

(1929) 02 AHC CK 0074
In the Allahabad High Court
In Re: Shiva Pershad Gupta

Date of Decision : 20-02-1929

Acts Referred:

Income Tax Act, 1922 — Section 13, 66

Citation : 124 Ind. Cas. 467

Hon'ble Judges : Naimatullah, J; Mukerji, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Mukerji, J.—This is a reference by the Commissioner of Income Tax, United Provinces, u/s 66, Income Tax Act of 1922.

2. The facts as they appear from the statement of the case made by the learned Commissioner and from the several appendices attached to the statement appear to be as follows: There was joint family business owned by several members of the family, the head office of which was in Calcutta. The Income Tax for the entire business was paid at Calcutta by the head office firm carrying on business under the name and style of Sital Prasad Kharag Prasad. The members of the family decided to separate, as and from the date 9th October, 1921. The date of separation having been fixed by mutual agreement, the actual partition of the effects of the family was made over to two gentlemen, Pandit Madan Mohan Malaviya and Babu Baldeo Bam Dave. These gentlemen made an award on 30th of November, 1925. The said award was made a rule of the Court on 26th February, 1926. It was, therefore, on 26th February, 1926, that the assessee, Babu Shiva Prasad Gupta, at whose instance this reference has been made, became the owner of the lot given to him as the result of the partition, 26th February, 1926, was almost at the close of the Sambat year 1982. The Sambat year 1983 began on 15th of March, 1926. For the Sambat 1983, Babu Shiva Prasad Gupta had a statement of his financial position drawn up in the shape of a profit and loss account. I have already mentioned that the family became separate with effect from 9th October, 1921, which would correspond to sometime about Kartik 1978 Sambat. In preparing the profit and loss account on

the credit or income side was shown the interest which accrued to Babu Shiva Prasad during the years 1978 Sambat to 1983 Sambat, each year being shown separately. On the debit or loss side, was shown for different years, such amounts as represented either a loss in business or unrealisable debts.

3. Babu Shiva Prasad Gupta was to be assessed for his income of the year 1927-28. The amount of his probable income, for the purpose of assessment, was to be taken to have been the same as was his actual income in the "previous year" namely, 1926-27 which would approximately correspond to the Sambat year 1983.

4. Having the profit and loss account prepared as aforesaid before him, the Income Tax Officer took all the accumulated interest of the several years as Babu Shiva Prasad's income for the year 1926-27. Babu Shiva Prasad's contention was that if on the income side, the interest that accumulated from time to time was to be shown as the income of the particular year 1926-27 (Sambat 1983), he was entitled to set off, as against that income, the losses suffered by him in business (the main business being a printing press) and on account of irrecoverable debts.

5. Apparently, the Income Tax Officer refused to deduct, out of the so-called income of Babu Shiva Prasad Gupta for the year 1926-27 his losses during the years, the interest earned for which have been taken as his income. There was an appeal to the Assistant Commissioner. It was unsuccessful except in so far as the assessable income was slightly reduced by him.

6. The assessee petitioned the Income Tax Commissioner to refer his case to the High Court but he did not formulate the question of law that really arose for decision. The learned Commissioner of Income Tax has formulated three questions for being answered by the High Court. These are as follows:

(1) In computing the income, profits and gains of the previous year, for the purpose of assessing them to Income Tax, can business losses incurred in years anterior to the previous year be set off against the income of the previous year?

(2) Similarly, in computing the income of the previous year, can bad debts or irrecoverable loans that became bad or irrecoverable respectively in years anterior to the previous year be deducted from the income of the previous year?

(3) If the answer to these two questions be in the negative, can interest that accrued in years anterior to the previous year, but for which the assessee in accordance with the system of accountancy regularly employed by him (see Section 13 of the Indian Income Tax Act) has taken credit for the first time in the previous year, be included in computing the income of the previous year for the purpose of assessing it to income tax?

7. It will be noticed that the first two questions do not really arise in the case. The third question again does not state the actual question that is in controversy. It entirely ignores the contention of Mr. Gupta that he is entitled to deduction out

of what has been taken to be his income.

8. The learned Government Advocate has contended that the High Court has no power to find out for itself what are the substantial questions of law that have arisen between the parties and that it is bound either to answer such questions as have been put to it by the Commissioner of Income Tax or to send back the case to him to make fresh "statement" in the case. In view of this contention, have considered Section 66 of the Indian Income Tax Act carefully. I am unable to find any warrant in it for the extreme contention of the learned Government Advocate. It appears to me that the section is not happily worded and the pronoun "it" has been used sometimes for a "question of law" and sometimes for the case. The meaning and object, however, of the entire Section 66 seems to me to be free from obscurity. My impression is that the High Court has to accept the fact as found by the Commissioner of Income Tax and if necessary may call for more facts by asking him to make a fresh statement of them under Sub-section 4 of Section 66. But it is for the High Court to find out, from the contention of the assessee on the one hand and the contention of the Income Tax authorities on the other, what is the real point of law that arises between the parties and what it has to decide. This reading of Section 66 seems to be clear to me, from among other matters, the fact that the High Court is nowhere called upon to decide such questions as may be framed by the Commissioner of Income Tax.

9. Let us now read Section 66 clause by clause. Sub-section 1 says where in the case of any assessment a question of law arises the Commissioner may draw up a statement of the case and refer "it" with his own opinion to the High Court. The pronoun "it" may refer either to the case which word appears close by, or it may refer to the "question" of law which word "question" appears four lines earlier.

10. Sub-section 2 mentions the case where reference is to be made at the instance of the assessee, sub-section 1 having already provided that a reference could be made by the Income Tax Commissioner either of his own motion or on reference from any Income Tax authority subordinate to him. Here again, the pronoun "it" that appears after the word "refer" may stand for the "case" or the "question" of law. The proviso to sub-section (2) makes it clear that the object of the reference is the decision by the High Court of the question of law that arises in the case and the main object of sending up the "case" is the decision of the question of law. The proviso says that if the Commissioner, in the exercise of his power of revision, decides the "question" which can mean only the question of law that arises, the assessee may withdraw his application for a reference to the High Court. If the assessee is satisfied with the Commissioner's decision on the point of law he may choose that he no longer would have a decision by the High Court.

11. Sub-section 3 relates to the position that might arise if the Commissioner happens to be of opinion that there is no question of law to be decided and the High Court is of opinion that there is a question of law to be decided and all that

the High Court wants is a statement of the case by the Commissioner. Obviously, in these circumstances, it will be for the High Court to find out what is point of law that arises and requires decision. In this sub-section what is to be referred to the High Court is the statement of the case, or the case itself or not a point or points of law.

12. Sub-section 4 relates to the affair when the statement of the case made by the Commissioner is unsatisfactory. It says that where a statement in a case referred under this section (Section 66) is insufficient to enable the High Court to determine the question raised "thereby," namely, by the case, the Court may refer back the case to the Commissioner for additions and alterations. The proviso supports the view that it would be for the High Court to find out what is the real point of law that is in issue between the assessee on the one hand and the Income Tax authorities on the other and whether for the purpose of determination of the point of law, sufficient facts have been supplied. It must be remembered that the questions of law that would ordinarily arise would arise in connection with particular facts and must be answered with reference to those facts. Otherwise, there would be no necessity of a statement of a case or any addition or alteration in that statement. It would be sufficient merely to put an abstract question of law to the High Court for an answer.

13. Sub-section 5 says that the High Court, on hearing any such "case" shall decide the "question of law raised thereby." The word "thereby" must stand for "the case." This sub-section nowhere suggests that the duties of the High Court are confined to answering the question of law put to it by the Commissioner, whether or not such question is a substantial question that is to be decided between the parties (the assessee and the Income Tax authority).

14. The result of my reading of Section 66, therefore, is, that although ordinarily the Income Tax Commissioner would be the officer who would frame the points of law that arise in the case stated by him and although he would be expected to give his own opinion on those points of law for the benefit of the High Court, Section 66 requires the High Court to decide the questions of law that arise in the case, i.e., the High Court is entitled to "re-settle the issues" as it were, and decide those issues. Of course, the issues would all be on question of law.

15. This being my reading of the provisions of Section 66 of the Income Tax Act, I find that the only controversy that does arise between the Income Tax authority on the one hand and the assessee on the other, is "whether the assessee is entitled to deduct from his "income," which is in the shape of interest which has accrued due, not only in the year 1926-27, but in five previous years (going up to Sambat 1978, see p. 7 Appendix A) the losses and irrecoverable debts that happened and should have been discovered, respectively, in those years?"

16. The answer to such a question can be only in the affirmative.

17. It will be recalled among the members of the joint Hindu family, the date of separation was fixed as 9th October, 1921, corresponding to 1978 Sambat. For

full four years, the partition proceedings dragged on and it was not till the close of Sambat 1982 that the assessee came to know what he had got as his share in the joint family property. It has been found that no Income Tax was paid on the interest that accrued in the years 1978 to 1982, according to the account-books. It is clear that Income Tax ought to be paid for those years, but no Income Tax can be assessed for the years 1978 to 1982, unless the accumulated interest be taken as a part of the income of the year 1953 (1926 to 1927). Prior to the year 1927-28, the assessee could only have been the joint family. The family did not treat the accrued interest as a part of their profits and did not pay any Income Tax on the same. In profit and loss account, the assessee, Mr. Shiva Prasad Gupta, treated the accumulated interest as his income for the year 1963. This treatment by Mr. Gupta was only for the purpose of ascertainment of his own financial position. It would be an untrue statement of fact if we said that the accumulated interest of 5 years was Mr. Shiva Prasad's income in one particular year, namely 1983. But he is prepared to allow the Income Tax authorities to treat the entire accumulated interest as his income tot the "previous years", provided he is allowed to set off against the interest, that accrued in a particular year, the loss that was incurred in the business (press) or due to a particular debt becoming irrecoverable in that particular year. This is a perfectly fair and equitable position and is not in any way discountenanced by Section 13 of the Income Tax Act. Section 13 of the Income Tax Act is a very fair section, if properly understood. It says that when an assessee keeps his accounts in a particular way in order to ascertain his own profit and loss, take his case of profit and loss in his particular way, provided it gives an accurate idea of his income in a particular period. But for this purpose, the method of keeping the account should be one which the assessee habitually and regularly adopts. This can only mean that the practice has gone on for some time. In this particular case before me, there can be no question of any particular method of keeping account which may have been "regularly employed", to quote the exact language of Section 13. Mr. Gupta came by his separate property in the very year under consideration, viz., 1926-27. He could not possibly have developed for himself any method of accounting as to which the description "regularly employed" may be applied. The Income Tax Officer, in the circumstances, is thrown upon "such basis" and "such manner" as the Income Tax Officer may determine es. 13. This does not mean that the Income Tax Officer has a purely arbitrary power to assess the income. If he adopts one particular method he is to pursue it to its logical conclusion. In this case, the Income Tax Officer adopts the assessee's "chitta" or profit and loss account for the purposes of Section 13 of the Income Tax Act, but he accepts only the figures on the one side and ignores the figures on the other. In other words he proceeds on what has been described in the course of the argument and in the statement of the case as "mercantile accountancy system". That system is this. In any particular year, the amounts that have become recoverable are shown as the income actually received and the liabilities incurred are shown as amounts actually disbursed. Under this system, the merchant, in order to ascertain his income, which is really a "book income", deducts from the

profit earned according to his books, the losses that he has suffered, also according to his books. The balance is a net "book income." u/s 13 of the Income Tax Act this net "book income" may be accepted by the Income Tax Officer as a fair estimate of the merchant's income. The reason will be two-fold. The merchant himself uses this method of ascertaining his own income and, secondly, the method is not an unfair one. In this particular case before me, the Income Tax Officer accepts the "book income" of any particular year, say for example, the year 1979 as the assessee's income, because the assessee, in his profit and loss account" has taken the book income of 1979 Sambat as his income. But when the assessee ascertained also his losses for the year 1979 in order to ascertain his actual book income for 1979 Sambat the Income Tax Officer says, "you ought to have done that in the year 1979 and you cannot do it now." The simple and honest answer to that would be "In the year 1979, the accrued interest was never treated as a part of the income and, therefore, the accrued losses were never deducted out of the income". To my mind, it is manifestly unjust that in treating the book income as the actual income the losses, which would have been deducted if the book income had been treated as the actual income in a particular year, by the assessee, should not be deducted.

18. My answer to the question formulated above at page 7, therefore, is that the assessee is entitled to have deducted from his estimated income the actual losses that may have been suffered in a particular year and the amount of irrecoverable debts that should have been discovered and could have been discovered in a particular year.

19. As regards the questions put by the learned Commissioner of Income Tax, my simple answer is that those questions do not at all arise, for there is no difference of opinion between him and the assessee on those points. The learned Counsel for the assessee, Sir Tej Bahadur Sapru, agreed before us, without any difficulty, that the answers to the questions Nos. 1 and 2 should be in the negative and the Income Tax Commissioner has himself given his answers to those questions in the negative. As regards the third question, as I have already stated, it does not cover the point in controversy which is, whether or not the assessee is entitled to have deducted from his estimated income certain particular amounts. I need not repeat, therefore, that none of the three questions framed by the learned Commissioner arise in the case. There is no occasion for calling for a fresh statement of the case, under Sub-section 4 of Section 66, for all the facts necessary for the determination of the real controversy on the questions of law, do appear from the statement of the case furnished to us by the learned Commissioner.

Niamatullah, J.

20. I concur.

21. The question that arises in the case as stated by the learned Commissioner is that indicated at page 7 of the judgment of one of us and is "Whether the

assessee is entitled to deduct from his income which is in the shape of interest which has accrued to him not only in year 1926 to 1927 but in five previous years (going up to Sambat 1978, see page 7 Appendix A) the losses and irrecoverable debts and should have been discovered respectively in those years,"

22. Our answer is that to be found at the top of page 11 in the judgment of one of us namely, "The assessee is entitled to have deducted from his estimated income not only losses that may have been suffered in a particular year and the amount of irrecoverable debts that should have been discovered and could have been discovered in a particular year."

23. Let a copy of our judgment be sent down to the Commissioner of Income Tax for his information. We certify that the Government Advocate is entitled to a day's fee, namely Rs. 200. The costs of this reference shall be paid by the Government. The Government Advocate will have one month's time to certify, as allowed by the rules.