

(1938) 02 AHC CK 0010
In the Allahabad High Court

In Re: Ganeshi Lal and Sons, Jewellers

Date of Decision : 14-02-1938

Acts Referred:

Income Tax Act, 1961 — Section 66(3)

Citation : AIR 1938 All 367

Hon'ble Judges : Collister, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Collister, J.—These are two applications u/s 66(3), Income Tax Act requesting this Court to direct the Commissioner of Income Tax to state a case for the decision of this Court. The assesseees are a firm at Agra known as Ganeshi Lal and Sons. They are dealers in jewellery, embroidery, curios and objets d'art of various kinds. One of these applications relates to the year 1933-1934 and the other relates to the year 1934-1935. They can be disposed of together, as was done by the Assistant Commissioner and by the Commissioner. The questions upon which we are asked to direct the Commissioner to state a case are as follows:

(a) Whether in view of the facts of the case the stock valuations should not have been accepted and whether the books could be legally rejected and an estimated profit could be rightly made on percentage basis u/s 13 of the Act?

(b) Whether that flat rate of 30 per cent, was rightly taken by the learned Income Tax Officer for estimating net profit (less interest on borrowed capital) when the evidence before him in the shape of the books showed an average gross profit of 15 per cent.?

2. In connexion with case No. 541 of 1936 we are also asked to have the question referred as to whether the rate of 60 per cent, which has been applied for the purpose of estimating the net profits of a particular article of jewellery was justified. The facts are simple enough and are not in dispute. The gross sale proceeds for 1933-1934 were Rs. 1,66,187 which included Rs. 70,000 on account

of a pearl necklace. For 1934-1935 the gross sale, proceeds amounted to Rs. 2,41,781 which included Rs. 78,696 on account of a commodity purchased in partnership with another party. It may be mentioned that in March 1931 the assesseees for the first time valued their stock and prepared a stock book, according to which the total value of the stock in trade was approximately Rs. 14,00,000. The returns submitted by the assesseees for the years in dispute showed a loss, but they, were not accepted by the Income Tax Officer. He did not accept the stock valuation and he had also refused to accept it for the previous year, i.e. 1932-1933. Before rejecting it in respect to 1932-1933, he selected 62 Articles, 21 being from the Jewellery department, and 41 from the cloth and embroidery department and he asked the assesseees to prove their costs. The assesseees were only able to prove the costs of 14 out of the 41 items from the cloth and embroidery department; and as regards the items from the jewellery department, the assesseees filed a statement in respect to 9 of those items only, but were unable to establish the correctness of that statement. Thereupon, the Income Tax Officer assessed profit at the rate of 30 per cent, of the sale proceeds; and he adopted the same principle in respect to the years 1933-1934 and 1934-1935, except as regards one article relating to the year 1933-1934. This was a pearl necklace consisting of 109 pearls which had been sold to an American for Rs. 70,000. According to the stock-book, the value of this article was Rs. 45,000, but the Income Tax Officer did not accept this valuation and assessed the profits from it at 60 per cent, of its sale proceeds. He accepted the profits disclosed by the assesseees in respect to the commodity which had been purchased in partnership with another party in respect to the year 1934-1935.

3. For the year 1933-1934, the Income Tax Officer assessed the business income at Rs. 12,926 and income from property at Rupees 3828. For the year 1934-1935 he assessed the business income at Rs. 31,311 and income from property at Rs. 4563. These figures were arrived at after making allowance on account of the interest on borrowed capital. Deductions were then made from these amounts on account of insurance premia. The assesseees appealed to the Assistant Commissioner of Income Tax but the appeal was dismissed. An application was then made to the Commissioner of Income Tax u/s 66(2) of the Act requiring him to refer certain questions for the decision of this Court, but that application was disallowed by the Commissioner who was of opinion that no question of law arose from the order or decision of the Assistant Commissioner. Learned Counsel for the assesseees contends that questions of law do arise and he asks us to direct the Commissioner to state a case accordingly. He says that when the stock, book of the assesseees was prepared, the value of articles recently purchased was entered therein according to the invoices; but as regards old family heirlooms and articles of little intrinsic but high artistic or sentimental value, the assesseees had to appraise them according to the market prices as recognized and accepted among wholesale dealers. He pleads that it was open to the assesseees to put a valuation upon these articles to the best of their judgment and that the authorities are not entitled to object to such valuation so long as the

total valuation does not exceed Rs. 14,00,000 which is said to be the total value of the stock in trade and in respect of which there is apparently no dispute. He argues that the assesseees are at liberty to distribute this Rs. 14,00,000 among the various articles as they please and that there can be no objection on behalf of the Income Tax authorities in respect to the valuation thus allocated to any particular item so long as the whole does not exceed Rs. 14,00,000.

4. What we have to consider is whether this contention gives rise to any question of law. In *Feroze Shah v. Commissioner of Income Tax Punjab and N.W.F. Province* AIR (1930) Lah. 197 a flat rate of profit of 32 1/2 per cent, had been applied. A similar rate had been applied in the two previous years without objection and it does not appear that the accounts for the year then in question were maintained on a different system. A Bench of the Lahore High Court observed:

Assuming however for the moment that no regular method of accounting was employed, it has not been shown in what particular manner the Income Tax Officer acting under the proviso (to Section 13) has failed in his computation of the profits. The matter is entirely within the discretion of the Income Tax Officer and unless it can be shown that such discretion had been illegally or arbitrarily exercised no point of law can possibly arise.

5. In AIR 1933 198 (Privy Council) a flat rate of 32 1/2 per cent, on sales was applied since the rate of profit could not be deduced from the books. A similar rate had been applied in the two previous years and no objection had been made. At page 334 their Lordships of the Privy Council observe:

With regard to the flat rate of 32 1/2 per cent., their Lordships are in agreement with the judgment of the High Court on that head. The principle of assessment at a flat rate not being contested, its amount must be for the Income Tax Officer to determine.

6. u/s 13 of the Act, the Income Tax Officer had discretion to accept or reject the assesseees' books, and he rejected them. There is nothing apparently unreasonable or arbitrary in applying the rate of 30 per cent, upon sale proceeds, especially when no objection to the application of such rate for the year 1932-1933 was made. If we think, as we do, that the Income Tax Department was entitled in its discretion to reject the books and if the principle of a flat rate thereby became applicable, the amount of such rate was entirely in the discretion of the Income Tax authorities, as held by their Lordships of the Privy Council in the case above referred to. There remains the question of the pearl necklace. Prima facie the rate of 60 per cent, appears to be high; but, in the absence of anything to suggest the contrary, we must assume that the Income Tax authorities used their discretion reasonably and not arbitrarily and that their appraisal of the value of the article was based on their experience in such matters. In *Sundaram's Law of Income Tax*, Edn. 4, at p. 476, the learned author says:

The basis of flat rates is obviously the previous practice and experience of the Department in regard to similar trades.

7. The Income Tax Officer in the present case did not believe the assessee's assertion that they were unable to say what the pearls had cost them. He also observes:

As far as pearls are concerned, the value of a necklace is determined by the matching of the pearls contained in it. Well matched pearls of comparatively low cost may make up a necklace of much greater value than ill-matched pearls of greater value would do. The margin of profit is thus very great, and I think it may be anywhere between 20 per cent, and 80 per cent. For the matter of that it may be even more. In any case, as I mentioned above, the dealer has to know what it actually cost him to make a necklace in order to enable him to fix a price for it.

8. The Assistant Commissioner in the course of his order says:

The Income Tax Officer was therefore quite justified in having applied a rate, and the rate of 60 per cent, applied to the sale of this precious piece of jewellery does not appear to be at all excessive. It is to be noted that rates of profit are generally high in the case of articles of luxury, and they are very much higher in the case of jewellery, and particularly of a piece of jewellery of this nature.

9. The Assistant Commissioner might have added that the rate of profits is often exceptionally high where the vendee is a rich American. In any case, the mere fact that a high rate of profits has been applied will not by itself warrant this Court in directing the Commissioner to state a case. Moreover, it is to be observed that in their application to the Commissioner u/s 66(2) there was no request to him to refer to this Court any question as regards the rate of 60 per cent, which had been applied in respect to this pearl necklace; the application was concerned exclusively with the flat rate of 30 per cent, which had been applied in respect to other articles. For the reasons given above we are of opinion that no question of law arises out of the order or decision of the Assistant Commissioner and we accordingly dismiss these two applications with costs. Counsel for the Department is entitled to Rs. 75 as his fee in each case. He should file his certificate within six weeks.