(1956) 07 KL CK 0003

In the High Court Of Kerala

Case No : O.P. No. 208 of 1955

K.S. Daniel APPELLANT

Vs

Commissioner Income Tax Travel and Coorg. RESPONDENT

Date of Decision : 30-07-1956

Acts Referred:
Income Tax Act, 1961 — Section 56(2), 66(1), 66(2)

Citation : (1956) 07 KL CK 0003

Hon'ble Judges : Kumara Pillai, J;Joseph Vithayahil, J

Bench : Division Bench

Advocate : P. Govindan Nair and K.V.R. Shenoi, for the Appellant; G. Rama Iyer, for the Respondent

Judgement

Kumara Pollai, J.—This is a petition for requiring the Income Tax Appellate Tribunal, Madras, to state and refer a case u/s 66(2), Income Tax Act.

2. For the assessment year 1952-53, the accounting period for which was from 16-8-1950 to 31-3-1952, the Petitioner returned a net income of Rs. 6737/- under the head ''Business''.

In making the assessment the Income Tax Officer, Aleppo Circle, added a further sum of Rs. 24128-14-0 under the head ''Other Sources'' the said sum being a cash credit booked in the assessor''s Personal Account on 3-9-1951. How the Assessee explained this cash credit to the Income Tax Officer is stated as follows in the petition filed here u/s 56(2):

The Petitioner explained the source of this sum of Rs. 24128-14-0 as only an adjustment entry, the corresponding debits being to the accounts of four different persons on 21 different dates in the very same accounting year. In the account books of the Petitioner for the assessment 1951-52, there were credits, to the extent of the very same amount of Rs. 24128-14-0 booked in the ledger folios of four different persons.

In dealing with the assessment of the applicant -for the assessment year

1951-52, the Income Tax Officer treated the credits in the names of the four persons mentioned above as Assessee''s own business income and subjected the same to tax. The applicant did not appeal against the assessment. In the meantime, he has been withdrawing these credits in small sutras as and when the finance of the business permitted such withdrawal.

After withdrawing the entire sum of Rs. 34128-14-0 he credited his personal account on 3-9-1951 with this sum of Rs. 24128-14-0 in one lump sum. The applicant explained the source of the credit in his personal account on .3-9-1951 as emanating from the withdrawals of the credits booked to the Ledger Accounts of four different persons in the earlier year, which has already been subjected to tax. He also pleaded that he did not take out this money from the business but only passed entries in his bocks as withdrawals and was having this money as cash on hand.

Hence he pleaded that the sum of Rs. 24128-14-0 should not be taxed as his income for the assessment year 1952-53, since the same amount has been taxed in the prior assessment year.

3. The Income Tax Officer rejected this explanations, and the appeal which the Assessee filed objecting to the inclusion of this amount in the assessment made by the Income Tax Officer was also dismissed by the Appellate Assistant Commissioner, Trivandrum. The reasons for the dismissal of the appeal have been stated by the Appellate Assistant Commissioner as follows:

The withdrawals from the personal accounts mentioned above were made on different dates during- the year and there is no proximity between the dates of such withdrawals and the date of reinvestment in the Appellant''s name.

It was further admitted by Appellant''s representative before me at one stage in the course of hearing that the amounts dented to the personal accounts of the above persons must have been spent away and would not have been, available with the Appellant for being reinvested. He therefore asked me to believe that the credit entry of Rs. 24129/- in the personal account did not mean that any cash to that extent was actually introduced into the business.

But when it was pointed out to him that the cash book really showed that there was an increase in the cash balance to that extent he changed his version and said that the amounts debited to the personal accounts of K.S. Baby and others were separately kept by the Appellant for various periods and reinvested in the business in his own name on 3-9-1951.

These explanations are to my mind quite unconvincing and I regret my inability to accept them. The Appellant has not satisfied me that the credit of Rs. 24129/- in question is a mere adjustment entry as alleged by him.

The fact that the credits in the name of K.S. Baby and others aggregating in all Rs. 33213/- had been treated as the Appellant''s income in connection with the assessment for 1951-52 cannot also make any difference for the decision of the issue before me. I am therefore of the opinion that the Income Tax Officer was fully justified in making the addition.

From the order of the Appellate Assistant Commissioner the Assessee filed an appeal before the Income Tax Appellate Tribunal. But that appeal also was dismissed. Thereupon the Assessee applied to the Appellate Tribunal for making a reference to this Court u/s 66(1), Income Tax Act, and on the dismissal of that application he has filed in this Court the present petition u/s 66(2).

4. The Appellate Tribunal''s reasons for dis missing the application u/s 66(1) are stated as follows in its order dated 26-2-1955:

In the course of examination of accounts the Departmental Officers found credits to telling Rs. 24129/- in the personal accounts of the Assessee. The Assessee offered explanation that these sums represented moneys withdrawn in four different names during the prior years, but at no stage of the proceedings the Assessee was able to prove the veracity of the statement. Referring to this, the Appellate Assistant Commissioner wrote:

It was further admitted by the Appellant''s representative before me at one stage in the course of hearing that the amounts debited to the personal accounts of the above persons must have been spent away and would not have been available with the Appellant for being" reinvested.

Thus the Assessee took "different stands at different times. At one stage he mentioned that the sums withdrawn were spent away and at another stage he mentioned that the sums withdrawn were available for re-introduction. The Tribunal found that the sums were withdrawn in different names which indicated that they were withdrawn for specific purposes. They were withdrawn during the period of nearly 2 years from 4-10-1950 to 1-9-1951 in driblets which also went to show that they were intended for specific purposes.

When the withdrawn sums were allegedly available with the Assessee the Tribunal found that the Assessee was running a big overdraft account with the bank. It is indicated that the sums were not readily available with the Assessee for introduction into the business. The Tribunal observed that the Assessee''s explanation that it had withdrawn the money in driblets and kept it at home and at the same time borrowed from the bank and paid interest on such borrowers was incongruous. It therefore came to the conclusion that the credit found in the personal account during the year of account were not satisfactorily explained. This is purely a question of fact and no question of law could be spelt out of all.

5. It-will be seen from the extracts given above from the orders of the Appellate Assistant Commissioner and the Appellate Tribunal that the main reason; of the appellate authorities for rejecting the Assessee''s objections to the inclusion of the amount of Rs. 24128-14-0 in the assessment for 1952-53 was the conflicting and contradictory explanations alleged to have been given by his - representative before the Appellate Assistant Commissioner for this credit.

The contradictory statements are said to have been made before the Appellate Assistant Commissioner, and not before the Appellate Tribunal. In the appeal petition and the proceedings before the Income Tax Appellate Tribunal it was denied that such statements were made before the Assistant Commissioner, still the Appellate Tribunal does not appear to have considered the question whether such confictin statements were actually made or not before the Appellate Assistant Commissioner and seems to have taken it for granted that such conflicting statements were actually made. There is no record signed by the Assessee or his representative containing conflicting and contradictory statements, and it is also improbable that a responsible Income Tax practitioner would have made before the Appellate Commissioner conflicting and contradictory statement so wholly inconsistent with and damaging to his client''s case.

Counsel appearing for the Assessee complained bitterly before us that the Appellate Tribunal should not have acted upon such "vague admissions alleged to have been made by the Assessee''s representative when there was nothing to show that that exactly was the admission. According to him if an admission had been made the Appellate Assistant Commissioner would have immediately got it down in writing from the Assessee or his representative.

When two contradictory statements of facts are made by counsel during the course and in the heat of the argument it may be unfair to take both those statements as admissions made by and binding on the Assessee. In such a cause the proper thing may be to point out the discrepant statements to the counsel and ascertain which is the statement to be taken as binding on the Assessee. There is no suggestion that the Assessee himself has made the discrepant statements or that the discrepant statements were made by the Income Tax practitioner in any written record.

If, as a matter of fact, no such statements had been made before the Appellate Assistant Commissioner, the Appellate Tribunal''s main reason for the dismissal of the Assessee''s appeal will not hold good. The question therefore arises for consideration whether conflicting and contradictory explanations for this credit were actually given by the Assessee''s representative before the Appellate Assistant Commissioner. If no discrepant statements binding on the Assessee had been made, there was no material before the Tribunal for arriving at its present conclusion and whether there was such material or not is a question of law.

6. It was also urged by the Assessee''s counsel that even if the Assessee''s explanations for the credit in question were unsatisfactory it would not follow from that alone that the amount in question was income from ''Other Sources and that unless the Income Tax authorities had some material before them to show that besides the business the accounts of which were produced by the Assessee before them, he had some other business also or some other source of income they would not be justified in treating any investment made by him in his business as income from a source not disclosed by him.

The Assessee''s contention before us was that there was no such material: in this case. According to the Assessee''s learned Counsel there was no onus on the Assessee to indicate the source of the cash in his possession or of a capital investment in his business unless the Income Tax authorities had some definite material for suspecting that the cash or investment came out of income from an undisclosed source. Reliance was placed in support of these contentions on the decisions in Nilkantlia Narayan Singh v. Commissioner of Income Tax B & O, 1951 20 ITR (AIR 1951 Pat 105) (A). Paimiswami J. has said in that case:

Lastly it was observed by the Tribunal that the Assessee was not in a position to say where-from the notes of the value of Rs. 10,000 each were obtained and his failure to do so lead to the conclusion that he was unwilling to disclose the-source. On behalf of the Assessee it was argued that no Home Chest Account was maintained by the Assessee and the Tribunal had no warrant for drawing an adverse inference. In my opinion the-contention of the Assessee is correct. There was no material before the Tribunal to suggest that a home-chest account was maintained and the appellate Tribunal ought not to have drawn an adverse inference because no such account was produced.

The tribunal remarked that there was no evidence that there was a Rs. 10,000 note in any of these receipts, and that the Raja and his employees-had not disclosed from whom the notes of the-value of Rs. 10000 each were obtained. In my opinion there is no onus thrust upon the Raja to indicate from whom each note to the value of Rs. 10,000 was received and no adverse inference ought to have been drawn by the Tribunal against the Assessee.

Sarjoo Prosad J. also has said In that case:

Now the various sources of the Assessee''s income are all stated in the accounts, and if the accounts are held to be genuine, as they have been held to be genuine, I do not see how it can be inferred that this money came from any different source during the period in question. The revenue-authorities appear to have presumed that there-was some home-chest account kept by the Assessee which the latter has failed to produce and, therefore, the presumption must be raised against him. In my opinion there is no legal foundation for such a presumption as there is no basis for assuming that there was a home-chest account maintained by the Assessee.

In Ramcharitarram Harihar Prasad Vs. Commissioner of Income Tax, also the Patna High Court has held that it was not open to the Income Tax authorities to add up both the cash credits and the estimated excess of the profits over the amounts, shown in the books of account and to hold the-amounts so added up was taxable and that such a course was open to the Income Tax authorities, only when there was material to show that the Assessee carried on an independent business apart from the business for which the assessment was made.

Having regard to these authorities it cannot be denied that in the present case also the question arises for consideration whether there was any material before the Income Tax authorities to justify the inference that the amount of Rs. 24,128-14-0 represented by cash credit on 3-9-1951 came out of income from any source undisclosed by the Assessee and whether there was an onus on him to prove that it did not come out of the income from any (undisclosed source.

7. For the reasons stated above we hold that the following substantial questions of law arise for consideration in this case, namely;

(1) whether from the facts and circumstances proved or admitted in this case an inference can be drawn that the amount of Rs. 24,128-14-0 credited in the personal account of the Assessee on 3-9-1951 was income from ''other sources''?

(2) Whether on the facts and circumstances there was an onus on the Assessee to show that the said sum of Rs. 24,128-14-0 was not income from other sources and was covered by the prior assessments?

8. The Income Tax Appellate Tribunal is therefore required u/s 66(2) to state the case and refer it accordingly.