

(1976) 06 OHC CK 0010

In the Orissa High Court

Case No : Special Jurisdiction Case No"s. 100 to 102 of 1974

Dhadi Sahu

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 22-06-1976

Acts Referred:

Income Tax Act, 1961 — Section 256

Citation : (1976) 42 CLT 838

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

Bench : Division Bench

Advocate : B.K. Mohanti, for the Appellant; Standing Counsel, for the Respondent

Judgement

R.N. Misra, J.—The Income Tax Appellate Tribunal, Cuttack Bench, pursuant to a direction from this court on 20th of August, 1975, made an application u/s 256(2) of the Income Tax Act of 1961 (hereinafter referred to as "the Act") and has stated these cases and referred the following common question for opinion of the court:

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in holding that the house in question belonged to the assessee ?"

2. Assessee is an individual and the relevant assessment years are 1968-69, 1969-70 and 1970-71. In the course of assessment proceedings for the first of these three years, the Income Tax Officer found that the assessee had acquired a house for a consideration of Rs. 3,400 on 20th of November, 1957, in the name of his wife. The said house was reconstructed in the year 1962, and a portion thereof had been rented out to M/s, Ramdas Motor Transport Pvt. Ltd., the rent being Rs. 240 per month between 1962 and 1966 and Rs. 280 per month from 1967 onwards. The Income Tax Officer further found that the assessee had purchased another plot of land for Rs. 5,000 on May 17, 1960 also in the name of his wife and had constructed a house thereon in 1965 and was occupying the

same for residential purposes from 1969. The Income Tax Officer found that the assessee was being assessed as the karta of a Hindu undivided family until the assessment year 1966-67, When the assessee was called upon to explain the source from where the two acquisitions had been made on January 22, 1970, the assessee stated that the residential house was acquired out of the rental income received from M/s. Ramdas Motor Transport Private Ltd. The Income Tax Officer found that the expenditure for construction as disclosed was low and added a sum of Rs. 10,000 to the expenditure disclosed. He came to hold that though the house property stood in the name of the assessee's wife in the municipal records, in the absence of satisfactory explanation for the source of acquisition of money, the assessee should be treated as the real owner and the assessee's wife as a name-lender. Accordingly, the Income Tax Officer proceeded to assess the income from house property in the hands of the assessee.

3. The first appellate authority upheld the assessments and dismissed the appeals. In appeals to the Tribunal, the assessee maintained that the burden lay on the revenue to prove that the apparent was not the real and the assessee and not his wife was the owner of the property. Reliance was placed on the decision in the case of RAMKINKAR BANERJI Vs. COMMISSIONER OF Income Tax, BIHAR AND ORISSA., . But the Appellate Tribunal, relying on the observation of the Supreme Court in the case of Commissioner of Income Tax, West Bengal II Vs. Durga Prasad More, , came to hold that the assessee had purchased the properties in question out of his own funds. Accordingly, the Tribunal dismissed the appeals and upheld the assessments.

4. Undoubtedly, law assumes the apparent to be real and a person who asserts to the contrary has the burden to establish that the apparent does not represent the real state. On the basis of these propositions when the house property stood in the name of the wife and she seems to be the ostensible owner, it was for the revenue to establish that the assessee and not his wife who was the recorded owner was the real owner. There is no dearth of authority to support such a proposition. In fact, Mr. Mohanty for the assessee had placed a catena of them before us at the hearing.

5. In the instant case, the Income Tax Officer examined a very material aspect, namely, whether the assessee's wife, the ostensible owner, had any source for paying the consideration for the acquisition. Since that was a matter within the special knowledge of the assessee or his wife, the Income Tax Officer gave an opportunity to the assessee to substantiate his stand by showing that his wife was possessed of assets to provide the consideration for the acquisition and the assessee having failed to establish the same, final decision has been taken against the assessee's stand. In Commissioner of Income Tax, West Bengal II Vs. Durga Prasad More, of the report, it is clearly indicated that one of the grounds taken for reaching the conclusion against the assessee was that the assessee's wife was not shown to have had any source of income from which she could have built up a huge sum of Rs, 2 lakhs by 1940. The assessee had been

called upon to explain the source of income of his wife, but he failed to do so. The Appellate Tribunal in the instant case took these features into consideration and came to hold that the assessee's wife was not possessed of sufficient assets so as to provide the consideration for acquisition.

6. Learned standing counsel relies upon the following passage occurring in Commissioner of Income Tax, West Bengal II Vs. Durga Prasad More, :

"The Tribunal is the final fact-finding body. It cannot be said that its finding as to the unreality of the trust put forward is not based on any evidence or the same is otherwise vitiated. Prima facie, the said finding is a finding of fact. The High Court, as seen earlier, directed the Tribunal to state a case and submit to the High Court the question set out earlier. From that question, it appears that the High Court was of the opinion that for arriving at its finding the Tribunal had to interpret the two documents referred to in that question. This conclusion of the; High Court appears to us to be an erroneous one. The Tribunal did not interpret those documents. It merely found itself unable to accept the correctness of some of the recitals in those documents. That does not mean that the Tribunal interpreted those documents. Whether to accept those recitals or not was within the province of the Tribunal. Unless its conclusion is held to be perverse or is not supported by any evidence or is based on irrelevant evidence, the High Court had no jurisdiction to interfere with its findings."

7. In the instant case, we find that the Tribunal has examined all aspects of the matter and has come to hold that the assessee has failed to establish that his wife had assets sufficient to provide the consideration money for the acquisition. Merely on the technical ground that the revenue has not established the nature of the property by leading evidence, we do not think a different view should be taken and the fact found by the Tribunal should be reversed. The Tribunal, as a final forum of fact, has come, in our view, to the correct conclusion on the materials placed before it and a finding of fact has been reached. No question of law does emerge on the basis of which the conclusion can be disturbed.

8. We make no direction for costs.

Das, J.

9. I agree.