(1976) 08 CAL CK 0013

In the Calcutta High Court

Case No : Income-tax Reference No. 1 of 1973

Dulichand Omprakash APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 02-08-1976

Acts Referred:
Income Tax Act, 1961 — Section 256

Citation : (1978) 113 ITR 476

Hon'ble Judges : S.C. Deb, J;Dipak Kumar Sen, J

Bench : Division Bench

Advocate : R.N. Bajoria and D.K. Dhar, for the Appellant;A. Sengupta and P.K. Mazumdar, for the Respondent

Judgement

Dipak Kumar Sen, J.—This reference is at the instance of the assessee, M/s. Dulichand Omprakash, u/s 256(2) of the Income Tax Act, 1961. The question called for from the Tribunal is :

"Whether the conclusion arrived at by the Tribunal that the sum of Rs. 87,000 was the income of the assessee from undisclosed sources was perverse in the sense that no reasonable man would come to it on the materials on record ?"

2. The facts found or admitted as appearing in the statement of the case and the annexures thereto may be briefly noted. In the assessment year 1962-63, the Income Tax Officer noticed certain cash credits in the books of account maintained by the assessee. Such cash credits had been noted also in the earlier assessment years. In this reference, we are concerned with one item of such cash credits in the name of one Tarachand Surana to the extent of Rs. 40,000. This amount was added back by the Income Tax Officer to the income of the assessee. During the assessment proceedings for the earlier year, Tarachand Surana could not be served with summons as he was not traceable at the address given by the assessee. Subsequently, a person appeared with the books of accounts of Tarachand Surana and confirmed the transactions of the assessee. Tarachand Surana had also made a confession that he was a name-lender and

had accommodated several parties to conceal their income in the guise of hundi loans. The request of the assessee that Tarachand Surana should be summoned for cross-examination was not acceded to. In the earlier assessment year also, the loan of Tarachand Surana was added back.

3. Being aggrieved, the assessee went up in appeal before the Appellate Assistant Commissioner against the assessments in both the said assessment years. The Appellate Assistant Commissioner upheld the decision of the Income Tax Officer in adding back the amount credited in the name of Tarachand Surana. He also noted that the cash position of the assessee did not justify the alleged loans from Tarachand Surana. There was a further appeal to the Income Tax Appellate Tribunal for both the assessment years by the assessee. In the meantime, penalty proceedings had been initiated and Tarachand Surana had been examined by the Inspecting Assistant Commissioner and cross-examined on behalf of the assessee. The assessee relied on such evidence and in particular on the admission of Tarachand Surana in his examination that he had in fact given the loans in question to the assessee. On behalf of the revenue, the following points in the evidence of Tarachand Surana were emphasised.''

(a) Tarachand Surana had no office and was not carrying on any business at the material time.

(b) On the other hand he stated that he was carrying on business in a number of trade names and had admitted having done hawala business for which he maintained account books.

(c) According to him he was earning only Rs. 5,000 to Rs. 6,000 per year but that he had invested Rs. 65,000 to Rs. 85,000 as capital at the time of starting his business and explained the source of this investment being the sale proceeds of the ornaments of his aunt. There was no proper evidence of this sale. He had suffered heavy loss in speculation.

(d) He admitted having given the loan to the assessee but could not say how many other genuine loans he had given.

4. On such evidence, the Tribunal held that Tarachand Surana was admittedly a name-lender and was earning a paltry sum of Rs. 5,000 to Rs. 6,000 annually. The Tribunal held further that the credit-worthiness of Tarachand Surana had not been established and his confession that his loans were all bogus had not been retracted by his subsequent evidence. The Tribunal concluded that the genuineness of the loans from Tarachand Surana to the assessee was not established. The addition made by the Income Tax Officer was accordingly upheld by the Tribunal.

5. Mr. R.N. Bajoria, learned counsel for the assessee, has contended before us that on the evidence adduced by Tarachand Surana, the only possible conclusion to which a reasonable man could arrive at would be that the loans advanced by Tarachand Surana to the assessee were genuine. In support of his contention he

has particularly relied on the admission of Tarachand Surana that the loans to the assessee were genuine.

6. On the submissions of Mr. Bajoria we are unable to persuade ourselves to hold that the finding of the Tribunal in the instant case is perverse in the sense that on the evidence on record no reasonable person could come to the conclusion that the disputed loans were not genuine on the materials on record. It is a part of the evidence of Tarachand Surana that he was earning only Rs. 5,000 to Rs. 6,000 per year; and that he was in the habit of lending his name to fictitious loans. On this part of the evidence it was possible for the Tribunal to come to the conclusion that the loans in the instant case were not genuine. No doubt on the same materials it is possible to come to a different conclusion but in the reference jurisdiction the court is not competent to find facts for itself.

7. For the reasons as aforesaid, we answer the question referred to us in the negative and in favour of the revenue.

8. There will be no order as to costs.

Deb, J.

9. I agree.

