

(1977) 08 OHC CK 0025

In the Orissa High Court

Case No : Special Jurisdiction Case No. 65 of 1975

DEVAMANI ATHA

APPELLANT

Vs

COMMISSIONER OF Income Tax, ORISSA.

RESPONDENT

Date of Decision : 11-08-1977

Acts Referred:

Citation : (1978) 112 ITR 837

Hon'ble Judges : R. N. Misra, J;Panda, J

Bench : Full Bench

Judgement

R. N. MISRA J. - The Income Tax Appellate Bench at Calcutta has stated this case and referred the following question for the opinion of the court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in upholding the addition of Rs. 1,01,000 as concealed income of the assessee ?"

The year of assessment is 1960-61. Assessee's father-in-law, Sivji Nathubhai, was engaged in business in manganese and iron ores. He having died in 1964 and the assessment for the year in question having remained incomplete until his death, the assessment has been completed in the hands of the present assessee as legal heir.

The Income Tax Officer found that in the books of account there were different amounts stated to be loans taken against hundis. Called upon to explain, the assessee produced letters of confirmation from seven of the creditors. The Income Tax Officer wanted production of the discharged hundis and confirmation letters from the remaining creditors. The assessee expressed her inability to produce the same on the ground that the original assessee who had privity with the creditors was dead. There was a long lapse of time and in many cases the creditors had changed their addresses and it would be difficult to contact them. It was, however, claimed before the Income Tax Officer that in most of the cases there were opening balances which had to be taken into account in working out

the peak credits. It was further claimed that in the case of M/s. Chaturbhuj & Co. of the Titilagarh the transactions could be verified. The Income Tax Officer instead of making any verification as suggested treated the peak credit of Rs. 2,31,000 as income from unexplained sources.

The assessment was set aside by the Appellate Assistant Commissioner with a direction to reassess. The Income Tax Officer on fresh assessment found that Rs. 2,31,000 represented the peak credit. He, however, was satisfied that there was evidence to show that the assessee had withdrawn a sum of Rs. 1,30,000 in previous years and that amount was available with him and could have been re-introduced. Accordingly, he reduced the addition by Rs. 30,000 and directed a lakh and a thousand rupees to be added.

Assessee appeal to the Appellate Assistant Commissioner and failed. In second appeal, the Tribunal observed that the assessee's counsel could not point out any evidence which would justify and interference. Accordingly, that order was sustained.

Mr. Roy for the assessee relies on a letter written by his client to the Income Tax Officer which is annexure "3" to the statement of the case. Therein it has been categorically stated that the loans were taken by her father-in-law during his lifetime and he having died in the year 1964, it has indeed become difficult for her to produce the entire evidence for the satisfaction of the Income Tax Officer. It was, however, stated that Rs. 50,000 standing to the credit of M/s. Chaturbhuj & Co. came under a cheque and complete particulars for this amount were supplied. The Income Tax Officer did not proceed to make any verification by saying :

"Deduction of Rs. 50,000 in its name is, therefore, sought to be made from Rs. 2,31,000. This need not be done since there will be no change in the peak credit of Rs. 2,31,00 as originally worked out."

The Appellate Tribunal, however, reiterated the stand of the Income Tax Officer in paragraph 4 of the appellate order and declined to give any relief on that score. Petitioner's counsel with reference to the original order of assessment wherein all the credits have been noted indicates that Rs. 50,000 has been taken into account to reach the peak credit and if this is deleted, the peak credit would be reduced by Rs. 50,000. The reasoning given by the Income Tax Appellate Tribunal to refuse to interfere with the assessment particularly with reference to the addition of Rs. 50,000 seems to be wholly unsustainable. An enquiry should have been made to find out whether the genuineness of the loan of Rs. 50,000 had been established and, if that was accepted, addition of Rs. 1,01,000 would have stood reduced by a further sum of Rs. 50,000. Learned standing counsel also accepts this submission to be substantial. We would accordingly hold that, on the facts and in the circumstances of the case, the Tribunal was not justified in upholding the addition of Rs. 1,01,000 as concealed income of the assessee.

This, however, would not mean that the addition should stand deleted. The

Tribunal may itself examine the justifiability of the assessee's contention or in its discretion it might remit the matter to the Income Tax Officer for investigation and report whereafter the appeal be re-disposed of in accordance with law.

We make no direction for costs.

PANDA J. - I agree.