

(1978) 06 CAL CK 0006

In the Calcutta High Court

Case No : Income-tax Reference No. 317 of 1970

Commissioner of Income Tax (Central)

APPELLANT

Vs

Mathuradas Govardhandas

RESPONDENT

Date of Decision : 15-06-1978

Acts Referred:

Citation : (1979) 120 ITR 583

Hon'ble Judges : Sudhindra Mohan Guha, J;S.C. Deb, J

Bench : Division Bench

Advocate : Suhas Sen, for the Appellant;D. Pal, P.K. Pal and Siddhartha Chatterjee, for the Respondent

Judgement

Sudhindra Mohan Guha, J.—This reference relates to the assessment year 1959-60. The relevant previous year is 2015 Dewali. The assessee is a firm consisting of two partners, Sri Ghanshyamdas Binani, having a ten annas share and his wife, Smt. Padma Binani, having a six annas share. The assessee was the managing agent of Metal Distributors Ltd. and was also carrying on business as insurance and clearing agent. The assessee also held investments in shares and securities. While examining the accounts the ITO noticed credits in the names of M/s. Kasturchand Baijnath and Gangadas Kothari for the sums of Rs. 50,000 and Rs. 1,00,000, respectively, both dated January 10, 1958.

2. The assessee was required to prove the credits. A letter was filed from Kasturchand Baijnath confirming the loan. Gangadas Kothari was reported to be dead. Of course some purjas showing receipt and repayment were produced.

3. Summons were issued to Kasturchand Baijnath for production of books of accounts, but there was no compliance. On 10th January, 1958, the opening balance of Rs. 1,00,000 in this account was repaid in cash but interest of Rs. 889.57 was paid by cheque and on that very day the sum of Rs. 50,000 was again shown in the account as a receipt of loan in cash. It was claimed by the assessee that the creditor was assessed in the same district, but according to the

ITO this file had been struck off in 1953 or 1954 and further the file was that of a firm and not of the creditor. In spite of repeated spot enquiries it was stated that the creditor failed to produce their accounts though they had confirmed that they had advanced Rs. 50,000. This advance of Rs. 50,000 having not been proved satisfactorily it was brought to tax in the assessment as undisclosed business income.

4. As regards the sums advanced by Gangadas Kothari the ITO observed that the principal amount was received and paid in cash and interest alone was paid by cheque. The creditor being dead, there was no trace of the business. It was also found by the ITO that the creditor had opened an account on 10th November, 1943, with the Bank of Baroda and had closed on 18th October, 1944. In the absence of any other evidence the ITO did not consider the purjas as sufficient proof of the advance of Rs. 1,00,000 as loan to the assessee and he eventually brought to tax that amount also as business income.

5. The assessee preferred an appeal against the inclusion in the assessment of Rs. 1,50,000. It was contended before the AAC that Sri Ghanshyamdas Binani had made a disclosure petition under Clause 68 of the Finance Bill, 1965, and had also filed an affidavit on 20th May, 1965. The gist was that Sri Ghanshyamdas had made a total disclosure of Rs. 25 lakhs odd and the credits under consideration were advances made by him out of the disclosed funds. The AAC did not accept the plea stating that this contention was not taken at the assessment stage nor at the earlier stages of the hearing of the appeal but only at the final hearing, i.e., 15th October, 1965. It was further observed by the AAC that it was impossible to accept that the income of Rs. 25 lakhs could have been earned without maintaining any accounts or contemporaneous records and whatever documents might be in existence were withheld from examination by the department. Such documents were of course not necessary for making the disclosure under the Finance Bill of 1965 ; the position was different if a firm wanted to take advantage of such disclosure. He, of course, held that the credit of Rs. 50,000 on 10th January, 1958, in the account of Kasturchand Baijnath could have come out of the debit of Rs. 1 lakh in the same account on that day. He, therefore, deleted the addition of Rs. 50,000. Ultimately, the AAC upheld the addition of Rs. 1 lakh.

6. This order was again challenged before the Tribunal, The stand of the assessee before the Tribunal was that when one of the partners came forward with a disclosure of Rs. 25 lakhs and submitted an affidavit to the effect that the sum of Rs. 25 lakhs included the credit in question and accepted the credits as his own money and paid taxes thereon, there was hardly any justification to hold that the money belonged to the assessee-firm. If the AAC had any doubt with regard to the veracity of the statements, it was submitted, he ought to have set aside the assessments.

7. On behalf of the department, it was reiterated that the plea of the assessee was an after-thought and it was further contended that the benefit under the

disclosure petition was available only to the person disclosing the amount and not to others, and at any rate the affidavit filed by Ghanshyamdas could not be taken as proof, as it was not put to test and, therefore, no reliance should be placed on the same and the conclusion of the AAC should be upheld.

8. The Tribunal allowed the appeal by observing as follows :

"The assessee concealed its income and later realised that what it did was not correct or even probable when it was confronted with inconvenient position and it had taken advantage of the scheme formulated by the Government contained in Section 68 of the Finance Act, which came handy, it is certainly entitled to do so and in fact there is no dispute about it. The scheme has not come into force prior to 1st April, 1965; the assessee was, therefore, trying to convince the department as best as it could on the basis of evidence available with it. After it became aware that it could not any longer convince the department with the data available with it and when the situation became too hot for it, one of its partners voluntarily came forward with the disclosure scheme and disclosed a sum of Rs. 25,06,000 as his undisclosed income. In the petition to the Commissioner he clearly stated that the sum included the credits in question. He also mentioned it on oath through an affidavit enclosed to the petition. It may be an after-thought, but the after-thought is to admit the income. The partner disclosing the income clearly admitted in most unequivocal terms that the sums in question belonged to him. That position was accepted by the department when the petition was accepted. It is futile to suggest that the petition was accepted without any enquiry. That is not a matter concerning us now nor need detain us any longer. It is for the department to accept and to make such enquiries as it thought fit. If it did not do so, that cannot turn up against the assessee. The partner had clearly stated that with a view to take advantage of the scheme he admitted the cash credits as his own income and offered them for tax and he paid tax thereon. When the tax was so paid on the basis of that admission, it is no longer in dispute as to whom the income belonged and the creditworthiness of that party. Eventually, it transpired that the amount belonged to the partner, Ghanshyamdas. His creditworthiness was proved as he disclosed a sum of Rs. 25,06,000 and paid thereon a tax of Rs. 15 lakhs on the due dates. It is thus clear that the amount in question did not belong to the firm. It is, therefore, incorrect for the Appellate Assistant Commissioner to observe that the plea put forward before him for the first time was inadmissible as evidence. We are unable to agree with the contentions of the departmental representative that the benefit of the scheme is available only to the person making the declaration and not to any others. Here is a case where a partner of the firm made a declaration that the amount credited in fictitious names in the firm belonged to him and paid taxes thereon and the firm submitting that in view of the admission made by the partner, the credits must be deemed to have been proved, and the amount did not belong to the firm. We, therefore, fail to understand how it could be said on these facts that the assessee is not entitled to rely upon the admission made by the partner in the disclosure petition. What is required by the firm to prove is the

nature and the source of the money. That has been clearly established.....

Upon consideration of the above, we hold that the source and the nature of the cash credits were clearly and fully explained by the admission made by the partner, Ghanshyamdas, in the disclosure petition made by him. The amounts in question, therefore, do not constitute concealed income of the firm. The additions are, therefore, deleted."

9. The application made by the CIT u/s 66(1) was rejected by the Tribunal and, thereafter, at the instance of the Commissioner, the court acting u/s 66(2) of the Indian I.T. Act, 1922, called for the following question for its determination :

" Whether, on the facts and in the circumstances of the case, the conclusion of the Tribunal that the sources and the nature of credits were fully explained by the partner, Ghanshyamdas, in the disclosure petition made by him was justified in law or was, in any event, unreasonable or perverse."

10. The main findings of the Tribunal may be summarised by us as follows :

The Tribunal found that the assessee had concealed its income and it realised what it had done was not correct. When confronted with the inconvenient position, the assessee had taken advantage of the scheme, namely, voluntary disclosure scheme under the Finance Act, 1965, which it was entitled to do. According to the Tribunal, there was no dispute about it.

11. After the assessee became aware that it could no longer convince the department with the available data and when the situation became too hot for it, one of the partners, namely, Ghanshyamdas Binani, came forward and disclosed a sum of Rs. 25,06,000 as his undisclosed income.

12. After the above findings, the Tribunal also held that the partner disclosing the income clearly admitted in most unequivocal terms that the sums in question belonged to him and that position was accepted by the department when the disclosure petition was accepted. According to the Tribunal, the petition must have been accepted after enquiry and if the department did not do so, that could not turn up against the assessee. As the partner had admitted the cash credits as his own income and offered them for tax and paid tax thereon, it was not to be enquired as to whom the income belonged and the credit worthiness of that party. Then the Tribunal held that the amount belonged to the partner, Ghanshyamdas, and his creditworthiness was proved as he had disclosed a sum of Rs. 25,06,000 and paid thereon the tax due. Ultimately, it was concluded that the amount in question did not belong to the firm and the amount in question did not constitute concealed income of the firm.

13. According to Mr. Pranab Pal, learned counsel for the assessee, the finding of the Tribunal, namely, that the assessee had concealed its income is not a finding of fact but a mere narration of the history of the case. But we are unable to accept his contention because the history of the case was narrated by the Tribunal in the earlier paragraphs. Further, the Tribunal had given reasons in

support of its acceptance of the contentions made on behalf of the assessee before it. Moreover, the relevant extract quoted earlier did not support the above contention of Mr. Pal.

14. Mr. Suhas Sen, learned counsel for the revenue, contends that it was pointed out by the Tribunal in unambiguous terms that the assessee had concealed its income. If it is a narration of fact, even then concealment of the income of the assessee-firm had been accepted by the Tribunal. Thereafter, the Tribunal made a wholly contradictory and inconsistent finding of fact, namely, that these amounts were the undisclosed income of the partner of the assessee-firm who put in the voluntary disclosure petition. Therefore, in view of the aforesaid inconsistent and contradictory findings of fact, the conclusion reached by the Tribunal that the assessee had fully explained the nature and source of the amounts is perverse, as its conclusion is based on the inconsistent and contradictory findings which cannot stand together and no reasonable man would come to such conclusion.

15. Mr. Suhas Sen also argues that the Tribunal's finding that the department accepted the voluntary disclosure petition and the department must have made an enquiry also could not be supported in law. Under the scheme, there is no scope for acceptance or rejection of the disclosure. There is also no scope for making any enquiry. The statement as to disclosure is purely a unilateral action u/s 68 of the Finance Act, 1965. One is at liberty to disclose his income, which, in the ordinary course, was assessable, had escaped assessment in the earlier years. Thus, we are in agreement with Mr. Sen that there was absolutely no scope for acceptance or rejection of the petition of disclosure or there was any scope for an enquiry and this position was also conceded before us by Mr. Pal.

16. There is also great force in the contention of Mr. Sen that the conclusion of the Tribunal, namely, that the assessee has duly explained the nature and source of the income is perverse in view of the aforesaid inconsistent and contradictory findings of fact.

17. In the premises, our answer to the question is that the conclusion of the Tribunal that the source and the nature of the cash credits were duly explained by the partner, Ghanshyamdas Binani, in the disclosure petition made by him was not justified in law and was unreasonable and perverse, and is in favour of the revenue. There will be no order as to costs.

Deb, J.

18. I agree.