

(1980) 03 KAR CK 0009

In the Karnataka High Court

Case No : Income Tax R.C. No. 87 of 1976

Commissioner of Income Tax, Karnataka-II

APPELLANT

Vs

N.L. Satyanarayan Setty

RESPONDENT

Date of Decision : 24-03-1980

Acts Referred:

Income Tax Act, 1961 — Section 148, 149, 68

Citation : (1980) 18 CTR 180 : (1981) 129 ITR 226 : (1981) 5 TAXMAN 63

Hon'ble Judges : M.K. Srinivas Iyengar, J;M. Rama Jois, J

Bench : Division Bench

Advocate : S.R. Rajasekhara Murthy, for the Appellant; K. Srinivasan, for the Respondent

Judgement

Srinivasa Iyengar, J.—The Income Tax Appellate Tribunal, Bangalore Bench, has referred the following question for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the sum of Rs. 31,194 could not be assessed as income of the assessee from undisclosed sources in the assessment year 1960-61 ?"

2. An assessment had been made on the assessee who is an individual, for the assessment year 1960-61, on March 15, 1962, under the provisions of the Indian I. T. Act, 1922. Subsequently, on the ground that certain income had escaped assessment and that the assessee had credited certain amounts by way of borrowings on hundis, and such borrowings were bogus, proceedings for reassessment were taken and notice was issued under s. 148 of the I. T. Act, 1961. This notice was served on the assessee on March 26, 1969, and ultimately reassessment was made on March 27, 1973, including therein a sum of Rs. 31,194 as representing the peak credit of hundi loans as in the month of August, 1958. The ITO had treated this as income from business. The assessee preferred an appeal. But the AAC confirmed the action of the ITO. On further appeal to the Tribunal, it held that the said amount could not be treated as income from

business and that it could be treated only as income from other sources. In that view, it held that as the assessment related to the assessment year 1960-61 and the assessment had been completed under the 1922 Act, the previous year in respect of such income from undisclosed sources would be the financial year and, therefore, the assessment year in which it could be assessed was the assessment year 1959-60, and s. 68 of the 1961 Act could not be invoked for this purpose. It, accordingly, deleted the addition in the reassessment for 1960-61.

3. At the instance of the Commissioner, the above question has been referred to this court. It appears to us that the matter is covered by the enunciation of the law by the Supreme Court in the case of Govind Das and Others Vs. The Income Tax Officer and Another, . The reassessment proceedings in the instant case, could be taken under the 1961 Act, by virtue of the provisions of s. 297(2)(d)(ii), which are as follows :

"(d) Where in respect of any assessment year after the year ending on the 31st day of March, 1940, -

(ii) any income chargeable to tax had escaped assessment within the meaning of that expression in section 147 and no proceedings u/s 34 of the repealed Act in respect of any such income are pending at the commencement of this Act, a notice u/s 148 may, subject to the provisions contained in section 149 or section 150, be issued with respect to that assessment year and all the provisions of this Act shall apply accordingly."

4. The Supreme Court in the aforesaid decision observed thus (head-note) :

"The words "all the provisions of this Act shall apply accordingly" in clause (ii) of section 297(2)(d) of the Income Tax Act, 1961, merely refer to the machinery provided in the new Act for the assessment of escaped income. They do not import any substantive provisions of the new Act which create rights or liabilities. The word "accordingly" in the context means nothing more than "for the purpose of assessment" and it clearly suggests that the provisions of the new Act which are made applicable are those relating to the machinery of assessment. The substantive law to be applied for determining the liability to tax must necessarily be the law under the old Act, for, that is the law which applied during the relevant assessment years and it is that law which must govern the liability of the parties."

5. There is no dispute that in regard to such income from undisclosed sources the previous year was to be taken as the financial year and it could be assessed in the assessment year corresponding to the said financial year. Under the 1922 Act, this undisclosed income could be brought to tax only in the assessment year 1959-60, vide Baladin Ram Vs. Commissioner of Income Tax, Uttar Pradesh, A change has been introduced by s. 68 of the 1961 Act, where, in regard to such income, the previous year adopted by the assessee would be the previous year which, in the instant case, would be the year ending June 30, 1959, and if s. 68 applied, the income could be brought to tax in the assessment year 1960-61. But

s. 68 creates a new liability to be assessed for a particular ar year. Section 68 does not contain any words, indicating its retrospective operation. So far as the assessment year 1960-61 is concerned, the law applicable was what had been provided for in the 1922 Act. Section 68 of the 1961 Act could not be invoked with a view to include the income from undisclosed sources which arose in August 1958, in the assessment for 1960-61. The view taken by the Tribunal is correct. We, accordingly, answer the question in the affirmative and in favour of the assessee.