

(1940) 10 AHC CK 0030
In the Allahabad High Court
Case No : Miscellaneous Case No. 84 of 1940

KHAIRATI LAL BABU LAL,

APPELLANT

Vs

RE.

RESPONDENT

Date of Decision : 04-10-1940

Acts Referred:

Income Tax Act, 1961 — Section 66(2)

Citation : (1941) 9 ITR 627

Final Decision : Disposed Off

Judgement

This is a reference u/s 66(2) of the Income Tax Act (XI of 1922). The assessee is a Hindu undivided family which does business in cloth, money-lending and property. For the assessment year 1938-39 the assessee returned an income of Rs. 9,128. The Income Tax Officer examined the books of account and added to the assessable income a sum of Rs. 2,814 from property and Rs. 8,919 from business. The last named sum included an amount Rs. 1,850 on account of interest which had been received from Kunjamal Banwari Lal and it is in respect of this sum of money that a reference has been made to us.

It appears that on November 29, 1927 the assessee advanced a loan of Rs. 15,000 on the security of house property, to Trilokinath Sansarnath, and on March 16, 1929 a further loan was advanced security of the same property for a sum of Rs. 5,000, which included Rs. 1,354 on account of January 30, 1932 the assessee instituted a suit and he ultimately obtained a decree for Rs. 32,000. Meanwhile another suit had been instituted for Rs. 58,000 by one Kanhaiya Lal and the suit was decreed, but for Rs. 2,000 only.

Trilokinath Sansarnath thereafter sold the mortgaged property to Bengalimal. Proprietor of the firm Kunjamal Banwari Lal. In the Sambat year 1992-93 Bengalimal paid three items amounting to Rs. 550, to the assessee and in the following year he similarly paid several items, amounting to Rs. 700. Bengalimal entered these items in the interest account of the books of Kunjamal Banwari Lal : but the Income Tax Officer found that the assessee had credited them in his

own books to the personal account of Bengalimal. The Income Tax Officer interrogated the assessee in respect to this matter and the latter said that no instructions had been received from Bengalimal as to whether the sums of money which had been paid from time to time to the assessee should be appropriated to principal or to interest. The assessee was then required to adduce specific evidence on the point and an affidavit of Bengalimal was put in, in which the latter averred : that he had sent no instruction to the assessee as to how these sums of money were to be allocated. The Income Tax Officer noticed that for the Sambat year 1992-93 Bengalimal had debited these various payments to the interest account in his books and had claimed and received an allowance in respect to them u/s 10 of the Act; and he noticed that for the year 1993-94 Bengalimal had similarly debited these items to the interest account in the books, but that at the end of the year a reverse entry had been made debiting these items in the property account, and an allowance was claimed u/s 9 of the Act. The Income Tax Officer formed the opinion that there had been collusion between Bengalimal and the assessee and he drew the presumption that Bengalimal "must have given instructions to the assessee to credit the items towards interest". The Income Tax Officer accordingly held that this sum of Rs. 1,850 should be added to the profits in the interest account.

The assessee appealed to the Assistant Commissioner but the appeal was dismissed. Thereafter an application was preferred before the Commissioner of Income Tax for review u/s 33 or for a reference to this Court u/s 66(2) of the Act. The Commissioner declined to exercise his powers of review u/s 33, but has stated a case and has referred the following question to this Court :

"Whether in the circumstances of this case the Income Tax Officer was justified in holding that the sum of Rs. 1,850 was received by the petitioner as interest in the account year ?"

The Commissioners own opinion is expressed in the following terms :

"I..... submit that, in the circumstances of the case, the Income Tax Officer was quite justified in having come to the conclusion that the payments were intended to be on account of interest and that such intention was communicated to the petitioner and that the subsequent reversal of the entries was made to support the pleas taken up by the petitioner before the Income Tax Officer that the payment was an open one and not of interest".

It will be observed that the question, as formulated, is wide in its scope and gives this Court considerable latitude. The first thing which we propose to decide is whether the Assistant Commissioner was justified in drawing the presumption which he did draw. He says :

"In ordinary circumstances the affidavit of Bengalimal would have carried weight, but when he himself treated the payment of Rs. 1,850 towards interest the natural presumption is that he must have asked the appellant also to credit the same to the interest account."

Further on he observes that

"..... in view of the entries in the books of Bengalimal himself, it cannot be presumed that Bengalimal sent the amount of Rs. 1,850 without any instruction."

The main foundation upon which this presumption rests is that at the end of the year 1993-94 Bengalimal reversed the entries and claimed an allowance u/s 9 instead of Section 10 of the Act. We do not think that any inference adverse to the assessee necessarily follows from this fact. Bengalimal may perhaps have thought in Sambat 1992-93 that it would be more advantageous to him to enter these items in the interest account and claim an allowance u/s 10 of the Act. He may have changed his view and may have thought that it would be more advantageous to debit these items to property and claim an allowance u/s 9. Nor do we think there is any particular reason to suppose that, when he remitted these various items to the assessee, he sent instructions with them as regards appropriation. There is no particular reason why he should have instructed the assessee to credit these items to the interest account rather than to the principal, for it is ordinarily to the advantage of a debtor that such payment should be credited to principal. Of course it is obvious that some sort of a message may have been sent when these items were remitted, but the probability is that the only message that a debtor would send would be that the money was to be credited to the decree, unless of course he particularly wanted it to be credited to the principal which is no ones case here. In our opinion the facts upon which the taxing authorities have based their presumption are hardly sufficient to justify such presumption and we accordingly answer the question referred to us in the negative.

The assessee is entitled to his costs of this reference. Counsel for the Department is entitled to a fee of Rs. 150.

A copy of our judgment will be sent to the Commissioner of Income Tax, Central and United Provinces, under the seal of the Court and the signature of the Registrar.

Reference answered in the negative.