

(1958) 03 AP CK 0019

In the Andhra Pradesh High Court

Case No : Case Referred No. 12 of 1956

G.M. Chenna Basappa

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 27-03-1958

Acts Referred:

Income Tax Act, 1922 — Section 13, 66

Citation : AIR 1959 AP 368 : (1958) 34 ITR 576

Hon'ble Judges : Chandra Reddy, O.C.J.; Srinivasachari, J

Bench : Division Bench

Advocate : P. Rama Rao and C. Kondiah, for the Appellant;

Judgement

Chandra Reddy, Offg. C.J.

1. At the instance of the assessee, this court directed the Income Tax Appellate Tribunal to refer the following question for its opinion:

"Whether on the facts, and in the circumstances of the case, the Appellate Tribunal is justified in sustaining both the additions of Rs. 14, 222 as deficit yield and Rs. 35, 400 as cash credits and whether they do not amount to double taxation ?"

2. The facts relevant to this question may be shortly stated.

3. The return submitted by the assessee who is a dealer in the manufacture and sale of ground-nut kernel and cake at Adoni, disclosed a gross profit of Rs. 5, 118 on a turnover of Rs. 3, 67, 000, the purchases of ground-nut alone amounting to Rs. 2, 41, 243 and the purchase of kernels being of the value of Rs. 1, 07, 448. There were no vouchers to support these transactions. The assessee decorticated ground-nuts and obtained kernel. The resultant kernel together with the kernel purchased was crushed by means of expellers yielding ground-nut oil and cake which were sold. No books were maintained to show the daily quantity of kernel pressed and the quantity of oil and cake obtained.

Similarly, there was no record showing the kernel obtained by decortivating the ground-nuts. In these circumstances and having regard to the fact that dealers similarly situated made gross profits of about 12%, the Income Tax Officer estimated the gross profits of the assessee at 10% which resulted in the addition of Rs. 31, 551. Besides this, he added Rs. 73, 000 as secret profits introduced into the books in the guise of unledgered anamath cash credits in the names of assessee's relatives and friends, when in the course of examination of accounts he found that there were credits to the tune of Rs. 48, 000, on 21 different occasions in the name of Mallikarjunappa whose full identity was not disclosed and another entry of Rs. 9, 000 as a credit in favour of one Kadlur Eriah whose existence was not proved by the assessee and a third item of Rs. 16, 000 in the name of one Sajjanara Gurubasappa, which alleged borrowing also was not satisfactorily explained. On appeal, the Appellate Assistant Commissioner thought that the fair estimates to be adopted was the rate of 76, 42 and 50 per cent. for yielding kernel, oil and cake respectively which would make only an addition of Rs. 14, 222 to the profits disclosed by the assessee. Thus, in that behalf, the estimate made by the Income Tax Officer was varied by substituting Rs. 14, 222 for Rs. 31, 551. As regards the other head, the Appellate Assistant Commissioner upheld the addition only to the extent of Rs. 37, 400. In his opinion, the entries which make up that amount were not satisfactorily explained by the assessee. The assessee carried a further appeal to the Tribunal but unsuccessfully. It is urged by Mr. Rama Rao in support of this reference that the Income Tax Officer having made an estimate of the profits of the business for the assessment year upon an examination of the account books which, as modified by the Appellate Assistant Commissioner, resulted in an addition of Rs. 14, 222, it was not open to him to make an addition of another sum in the name of undisclosed profits ; in other words, it was open to the Income Tax authorities to accept either the sum of Rs. 14, 222 or Rs. 37, 400 as the estimated profits of the assessee for the year and not to take into account both the amounts together. It is maintained by him that having rejected the books of account in some respects and made an estimate of the profits he could not add up the cash credits to that estimate. This argument is founded on *Ramcharitar Rath v. Commissioner of Income Tax*. We do not think that this ruling is of much assistance to the assessee. In that case, the Income Tax Officer made an estimate of the profits of the business for the assessment year, not having accepted as genuine his books of account. Having done it, he found that some cash credits entered in the books of account were the separate profits of the business. He added this to the income disclosed by the assessee. He further added another amount as the undisclosed profits of that very business. In that position, the High Court pointed out that the Income Tax Officer could not add both the sums as the addition was made under the head "business" and this could be justified only if there was material to show that the assessee carried on a different and independent business apart from the business to which its books related and on which it was being assessed. The facts of this case do not bear any resemblance to the instant case. The Income Tax Officer here has not added

the two items under the head of profits made out of the same business as shown in the accounts. The Officer thought that the assessee must have made a gross profit of 10% on the turnover as disclosed in his account books. With regard to the other head, he was not prepared to accept the explanation regarding the sources from which the credits were derived and was inclined to view them as profits from undisclosed source. According to him this might have had reference to the business which the assessee carried on outside the books of accounts. In our opinion, it is certainly open to the Income Tax Officer to make these two additions which fell under two distinct heads. The correct legal position seems to be that if the two additions are traceable to two distinct heads, namely, one attributable to the business activities of the assessee and is thus an undisclosed profit from the known source, and the other to profits from an undisclosed source, i.e., some profit earning activity of the assessee which is altogether unknown, they are legally sustainable. The position will be different if the cash credits also were treated as part of the undisclosed profits of the same business. It will not be permissible for him to estimate the gross profits from the business and again to add to it the cash credits shown in the books in some disguise, as part of the income of the same business. The case which is more in point is *D. C. Auddy and Bros. v. Commissioner of Income Tax* which was cited by the counsel for the assessee. This decision does not render him any assistance ; on the other hand, it furnishes an answer to the point raised by him. What happened there was this. The books of the assessee disclosed only a gross profit of 4%. The Income Tax Officer considered this percentage of profits as too low and thought that considerable volume of sale had been suppressed. In that view he estimated the gross profits at 15% and added a sum of Rs. 5, 000 to assessable income as representing concealed profits of the business. Besides this, he added a further sum of Rs. 32, 563 which was made up of certain cash credits which were entered in the suspense account of the assessee. The explanation as put in by the partners of the assessee with regard to the source of the deposits was not accepted by the Department and the Officer concerned came to the conclusion that they were profits made by the firm from undisclosed sources.

4. One of the questions posed before the Bench of the Calcutta High Court was whether the Income Tax Officer could add the amount of unexplained cash credits as profits from undisclosed sources when he had already estimated the whole of the undisclosed profits of the business carried on by the assessee. The learned Judges answered it in the affirmative, distinguishing *Ramcharitar Ram v. Commissioner of Income Tax* cited on behalf of the assessee, since the Income Tax Officer had not, "after making an estimate of the profits of the business and making an addition to the undisclosed book profits, added a further sum" as undisclosed profits of the same business as in the *Patna* case. They then pointed out the distinction between an undisclosed income from known source and income from an undisclosed source. We do not see how this ruling can be pressed into service by the assessee. A contention similar to the one advanced by the assessee here was rejected by the learned Judges. To the same effect is

the judgment of the Patna High Court in *Srinivas v. Commissioner of Income Tax*. Therefore, even on this ground, the reference has to be rejected.

5. That apart, there is a very substantial reason for rejecting this reference. The objection as presented before us was not raised either before the Income Tax Officer or the Appellate Assistant Commissioner. Both the Officers determined the question bearing on the genuineness of these entries. The stand taken before the Tribunal was that certain intangible additions were made in prior years and, therefore, the present one should be deleted. This contention was disposed of by the Tribunal by observing that the income of each year should be determined from the materials available for that year, and that the additions made in prior years related to the income of those years and the additions under consideration bore on the income of the year under consideration and that, therefore, there was absolutely no force in the representative's argument. The statement in paragraph 8 of the statement of the case that "the assessee's argument that both the credits as well as deficit yield could not be added was not accepted by the Tribunal for the reason that both were separate and distinct" has to be understood in the context of the observations made by the Tribunal in its order dismissing the appeal. It would not be possible to construe this as meaning that the case of the appellant was presented in the form in which it is done before us and it was negatived having regard to the fact that it is stated in the statement that:

"particulars regarding this are found in the orders of the Income Tax Officer and the Appellate Assistant Commissioner, copies of which are annexures 'A' and 'B' and form part of the case."

6. If, however, that is susceptible of the interpretation sought to be put upon it, it is not of much help to the assessee because it means that the matter had received the attention of the Tribunal and they found as a fact that they represent two distinct sources. Be that as it may, there is no scope for construing it in the manner the counsel for the assessee invites us to do. If that were so, no question of law arises to be answered by us. A question of law can be said to arise out of an order of the Appellate Tribunal within the meaning of section 66(1) of the Indian Income Tax Act. In other words, the order of the Tribunal should disclose that the point of law was raised before the Tribunal. If such a question is not raised before the Tribunal, it cannot be said to arise out of its order even if it could be sustained on the facts in the statement of the case by the Tribunal. There is ample authority for this proposition. See *Abboy Chetty v. Commissioner of Income Tax* and *Commissioner of Income Tax v. Modern Theatres Ltd*. In the above circumstances, the question is answered in the affirmative and against the assessee. The assessee will pay the costs of the Department which we fix at Rs. 100.

Question answered in the affirmative.