
(1960) 02 KL CK 0002
In the High Court Of Kerala
Case No : ITR No. 15 of 1957

Daniel

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 02-02-1960

Acts Referred:

Income Tax Act, 1961 — Section 66(1)

Citation : (1961) 43 ITR 119

Hon'ble Judges : T.C. Raghavan, J;M.A. Ansari, J

Bench : Division Bench

Advocate : G.B. Pai, P. Govindan Nair, K.V.R. Shenoi and P.K. Kurien, for the Appellant; G. Rama Iyer, for the Respondent

Final Decision : Dismissed

Judgement

Ansari, J.—The assessee, who is a dealer in grocery, salt and jaggery, also owns an oil mill, which he had leased on rent to a partnership between himself and his two brothers; and his accounting year for the assessment year 1952-53 extended over the period of 19 months, i.e., from August 16, 1950, to March 31, 1952. He had, for the year, furnished return showing a net income of Rs. 6,737; but the income tax Officer, Alleppey Circle, had added to it a further sum of Rs. 24,128-14-0 under the head "other sources of income". This has been done because the said sum had been shown in the assessee's personal account as cash credited on September 3, 1951; and the explanation for not treating it as part of the earlier income has been rejected, That explanation is that the entry was made in order to adjust what had been earlier shown as debits in the accounts of three fictitious persons. The assessee's account books for the earlier year contained credit items of Rs. 24,128-14-0 in favour of these three persons. These have been given in tabular form in the statement of the case and may be usefully quoted.

Rs.

As.

Ps.

K.S. Baby (Ledger account)

6,993

14

0

,,(Anamath account)

5,295

0

0

Kuttiyil Varghese

5,105

0

0

K.S. George

6,735

0

0

24,128

14

0

These accounts have further shown withdrawals by the three persons, which were spread over from August 17, 1950, to August, 1951. To be more precise K.S. George was shown to have withdrawn in three instalments what had been credited in his favour. K.S. Baby was shown to have reduced by four withdrawals in a year the credit item of Rs. 6,993-14-0 to Rs. 3,215, and to have exhausted in another year the balance. The same person was shown to have completely closed his anamath account as well, and to have fully withdrawn Rs. 5,295 through six instalments. Lastly, Kuttiyil Varghese was shown as having closed his account by steadily withdrawing from what had been credited in his favour, and another sum of Rs. 370. It is admitted that all these credit and debit items in favour of and by the aforesaid persons are not genuine, and Rs. 24,128-14-0 was again shown as a credit item to bring back what was fictitiously shown to have been taken out by withdrawals. The income tax Officer has rejected the

explanation on the grounds that the assessee was in 1950 building an oil mill, was then drawing funds from his grocery account books and was running overdraft accounts and borrowing and under these conditions he would not have such a large sum of idle cash in hand. The Appellate Assistant Commissioner had acted on certain statements alleged to have been made by the assessee's representative before him, and also held that there was no reason why increase in the cash balance for the sum of Rs. 24,159 should be treated as the very amounts which had been debited earlier in the accounts of the three persons. The reasons on which the Appellate Tribunal has dismissed the appeal are to be found in the following extracts of its order:

"Therefore, it is clear that at one stage of the proceedings the representative urged before the Appellate Assistant Commissioner that prior withdrawals had been spent away. There is strong ground to arrive at the conclusions that the prior withdrawals were not available with him. In fact we are informed that during the prior accounting year when the withdrawn sums were allegedly available, the assessee was running an overdraft account in the bank. No businessman would borrow from the bank for the fun of doing it when he had sufficient funds available for introduction into business lying idle at home."

2. An application u/s 66(1) of the income tax Act having been rejected by the Tribunal, the assessee came to this court, and the following two questions were directed to be referred by the Division Bench, and have been so referred:

"1. Whether from the facts and circumstances proved or admitted in this case, an inference can be drawn that the amount of Rs. 24,128-14-0 credited to the personal account of the assessee on September 3, 1951, was income from "other sources"?

2. Whether, on the facts and circumstances, there was an onus on the assessee to show that the said sum of Rs. 24,128-14-0 was not income from other sources and was covered by the prior assessment?"

3. The assessee's advocate has properly confined his argument to the short point of how far the rejection of the explanation was proper; for the legal position after the explanation be rejected has now been clarified by several decisions. In *A. Govindarajulu Mudaliar Vs. Commissioner of Income Tax, Hyderabad*, Venkatarama Ayyar J. has held that where an assessee fails to prove satisfactorily, the source and nature of certain amounts 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. Again a Division Bench of this court in *S. KUMARASWAMI REDDIAR Vs. COMMISSIONER OF Income Tax, MYSORE, TRAVANCORE-COCHIN AND COORG.*, has held that where the assessee gives no satisfactory explanation of a cash credit, the income tax Officer may legitimately hold that it represents an income from an undisclosed source. The aforesaid proposition of law is not disputed; but what is urged is that the conclusions by the Tribunal, like conclusions of facts by other authorities discharging judicial

function must be properly arrived at; and not, vitiated because of having been reached on surmises and conjectures, or on evidence part of which is relevant and part irrelevant. We feel the necessity of referring to authorities on this point, because the Appellate Tribunal in the reference appears to think that its findings on facts are sacrosanct and immune from the scrutiny of this court. In *SREE MEENAKSHI MILLS LIMITED Vs. COMMISSIONER OF Income Tax, MADRAS.*, one of the propositions laid down by the Supreme Court is that a finding on a question of fact is open to attack u/s 66(1) as erroneous in law when there be no evidence to support it, or if it be perverse. Again it has been affirmed in *Omar Salay Mohamed Sait Vs. Commissioner of Income Tax, Madras*, that the conclusions reached by such Tribunals should not be coloured by any irrelevant considerations or matters of prejudice, and if there are any circumstances, which require to be explained by the assessee, the assessee must be given an opportunity of doing so. It was further affirmed that on no account whatever should the Tribunal base its findings on suspicions, conjectures or surmises; nor should it act on no evidence at all, or on improper rejection of material and relevant evidence, or partly on evidence and partly on suspicions, conjectures of surmises; and if it does anything of the sort, its findings even though on questions of fact will be liable to be set aside by the court. It is, therefore, clear that the claims by the Tribunal in the statement of case about a particular conclusion being of fact does not debar an assessee from challenging the finding in the High Court on the grounds-enumerated above. The assessee's counsel has referred us to several decisions where mere rejections of the assessee's claims have been held not sufficient for drawing inferences against the assessee. One such case is (1956) 29 ITR 194 and the others are *Mohammed Idrees Barry v. Commissioner of income tax* [1957] 32 ITR 18 (Lah.) and *KANPUR STEEL CO. LTD. Vs. COMMISSIONER OF Income Tax, UTTAR PRADESH.*, . We think these are but illustrative of the rule as to when findings of fact by the Appellate Tribunal are not to be treated as conclusive, and the legal position, which the aforesaid decisions illustrate, is the one already stated. Therefore, the answers to the questions referred to us must depend on a determination of whether the conclusion of the Appellate Tribunal is vitiated because of its having been reached on conjectures, surmises or on any other irrelevant evidence. In this connection it is relevant to state that the assessee had in the accounting period for the earlier assessment year shown the sum of Rs. 24,128-14-0 not to be his own and that was in order to escape assessment. He had then failed, and the aforesaid sum had been treated as part of his income, and liable to pay the tax. It follows that the assessee's veracity stands discredited by his own conduct; and any explanation by him must be sufficiently supported before it can be accepted. The explanation that the credit item in the subsequent accounting year is in order to bring back the total of the debit entries in the names of the three persons rests on oral statement and the account books offer no link between the outgoing amounts and the new entry. Indeed the credit entry is on September 3, 1951, and it is not disputed that between that date and those of the last debits in favour of the fictitious customers, there is a gap of some days. The gap has been

treated as sufficiently discrediting the assessee's explanation, and we have not been convinced about its being incorrect. The Appellate Tribunal has evidently treated the debit items as expenditures, and has further supported its conclusion by the reasoning that no businessman would have overdraft account when large cash be lying idle at home. The assessee's counsel has argued that these are pure conjectures, as there is no evidence to show the amount having been spent, and the assessee's having overdraft account is no ground for holding that he would not have cash at hand. The latter part of the Tribunal's finding perhaps is not sound; but to support the case of the credit entry being for purpose of bringing back the several withdrawals by the fictitious persons there must be something in the account books to connect them and the books offer no link. Indeed the Appellate Tribunal cannot be blamed if it treats something as spent what the books show to be exhausted. That apart, with the credit amount standing on September 3, 1951, the gap offers a different conclusion, particularly when the source from which the assessee had got the earlier amount has not been proved to have been closed. The consequences are that the explanation is rightly rejected and with such rejection adverse inference can be drawn against the assessee. The further ground taken by the Tribunal that the assessee being indebted precludes his having cash becomes unnecessary, and the argument about the ground being incorrect would not vitiate the main reasons on which the explanation has been rejected, which is the absence of any link between the new credit and the earlier debit entries. We, therefore, think that there is basis to support the Tribunal's conclusions that, the account books having shown the earlier entry of Rs. 24,128-14-0 as having been spent, the fresh credit entry is new income from other sources. After all the crucial point is whether the explanation of the assessee should be accepted, and once it is rejected on rational basis certain legal consequences follow. We, therefore, hold that the answer to the first question should be in favour of the Department. We also think that the answer to the second question should be that the onus is on the assessee, as his own account books clearly show the credit entry to be a new one, and he must prove what is contrary to his own books. We would not conclude this judgment without expressing our displeasure at the form in which paragraphs 15 and 16 of the statement of the case have been drawn. So far as the 15th paragraph is concerned, we do not think the Appellate Tribunal need point out any decision on a question raised in the reference. That duty may with advantage be left to the Department's pleader appearing before the court. Nor do we think that the Tribunal need state which question really arises in a case; for this court is alone qualified to ascertain which questions are relevant and should be answered. We hope the statements of case by the Appellate Tribunal in future would be properly drawn. Let the answers be sent, but we would not give the Department costs of this reference.