
(1989) 03 CAL CK 0041

In the Calcutta High Court

Case No : Income-tax Reference No. 322 of 1979

Commissioner of Income Tax

APPELLANT

Vs

S.C. Laul

RESPONDENT

Date of Decision : 07-03-1989

Acts Referred:

Income Tax Act, 1961 — Section 254

Citation : (1991) 93 CTR 117 : (1993) 202 ITR 244 : (1990) 53 TAXMAN 362

Hon'ble Judges : Suhas Chandra Sen, J; Bhagabati Prasad Banerjee, J

Bench : Division Bench

Judgement

Suhas Chandra Sen, J.—The following three questions of law have been referred by the Tribunal u/s 256(2) of the Income Tax Act, 1961 (for short, "the Act") :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal misdirected itself in law in holding that a mistake apparent from the record has crept in the order of the Tribunal dated August 23, 1975, and in that view setting aside the said order and in directing the Income Tax Officer, Hyderabad, to make an enquiry in the matter and to decide the includibility or otherwise of the amount in question in the total income of the assessee ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal by its order dated April 9, 1976, reviewed the order dated August 23, 1975, and whether the order dated April 9, 1976, is without jurisdiction, illegal or void ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in allowing the miscellaneous application of the assessee and in setting aside the order of the Appellate Assistant Commissioner on the point of inclusion of the agricultural income of Rs. 59,375 in the total income of the assessee and in directing the Income Tax Officer to decide the matter afresh after hearing the parties ?"

2. The assessment year involved is 1970-71 for which the relevant accounting year is the year ending on August 31, 1969.

3. Originally, the dispute before the Tribunal was about includibility of the income from a trust known as Lal Bagh Trust and the income of the assessee's wife in his assessment. The Tribunal, following its earlier decision, directed the sums to be included in the assessment of the assessee.

4. The next contention before the Tribunal was in relation to the addition of a sum of Rs. 46,223 shown in Part IV of his return, which the assessee claimed to be agricultural income. Subsequently, he filed a revised profit and loss account showing the income from agriculture at Rs. 59,675. It was submitted on behalf of the assessee before the Income Tax Officer that the assessee had purchased a grape garden situated in Hyderabad called Brindaban Grape Garden on September 7, 1968, from Shri D.D. Shroff and others at a price of Rs. 95,000 and the above income of Rs. 59,375 had accrued to the assessee from that garden. The Income Tax Officer in order to verify the correctness of the assessee's statement wanted to examine Shri D.D. Shroff. Summons was issued to Shri Shroff. The assessee was also requested to produce Shri Shroff for examination, which the assessee failed to do. All books of account, bills and vouchers were produced to show the sale of grapes. The Income Tax Officer found that the grapes were mainly consumed by the breweries. But, in the absence of verification of the books of account, the Income-tax Officer ultimately rejected the assessee's claim that he had income from agriculture. The entire amount of Rs. 59,375 was treated as income from undisclosed sources.

5. The assessee appealed to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner examined the documentary evidence that was produced before him and came to the conclusion that the income of Rs. 59,375 did not represent any bona fide receipt from agriculture but was the assessee's income from undisclosed sources.

6. Before the Tribunal, the grievance of the assessee was that the Income Tax Officer had not cared to make any local enquiry to find out whether the assessee had actually purchased any such garden. He had produced before the Tribunal a copy of the sale deed in support of the assessee's case that the assessee had actually purchased a grape garden. The stand taken by the Department was that the statement of Shri D.D. Shroff was recorded at a later date on March 18, 1974, even after the order of the Appellate Assistant Commissioner had been passed. In any case, it was submitted that the statement also did not support the case of the assessee, inasmuch as he was unable to give any details about the management or the investment in the garden. He also submitted that it was surprising that a garden which could yield a net income of about Rs. 60,000 in one season was sold for such a small amount of Rs. 95,000 by its previous owner. His further submission was that the assessee had utterly failed to show how this garden was cultivated and how he could control it from Calcutta. Relying on the order of the Appellate Assistant Commissioner, he argued that the books of account and the various vouchers produced by the assessee having been established to be bogus, they could not support the case of the assessee that he

had any income from the grape garden. He also submitted that the acceptance of certain income as agricultural in the hands of the sons of Shri D.D. Shroff by the Income Tax Officer was of no consequence as the assessment orders did not show any enquiry having been conducted by the Income Tax Officer in the matter nor had those assessment orders been produced before the present Income Tax Officer. He finally submitted that it was for the assessee to prove that the income sought to be taxed was agricultural income exempt from taxation under the relevant provisions of the Act and since that burden had not been discharged in the present case, the assessability of the amount in dispute as the assessee's income from undisclosed sources could not be questioned.

7. The Tribunal upheld the finding of the lower authority that there was no genuine documentary evidence in support of the assessee's case of having earned agricultural income. The Tribunal observed that the books of account and the vouchers produced before the Appellate Assistant Commissioner were also found to be fake and prepared at a subsequent date. Learned counsel for the assessee did not offer any comments on this part of the finding of the Appellate Assistant Commissioner. Looking at all the above facts, the Tribunal was of the considered opinion that the assessee had failed to prove that the income of Rs. 59,375 brought to tax by the Income Tax Officer was agricultural income exempt from taxation under the Act. That being the position, the Tribunal confirmed the order of the Appellate Assistant Commissioner on this point.

8. This order was passed on August 23, 1975. Thereafter, a miscellaneous application was filed on behalf of the assessee alleging that the Tribunal was wrong in holding in paragraph 6 of its order dated August 23, 1975, that there was no genuine documentary evidence in support of the assessee's claim of having earned any agricultural income. The circumstantial evidence was that the sale vouchers did not show the name of any purchaser nor was there any sale to any brewery. The assessee had stated that, in coming to the aforesaid finding, the Tribunal had lost sight of the audited accounts a copy whereof had already been produced by the Revenue. The assessee further stated that a new case was sought to be made out at the Tribunal stage that what was sold was not a grape garden but only a piece of land. In paragraph .6 of its order, the Tribunal had further observed to the effect that the fact that he could purchase the alleged garden only for a sum of Rs. 95,000 also went to show that there was in fact no such garden.

9. It appears from the order of the Tribunal that the Tribunal had considered various aspects of the case. The documentary evidence produced had also been examined by the Appellate Assistant Commissioner. The Tribunal had also made comments about the so-called failure of the assessee to produce Shri Shroff before it and the Tribunal also took note of the fact that Shri Shroff did not appear before the Appellate Assistant Commissioner. The Tribunal also took into consideration the books of account, bills and vouchers produced before the Appellate Assistant Commissioner. Therefore, it cannot be said that the Tribunal

was unmindful about the Appellate Assistant Commissioner's findings and about the evidentiary value of the balance-sheet produced on the basis of such unsatisfactory evidence, there is a disputed question of fact has been raised. There was nothing before the Tribunal to come to the conclusion that the assessee appealed on the basis of the records of the case and in that view of the matter it set aside the order of the Appellate Assistant Commissioner on the basis of a rectification petition and directed the Income Tax Officer to make an enquiry in the matter after giving an opportunity to the assessee and that the assessing Income Tax Officer should consider afresh the includibility or otherwise of the amount in question in the total income of the assessee after giving an opportunity of being heard to the assessee. This is entirely a new order which actually refers to the earlier order passed. In fact the findings of fact made in the parent order and the rectification order are self-contradictory.

10. Under these circumstances, question No. 1 raised must be answered in the affirmative and in favour of the Revenue. Question No. 2 is also answered in the affirmative and in favour of the Revenue.

11. There will be no order as to costs.

Bhagabati Prasad Banerjee, J.

12. I agree.