(1968) 01 AHC CK 0036

In the Allahabad High Court

Case No : Income Tax Reference Application No. 151 of 1964

Commissioner of Income Tax, U.P. APPELLANT

Vs

Bharat Engineering and Construction Co. RESPONDENT

Date of Decision : 12-01-1968

Acts Referred:
Income Tax Act, 1922 — Section 66(2)

Citation : (1968) 01 AHC CK 0036

Hon'ble Judges : V.G. Oak, C.J;R.S. Pathak, J

Bench : Division Bench

Advocate : Gopal Behari, for the Appellant;

Final Decision : Dismissed

Judgement

Oak, C.J.—This is an application u/s 66(2) of the Indian Income Tax Act, 1922 (hereinafter referred to as the Act), M/s. Bharat Engineering and Construction Company is the assessee. The assessment year is 1944-45. u/s 34 read with section 23(3) of the Act the Income Tax Officer made the assessment. In making the assessment certain receipts of the assessee were treated as income. The assessee protested that these items did not constitute income of the assessee. When the matter went before the Income Tax Appellate Tribunal, Bombay Bench at Allahabad, the Appellate Tribunal partly accepted the assessee''s claim, Two items of Rs. 2,50,000/- and 40,000/- were excluded from the assessee''s income, The Commissioner of Income Tax, U. P., filed before the Appellate Tribunal an application u/s 66(1) of the Act requesting for reference of two questions of law to this Court. The application was dismissed by the Appellate Tribunal. The Commissioner of Income Tax, U. P., has filed the present application in this Court u/s 66(2) of the Act.

2. We may mention at the outset that the Appellate Tribunal accepted the assessee''s claim with respect to two separate items for Rs. 2,50,000/- and Rs. 40,000/-. Although the assessee''s claim with respect to the sum of Rs. 40,000/- was in some respects similar to its claim with respect to the sum of Rs.

2,50,000/-the Commissioner has, in the present application, made no grievance with respect to the sum of Rs. 40,000/-. The present application is confined to the sum of Rs. 2,50,000/-.

3. The controversy with respect to the amount of Rs. 2,50,000/- arises thus. In the account books of the assessee there are five separate entries between 1-6-1943 and 15-3-1944 with respect to five separate sums making a total of Rs. 2,50,000. These entries are in the name of Benaras Investment Corporation. According to these entries, the assessee received in all a sum of Rs. 2,50,000/- from the Benaras Investment Corporation between June 1943 and March, 1944. The question arose whether this sum of Rs. 2,50,000/- indicated an undisclosed income of the assessee. The Appellate Tribunal accepted the assessee''s explanation that this was merely money raised by the assessee for caring out the business of the firm.

4. The point in dispute was disposed of by the Appellate Tribunal in paragraph 13 of its judgment dated 13-3-1963. The Tribunal observed:-- "At the same time, it is difficult to visualize the assessee having an undisclosed source of income from which it can bring large sums from time to time and effectively conceal the income as borrowings. We are, therefore, prepared to give the benefit of doubt to the assessee in respect of the sum of Rs. 2,50,000 that have come into the account books in the earlier stages of its business," Some of the facts, which have a bearing on this question, are these. The assessee is a firm constituted under a partnership deed dated 6-2-1943. Originally, there were two partners. Two other persons joined the partnership after a few days under a supplementary deed dated 15-2-1943, There is some indication that business in some form commenced in December, 1942. The five items in question relate tO the period from June 1943 to March. 1944.

5. One of the partners of the assessee firm is Sri Jyoti Bhushan Gupta. He is interested in a number of business concerns including the Benaras Investment Corporation, in whose name the five entries in dispute stand. The question for consideration is whether the five relevant entries represent income of the assessee firm of money raised by the firm by way of a loan.

6. The applicant has proposed three questions of law. They are as follows:--

"1. Whether on the facts and in the circumstances of the case, the Tribunal was justified in giving the benefit of doubt to the assessee in respect of the sum of Rs. 2,50,000?

"2. Whether on the facts and in the circumstances of the case, the deletion of the sum of Rs. 2,50,000 is based on proper appraisal of facts and evidence on record?

3. Whether there was any material on the record for the finding of the Tribunal that the sum of Rs. 2,50,000/- was put of the past savings and was not the income from undisclosed source as held by the Income Tax Officer?

7. On going through the Appellate Tribunal''s order, we do not find any finding to the effect that the sum of Rs. 2,50,000 represents the past savings of the assessee. No such question appears to have been raised by the applicant in his application u/s 66(1) of the Act. Question No. 3 cannot, therefore, possibly arise in the present application.

8. Under question No. 2, the applicant has raised the question whether the decision of the Appellate Tribunal is based on a proper appraisal of facts and evidence on record. This is largely a question of fact. The proposed question is hardly a question of law.

9. Question No. 1 no doubt raises some difficulty. Mr. Gopal Behari, appearing for the applicant urges that the Tribunal was wrong in giving the benefit of doubt to the assessee,

10. In HAZARILAL Vs. COMMISSIONER OF Income Tax, ANDHRA PRADESH., it was held by Andhra Pradesh High Court that both with regard to credits in the names of the assessee as also credits in the names of third parties the burden is on the assessee to explain the credit entries. If an assessee fails to prove satisfactorily the source and nature of the amount of cash received during the accounting year, the Income Tax Officer is entitled to draw the inference that the receipts are of an assessable nature.

11. It may be that if a fact is exclusively within the knowledge of an assessee, the burden of explaining the fact will lie upon the assessee, However, the general burden of proving that a certain item constitutes income of the assessee will always lie on the Income Tax Department.

12. In Commissioner of Income Tax, Nagpur Vs. Rai Bahadur Jairam Valji and Others, it was held by the Supreme Court that the question whether a certain item is capital or income involves a conclusion of law to be drawn from certain facts. It does not follow that in every case whether certain receipt is income or not necessarily raises a question of law.

13. According to the relevant entries in the assessee''s account books, the assesses received a total sum of Rs. 2,50,000 from the Benaras Investment Corporation. The question before the Appellate Tribunal was whether this receipt represented income or a loan. It is true that the finding of the Appellate Tribunal on this question is not happily worded. But the view taken by the Appellate Tribunal seems to be that the receipt represented a loan. The Appellate Tribunal took two circumstances into consideration. Firstly, the receipt of the amount in question was shortly after the commencement of the business of the firm. Secondly, Shri Jyoti Bhushan Gupta was interested in a number of allied concerns including the assessee firm and Benaras Investment Corporation. We are not called upon to decide whether the finding of fact arrived at by the Appellate Tribunal is sound or not. The point for consideration by us is whether the appellate decision of the Tribunal raises a question of law. We do not think that the order of the Appellate Tribunal raises a question of law.

14. The application is, therefore, dismissed. We make no order as to costs in this application.

