
(1953) 05 PAT CK 0006

In the Patna High Court

Case No : Misc. Judicial No's. 37 and 38 of 1950

Durgadutta Sarogi and Another

APPELLANT

Vs

Commr. of Income Tax

RESPONDENT

Date of Decision : 15-05-1953

Acts Referred:

Income Tax Act, 1961 — Section 66(4)

Citation : AIR 1954 Patna 122 : (1953) 1 BLJR 476

Hon'ble Judges : Ramaswami, J;Jamuar, J

Bench : Division Bench

Advocate : S.N. Dutta and S.K. Majumdar, for the Appellant; Gopal Prasad, for the Respondent

Judgement

1. In this case the Income Tax Appellate Tribunal has submitted the following question for the opinion of the High Court:

"Whether there are materials or legal evidence to justify the finding that the property of Mr. Peppe at Ranchi was purchased by the assessee In the benami of the ladies?"

2. The reference came up before the High Court on 5-2-1952. But after hearing arguments of learned counsel for both the parties the Bench was of opinion that the statement of the facts in the case was not sufficient for determining the question raised. The case was therefore referred back to the Tribunal u/s 66(4), Indian Income Tax Act for submitting supplementary statement of the case.

3. This case relates to assessment of Durga-dutt Sarawgi and Rekhachand Sarawgi who are two Hindu undivided families. The two kartas on behalf of the respective joint families have been carrying on a partnership business under the name of Jokhram Jagannath in which Rekhachand Sarawgi has nine annas share and Burgadutr, Sarawgi has seven annas share. The case relates to the assessment year 1944-45, corresponding to accounting year 1999-2000 samvat. The dispute in this case is with respect to the ownership of a house property

which was purchased by a sale deed on 10-11-1943 by three ladies, vis., Rekhabchand's wife, Durgadutt's wife and the widow of Sheobhagwan.

On behalf of the assessee it was explained that Rekhabchand's wife had five annas share, the widow of Sheobhagwan had five annas share and the wife of Durgadutt has six annas share. It was alleged on assessee's behalf that out of the total amount of consideration a sum of one lac was advanced by the partnership firm to the ladies for purchase of the house property. The three ladies managed to collect a sum of Rs. 1,30,095 out of the sale proceeds of their ornaments. The balance of Rs. 1,61,387 was borrowed by the three ladies from the Bengal Central Bank on security of the house property which they had purchased. The claim of the assessee was, therefore, that the house property belonged to the three ladies but this claim was disbelieved by the Tribunal who came to the finding that the property was actually purchased by the two Hindu undivided families out of their own funds and partly by borrowing from the Bengal Central Bank. In effect, the finding of the Tribunal was that the purchase of the house property was made benami in the name of the three ladies.

4. The finding of the Appellate Tribunal is challenged by Mr. Datt on behalf of the two assessees on the ground that there is complete absence of material to support the finding. The argument of Mr. Dutt is that three grounds have been taken by the Tribunal for reaching the conclusion that the purchase was benami, but all the three grounds are vitiated by mistake of fact and the conclusion of the Tribunal that the purchase was benami cannot therefore stand. The first ground mentioned by the Tribunal is that the amount of one lac was paid by the partnership firm to Mr. Peppe on behalf of the ladies but "the amount was not debited to the accounts of the ladies, in the account books of the firm". The contention of the assessee is that the Tribunal has committed a serious mistake of record in this connection. When the reference was heard on 5-2-1952 the counsel on behalf of the assessee actually produced the firm's rokar bahi to show that the sum of one lac was entered as loan granted to the ladies for the purchase of the house.

Learned counsel also produced a khata maintained by the ladies to show that the amount of one lac was taken as loan. The matter was hence referred back to the Tribunal u/s. 68(4), Indian Income Tax Act. In supplementary statement submitted on 9-10-1952 the Tribunal do not say that the argument of the learned counsel for the assessee on this point is not correct; on the contrary, the Tribunal concede that "there was only one account in the ledger for all the three ladies". The Tribunal merely state that

"there was no individual accounts of the three ladies in the applicant's books nor was the individual liability of each of the ladies stated anywhere"

and "there was only one account in the ledger for all the three ladies". It is therefore clear that there was a loan account maintained in the books of the firm for the amount of one lac advanced for the purchase of the house property. The

statement of the Appellate Tribunal that the amount was not debited to the accounts of the ladies, in the account books of the firm is therefore a mis-statement.

The second point taken by Mr. Dutt was that the Tribunal has wrongly said that there was an admission on assessee's behalf that "there was sufficient gold, which was purchased by the firm during the previous years". On the basis of this so-called admission the Tribunal has argued that

"the ornaments were not the personal property of the ladies but were assets of the firm, which some firms normally keep in the shape of bullion or even ornaments as their assets, otherwise the purchases of gold would not have been by the firm but by the partners."

The contention of Mr. Dutt is that there was admission on behalf of the assessee not that the firm had collected sufficient gold but that the partners had purchased sufficient gold in previous years and that the partners had individually made over gold as gifts to the respective wives.

In support of this statement Mr. Dutt referred to the order of the Income Tax Officer at page 6 of the paper book wherein it is stated as follows:

"But when called upon to adduce evidence as to wherefrom gold was obtained, assessee showed from account books that he had purchased sufficient gold in preceding years for his wife, which could fetch the amount invested in properties."

It is manifest that the reasoning of the Tribunal on this point proceeds on a mistaken reading of the record of the case.

The third important reason upon which the finding of the Tribunal is based is that

"the sale proceeds of the ornaments had been shown to have been received in September, but the accounts of the ladies in the books of the firm were not credited with the alleged sale proceeds."

It was contended by Mr. Dutt that this can hardly be a reason for holding that the sale proceeds of gold did not really belong to the ladies. The argument is that the gold ornaments were sold on the ladies' behalf and there was no reason why they should be credited in the books of the firm. The contention of the learned counsel is that the amount realised by the sale of the ornaments was paid direct to the account of Mr. Peppe by a cheque drawn by the ladies on a Calcutta Bank. This is the explanation given by Mr. Dutt, though we do not see any such fact mentioned in the order of the Appellate Tribunal or in the statement of the case.

But the argument of Mr. Dutt is nevertheless valid to this extent that the reasoning of the Tribunal on this point does not constitute a ground for holding that the amount of Rs. 1,30,095 was not the sale proceeds of the ornaments belonging to the three ladies. In the statement of the case an additional ground was taken that the sale proceeds were entered in the cash, book of the ladies"

estate on 19-11-1943. The argument of the Tribunal is that the ornaments were alleged to have been sold in September 1943 and there was no good reason furnished by the assessee to explain why the sale proceeds were entered in the cash book of the ladies' estate on 19-11-1943. The contention on behalf of the assessee is that the statement of the Tribunal on this point is incorrect. When the reference was heard on 5-2-1952 a specific argument was addressed by the counsel on behalf of the assessee that the entries were made in the cash book of the ladies on 9-10-1943--Dasahra day, when the cash book was opened for the first time.

Counsel also referred to a bank account to indicate that the jewellerys were sold between 20-8-1943 and 24-9-1943 and the moneys were credited in the bank account and subsequently transferred to the cash book opened by the ladies. In supplementary statement of the case the argument of the assessee is not controverted. On the contrary, it is conceded by the Tribunal that there is a mistake in typing the date as 19-11-1943. Mr. Dutt therefore submitted that the basis of the reasoning of the Tribunal has vanished and the conclusion that the transaction of purchase was a benami purchase is supported by no material. The standing counsel appearing on behalf of the Department, however, attempted to support the finding of the Tribunal on two other grounds.

Mr. Gopal Prasad argued in the first place that there must have been a written contract of sale executed for the sale of the house property since it was not conceivable that the firm should have paid the amount of one lac to Mr. Peppee without such a written contract. Mr. Gopal Prasad proceeded to argue that the assessee has failed to produce this contract and presumption must be drawn that the contract was executed not in favour of the ladies but in the name of the firm who was real purchaser of the house property. We think that the argument is not sound since the question whether there was a contract of sale executed is a disputed question between the parties and no presumption can be drawn against the assessee on the ground that the alleged contract of sale was not produced.

In the next place, it was pointed out by Mr. Gopal Prasad that the two receipts granted to Mr. Dutt for a sum of Rs. 50,000 each have not been produced by the assessee. The receipts are dated 23-3-1943 and 26-5-1943. The explanation of the assessee is that these receipts were not produced before the Tribunal since the receipts were returned to Mr. Peppee at the time when the document of sale was executed. The Tribunal has not disbelieved the explanation of the assessee in this regard and the argument of Mr. Gopal Prasad that presumption should be drawn against the assessee for non-production of the receipt cannot therefore be entertained.

Lastly, it was argued on behalf of the Department that the finding of the Tribunal that the transaction is benami is a finding of fact which cannot be impeached on a reference to the High Court. Normally, a finding on such a question is a finding of fact but the finding is open to attack as question of law in the High Court if there is no material to support the finding or if in reaching its finding the

Appellate Tribunal applies a wrong legal principle or wrongly shifts the onus of proof. In the present case we are satisfied that the finding of the Tribunal cannot be sustained because there is no material to support that finding.

5. For the reasons we have stated we hold that there is no material to justify the finding of the Tribunal that the property of Mr. Peppe at Ranchi was purchased by the assessee in the benami of the ladies. The question must accordingly be answered in favour of the assessee. The Income- tax Department must pay the cost of the reference. We assess the hearing fee to be Rs. 250.