
(1970) 10 AHC CK 0008
In the Allahabad High Court
Case No : Income-tax Reference No. 599 of 1964

Kashi Ram

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 15-10-1970

Acts Referred:

Income Tax Act, 1922 — Section 13, 66

Citation : (1971) 82 ITR 401

Hon'ble Judges : V.G. Oak, C.J;H.N. Seth, J

Bench : Division Bench

Advocate : P.N. Pachauri, for the Appellant; B.L. Gupta and R.R. Misra, for the Respondent

Final Decision : Disposed Of

Judgement

V.K. Oak, C.J.—This is a reference u/s 66 of the Indian Income Tax Act, 1922. Kashi Ram has been assessed as an individual. The assessment year is 1960-61. The assessee is a partner in registered firm, Messrs. Jamuna Das Kashi Ram. His share in the firm is 8 annas. At the time of assessment of Kashi Ram the Income Tax Officer noticed deposits amounting to Rs. 8,500. It was further noticed that the assessee had withdrawn from the accounts of the firm a small sum of Rs. 500. The assessee was invited to explain the source of deposit of Rs. 8,500. The assessee state d that that money came from dowry and sale of ornaments. The Income Tax Officer concluded that the explanation given by the assessee was not correct. Adding a sum of Rs. 2,000 to the deposit of Rs. 8,500 the Income Tax Officer inferred that a total sum of Rs. 10,500 represented the assessee's income from undisclosed sources. The same officer assessed the firm also. The firm declared a loss during the accounting period. That position was not accepted by the Income Tax Officer. He estimated the profit of the firm as Rs. 44,000. The assessee's share in the profit of the firm was fixed at Rs. 21,975. To that sum, a further sum of Rs. 10,500 was added as income of the assessee from undisclosed sources. In the result the individual was assessed on a total sum of Rs. 32,475.

2. In appeal the assessee urged that it was unfair to assess on the sum of Rs. 10,500 as income from undisclosed sources in addition to the assumed share in the profit of the firm amounting to Rs. 21,975. This contention was accepted by the Appellate Assistant Commissioner. The sum of Rs. Rs. 10,500 was, therefore, deleted from the assessment.

3. The department appealed. The Tribunal allowed the appeal by the department, reversed the decision of the Appellate Assistant Commissioner, and restored the decision of the Income Tax Officer, Kanpur, In arriving at its conclusion the Appellate Tribunal relied upon a decision of the Supreme Court in *Kate Khan Mohammad Hanif v. Commissioner of Income Tax*.

4. At the instance of the assessee, the Appellate Tribunal has referred the following question of law to this court:

"Whether the ratio laid down by the Supreme Court in *KALE KHAN MOHAMMAD HANIF Vs. COMMISSIONER OF Income Tax, MADHYA PRADESH AND BHOPAL.*, , applied to the case of the assessee and whether under the circumstances of the case the sum of Rs. 10,500 was rightly assessed in the hands of the assessee as income from undisclosed sources in addition to the addition made to the share income of the assessee from the firm, *M/s. Jamuna Das Kashi Ram* ?"

5. In *Sreelekha Banerjee v. Commissioner of Income Tax* [1963] 49 ITR (S.C.). 112 : [1964] 2 S.C.R. 552 (S.C.), it was held by the Supreme Court that if the explanation offered by an assessee is unconvincing, the department can reject it and draw the inference that the amount represents income either from the sources already disclosed by the assessee or from some undisclosed source. The department does not proceed on no evidence, because the fact that there was receipt of money is itself evidence against the assessee.

6. In *Kale Khan Mohammad Hanif v. Commissioner of Income Tax*, it was held by the Supreme Court that the burden of proving the source of cash credits is on the assessee.

7. In the assessee's books there was a credit entry for a sum of Rs. 8,500. It was for the assessee to explain the source of this sum of Rs. 8,500. The explanation offered by the assessee was rejected by the Income Tax Officer and by the Tribunal. It was, therefore, open to these authorities to infer that the sum of Rs. 8,500 represents the assessee's income from some undisclosed source.

8. The next question for consideration is whether the undisclosed source is the business of the firm of which the assessee was a partner, or some other source. According to the department, the source in question was outside the business of the firm. On the other hand, the assessee suggests that the undisclosed source might be covered by the business of the firm.

9. In *Commissioner of Income Tax Vs. Babban Pandey*, it was held by this court that the Tribunal was competent to entertain the submission made by the assessee's counsel that the sum of Rs. 6,531 came out of and was covered by

the addition of Rs. 18,000 to the business profits.

10. Mr. P. N. Pachauri appearing for the assessee places strong reliance upon a decision of this court in DEVI PRASAD VISHWANATH PRASAD Vs. COMMISSIONER OF Income Tax, UTTAR PRADESH., It was held in Devi Prasad's case, that where the assessee's explanation as to the credit entry is disbelieved, the Income Tax authorities could presume that the amount was an undisclosed income, but they could not go further and assume that it was not income from business but from another source.

11. The decision of this court in Devi Prasad's case no doubt supports the stand taken by the assessee. But the decision of this court was reversed by the Supreme Court in appeal. The decision of the Supreme Court is Commissioner of Income Tax, Uttar Pradesh Vs. Devi Prasad Vishwanath Prasad,

12. It is true that the main ground for reversing the decision of this court by the Supreme Court was that the question discussed by the High Court did not arise out of the order of the Tribunal. None the less, the Supreme Court made certain observations on the merits of the case. Their Lordships observed on pages 196 and 197 :

"There is nothing in law which prevents the Income Tax Officer in an appropriate case in taxing both the cash credit, the source and nature of which is not satisfactorily explained, and the business income estimated by him u/s 13 of the Income Tax Act, after rejecting the books of account of the assessee as unreliable. This was so decided in Kate Khan Mohammad Hanif v. Commissioner of Income Tax. Whether in a given case the Income Tax Officer may tax the cash credit entry in the books of account of the business, and at the same time estimate the profit must, however, depend upon the facts of each case The question again assumes that it was for the Income Tax Officer to indicate the source of the income before the income could be held taxable and unless he did so, the assessee was entitled to succeed. That is not, in our judgment, the correct legal position. Where there is unexplained cash credit, it is open to the Income Tax Officer to hold that it is income of the assessee and no further burden lies on the Income Tax Officer to show that that income is from any particular source. It is for the assessee to prove that even if the cash credit represents income it is income from a source which has already been taxed."

13. In view of the decision of the Supreme Court in Devi Prasad's case, it must be held that the decision of the Income Tax Officer was sound. There was no justification in law for the reversal of that decision by the Appellate Assistant Commissioner. The Appellate Tribunal set aside the decision of the Appellate Assistant Commissioner, and restored the decision of the Income Tax Officer, which as we have seen was sound in law. At the hearing before the Tribunal the assessee's counsel was invited to state whether the cash credit in question in fact represented disclosed income of the assessee. The assessee's counsel declined to make a definite statement on the point. In view of all these

considerations, the ultimate decision of the Tribunal in allowing the appeal must be accepted as a decision which is sound in law.

14. We answer both the parts of the question referred to the court in the affirmative, and against the assessee. The assessee shall pay the Commissioner of the Income Tax, U.P., Rs. 200 as costs of this reference.