of 1989

Commissioner of Income Tax

APPELLANT

Vs

R.S. Rathore

RESPONDENT

Date of Decision : 21-07-1994

Acts Referred:

Income Tax Act, 1961 — Section 68

Citation : (1994) 07 RAJ CK 0030

Hon'ble Judges : V.K. Singhal, J;V.G. Palshikar, J

Bench : Division Bench

Advocate : D.S. Shishodia, for the Appellant; Vineet Kothari, for the Respondent

Judgement

V.K. Singhal, J.—The following question of law has been referred by the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur, in respect of the assessment years 1974-75 and 1976-77 u/s 256(1) of the Income Tax Act, 1961 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in confirming the Commissioner of Income Tax (Appeals") order dated March 5, 1984, in Appeals Nos. 55, 51 and 50 with a contradiction in holding that all investment cannot be treated as unexplained though some of them are certainly not genuine ?"

2. The brief facts of the case are that certain investments were made by the assessee in the name of his wife Champa Devi and himself and also his daughter, Smt. Sumitra Devi, in a company known as Madhuvan Chemicals and Fertilisers P. Ltd., Udaipur. The returns in respect of six years were filed. The Income Tax Officer asked the assessee to explain the source of acquisition in respect of these investments and it was explained that the money had been borrowed from various transporters. The creditors were asked to be produced and some of them were produced. The Income Tax Officer found that the addresses of the creditors had not been given and only the truck numbers have been given. The transporters are all outsiders and the amounts have been advanced in cash. The

exact date of the advance of loan or its return have not been given. Neither was any security taken by the creditors nor were any documents produced in proof of the loan itself. The creditors have not explained the source of investment and since they were all living at a distant place and were not engaged in the business of money-lending and were only transporters, the investments by the assessee, wife and daughter were considered as unexplained investment.

3. In appeal before the Commissioner of Income Tax (Appeals), the additions were explained and duly proved, and though all the creditors were not produced, confirmations from all the creditors were submitted. The affidavits of certain creditors were so produced. In respect of income from agriculture, proof of ownership of the land of the assessee's father and the affidavit of his father that the loan was given out of such agricultural income was also submitted.

4. In second appeal before the Tribunal, the Tribunal observed that it is very difficult to give a conclusive finding regarding any of the two sources. In fact, the Commissioner of Income Tax (Appeals) has not given any finding in relation to investment made by the assessee after receiving the loan from various creditors. The Commissioner of Income Tax (Appeals) reproduced the letter filed by the assessee before him explaining the circumstances under which these loans were taken. The Tribunal observed : "while we do not dispute that some of these loans may be genuine ones, the mere fact that the story of the assessee was very probable or plausible would not necessarily mean that the same should have been accepted in toto." After taking into consideration the various facts, it was observed that at this stage it is impossible to verify the truth of these investments and as such the conclusion of the Commissioner of Income Tax (Appeals) was upheld.

5. We have considered the submissions made by the parties. Section 68 of the Income Tax Act refers to cash credits which are found in the books of the assessee. If the explanation offered by the assessee is not satisfactory, then the sum so credited may be charged to Income Tax as income of the assessee in the previous year. The burden, therefore, is on the assessee to explain satisfactorily with regard to the amounts which have been credited in the books of account by the assessee. The source and the nature of the receipt has to be proved by the assessee, and if he fails to prove satisfactorily the source and nature of the amount received, the assessing authority is entitled to draw an inference that the receipt is assessable income of the assessee. *A. Govindarajulu Mudaliar Vs. Commissioner of Income Tax, Hyderabad*, . The assessee has not produced all the creditors in spite of opportunity being given to him and a number of factors were taken into consideration by the Income Tax Officer to come to the conclusion that the explanation offered by the assessee is not satisfactory. The Commissioner of Income Tax (Appeals) has gone on the point that the explanation offered is plausible and probable and the Income Tax Appellate Tribunal has proceeded only on presumptions. The Tribunal has cast doubts with regard to the investments and has even observed that some of them are not

even genuine. A duty was cast on the Tribunal to have either remitted the matter to the Commissioner of Income Tax (Appeals) or to the assessing authority to find out the correct position. There may be a number of creditors of similar nature, but the assessee has to discharge his burden in respect of all of them. The burden was to be discharged by the assessee and all the creditors were not produced, their addresses were not given and cogent reasons were given by the Income Tax Officer. The Commissioner of Income Tax (Appeals) has held that the explanation given by the assessee was plausible and probable. When the Tribunal was of the view that some of the investments were not genuine, it should not have upheld the order of the Commissioner of Income Tax (Appeals) and the proper course was to set aside the order of the Commissioner of Income Tax (Appeals) with a direction to either allow such amounts for which the assessee has been able to prove satisfactorily the investment or to give him the opportunity to prove such unexplained investments. The Tribunal observed as under :

"We agree that the whole affair was not bogus, but the whole affair could certainly be manipulated in such a systematic manner so as to fit in the dates of cash credits with the actual date of investments. The Commissioner of Income Tax (Appeals) has further observed that the background of the assessee showed that he could not have saved so much of money from his other business. This is also quite true, but at the same time, the assessee has been a liaison officer obliging the operators. He has also been a partner. He, therefore, could have saved a little more than what he was earning. It is certainly a very difficult matter to estimate the probable savings of the assessee and the actual amount of gifts received by him. However, in view of the fact that at this stage, it is impossible to verify the truth of these investments, we have no alternative but to accept the Commissioner of Income Tax (Appeals") conclusion inasmuch as we cannot hold that all the investments in the present case are unexplained though we are sure that some of them are certainly not genuine."

6. The above observations of the Tribunal make it clear that the Tribunal itself was in doubt about the correctness of its own conclusion when it observed that some of the cash credits were not genuine. Thus, the finding which has been recorded by the Tribunal that some of the cash credits were not genuine vitiates the order passed by it. The burden which was to be discharged by the assessee has not been discharged and the order of the Commissioner of Income Tax (Appeals) could have been confirmed only if the Tribunal was satisfied that all the investments were satisfactorily explained. The explanation which has been given by the assessee before the Income Tax Officer could be considered by the Tribunal and on that basis it could come to a different conclusion than what has been arrived at by the Income Tax Officer. If on the basis of the explanation and evidence offered by the assessee before the Income Tax Officer, the Tribunal comes to the conclusion that the investment has been explained, then it becomes a finding of fact, but the present is not a case where such a finding has been recorded and on the contrary the Tribunal itself was not in a position to feel

satisfied with regard to the explanation submitted and observed that some of the investments were not genuine. It was not justified on the part of the Income Tax Appellate Tribunal in such a case to uphold the order of the Commissioner of Income Tax (Appeals). While explaining the various credits and investments, it may be possible that the assessee may be successful in explaining some of them, but that does not by itself mean that the entire investments has to be considered as explained. Even lapse of time or inability of the assessee would not make the unexplained investment an explained one. It is each and individual entry on which the mind has to be applied by the taxing authority when an explanation is offered by the assessee. If no explanation has been offered in respect of a particular entry, the taxing authority will be justified in coming to the conclusion that the said investment is unexplained. It is not the totality of the credit entries which are to be allowed or to be disallowed. This work has to be done on the basis of the explanation offered for different entries and if the explanation of the assessee is acceptable on the basis of the evidence produced before the taxing authority, the Tribunal can come to the conclusion that such investment is fully explained. In these circumstances, we are of the opinion that the Income Tax Appellate Tribunal was not justified in confirming the order of the Commissioner of Income Tax (Appeals) and there is contradiction in its decision in holding that all investments cannot be treated as unexplained though some of them are certainly not genuine.

7. The reference is answered in favour of the Revenue and against the assessee and the matter is remitted back to the Tribunal to consider each individual investment for which an explanation has been given. If the Tribunal is satisfied with the explanation submitted by the assessee, then the investment to that extent has to be allowed and the entire sum cannot be allowed in general. No order as to costs.