
(1942) 01 AHC CK 0007
In the Allahabad High Court
LACHHMAN DAS BRIJBALLBH DAS.

Date of Decision : 17-01-1942

Acts Referred:

Citation : (1942) 10 ITR 186

Judgement

This is an Income Tax reference u/s 66 (3) of the Act arising out of the assessment of Messrs. Lachhman Das Brijballabh Das for the assessment year 1934-35. The assessee's accounting year was the Diwali year from November 1932 to November 1933 and the profits of that period have got to be considered for the purpose of this reference.

It appears that when called upon to submit a return he filed one, but the Income Tax Officer was of the opinion that the return did not furnish true particulars and therefore he went carefully into the regular account books of the assessee and considered certain facts which became evident from a little investigation. He increased the profits of the assessee and being of the opinion that the assessee had concealed the particulars of his income he imposed a penalty u/s 28 of the Act.

There was an appeal to the Assistant Commissioner and that officer, although he reduced the amount of the tax, was also of the opinion that there had been deliberate concealment and therefore a penalty was imposed by him though in a lesser sum.

The assessee then applied to the Commissioner u/s 33 of the Act and there was an application for a reference to this Court u/s 66 (2) of the Act. The learned Commissioner gave some relief u/s 33, but he did not refer the cases to this Court. The tax and the penalty were reduced, but the learned Commissioner was also of the opinion that there had been concealment of the income.

The assessee then applied to this Court u/s 66 (3) of the Act on the 30th of July 1936 and by an order of this Court dated the 28th July 1939 the Commissioner was required by us to state a case and to formulate certain questions of law for our decision. These questions of law are mentioned in the application to us and

this Court was of the opinion that question No 1. was not fair and was not couched in happy language, but the other three questions did arise and the learned commissioner was required to refer those question did arise and the learned Commissioner was required to refer those questions of law for our decision. It was further made clear that if any question of law arose out of the first question mentioned in the application of the assessee that question may also be referred to us in a different form, but we made it quite clear that the facts should be found definitely and categorically by the Commissioner.

It is under these circumstance that the present reference has been made to us, and as would have become evident by this time the main question of controversy between the revenue authorities and the assessee was the question of concealment. The first question that has been referred to us is as follows :

"Whether under the circumstances of the case in which the difference between the Income Tax Officer regarding certain income and its consequents non-entry in the return Section 22 (2) depends solely on the method of computation and accounting adopted by either party,, could it be said to be a deliberate concealment of income or particulars of such income and whether provisions of Section 28, Income Tax Act, apply to such a case? "

The assessee has income from interest on securities, property and business in grain, money-lending, cotton and commission agency. In October 1918 he had advanced a loan of Rs. 65,000 to Babulal Lachhman Das, and Hiralal under a usufructuary mortgage in respect of property known as Shankerganj. Shortly after, in December 1918 he advanced another sum of Rs. 40,000 to the same debtors under a simple mortgage and the properties mortgaged were the equity of redemption so far as Shankerganj property was concerned and the village Sahil and a house in Lohar Gali. In 1920 the assessee advanced a sum of Rs. 7,200 to Hiralal, one of the previous debtors, under a simple mortgage and the property mortgaged was the share of Hiralal in the three properties mentioned above. In the year 1924 the assessee brought a suit in respect of the simple mortgage of Rs. 40,000 and obtained a decree. In execution of the decree on the 21st of December 1929 the assessee put village Sahil to sale and purchased it for Rs. 56,000. The decree was for a larger amount and a portion of the decree remained unsatisfied. On the 3rd of January 1933 in execution of the same decree the assessee put the house at Lohar Gali to sale and purchased it for Rs. 1,700. The value of the Shakerganj property was fixed at the figure of Rs. 73, 837 out of which Rs. 1,200 was adjusted towards the decretal amount.

The assessee had for the assessment year 1934-35 returned an income of Rs. 35,414. No income in this return related to the transactions which we have already mentioned. Nothing was said in the return about the purchase of village Sahil or the purchase of Shankerganj property or the purchases of Village Sahil or the purchase of Shankerganj property or the purchase of the house in Lohar Gali. The Income Tax Officer was of the opinion that when village Sahil was purchased for Rs. 56,000 the capital of Rs. 40,000 was wiped out and there was

a clear profit of Rs. 16,000. He also thought that there was a profit of Rs. 1,700 when the house in Lohar Gali was purchased. In connection with the purchase of the Shankerganj property he was of the opinion that there was a profit of Rs. 1,200 and further a profit of Rs. 7,000 odd, the difference between the amount of the usufructuary mortgage (Rs. 65,000) and the price fixed for Shankerganj property (Rs. 72,637). After appropriate deductions and taking into account the income shown by the assessee in his return the Income Tax Officer fixed the total income from all sources of the assessee at 62,378 and levied tax accordingly. He then observed :-

"As the assessee did not show any income from his investments on Messrs. Babulal Lachhman Das and Hirala and did not make any mention of the Same in the return u/s 22 (2) and had obviously concealed the particulars of interest, he was asked to show cause why a proper penalty u/s 28 be not imposed".

In connection with these proceeding the assessee was represented by Pandit Prabhu Dayal, pleader, and an application was made where in it was mentioned that the income shown in the return was not below the real amount and the circumstances of the case did not justify the imposition of any penalty. The Income Tax Officer, however, held that there was deliberate concealment in as much as the investments were not noted in the regular account books nor was there any record for purchase of properties in the books produced. The concealed income was deduced after a very thorough investigation. An income of about Rs. 26,212 would have escaped taxation but for the industry of the Income Tax Officer. The case was considered to be a suitable case for imposition of a penalty and a penalty in the sum of Rs, 2,500 was imposed.

The Assistant Commissioner of Income Tax on appeal gave effect to the contention of the assessee that Rs. 16,000 as profits was received on the 21st of December 1929 when village Sahil was purchased and this income was obtained not in the accounting year or even one year before the accounting year and could not be taxed. He, therefore, reduced the assessable income by Rs. 16,000. on the question of concealment it was argued before him that the usufructuary mortgage of Rs. 65,000 was known to the authorities in as much as there was a mention of this advance in the assessment for 1932-33. The Assistant Commissioner conceded this point, but he observed that the fact remained that the loan for Rs. 65,000 or that for Rs. 40,000 was neither incorporated in the books nor was the interest credited to the accounts and included in the return and it was clear that the items realised during the accounting year November 1932 to November 1933 were not so small as to have escaped the attention of the assessee. He agreed with the Income Tax Officer in the view that the assessee had deliberately omitted certain items and the penal assessment was rightly made. As we have mentioned before, the Assistant Income Tax commissioner held that the income of Rs. 16,000 realised in December 1929 should not be considered in the present assessment and he, therefore, reduced the penalty also from Rs. 2,500 to Rs. 2,000.

When the matter went before the Commissioner in connection with the application u/s 33 he gave effect to the contention of the assessee that a certain sum of Rs. 2,00 collected before the suit the assessable income was therefore reduced further and relief to that extent was given to the assessee. The penalty was also reduced from Rs. 2,000 to Rs. 1,200 but on the question of concealment be thought that the question was a question of fact into which he could go neither in proceeding u/s 33 nor could he refer the matter to this Court u/s 66 (2).

We have taken some pains in stating the facts at some length in order to show that the Income Tax authorities were definitely of opinion that there had been deliberate concealment and prima facie the question is a question of fact, but even if we were to consider this question as a mixed question of fact and law we are of the opinion that the materials show that the assessee was guilty of concealment and it cannot be said that there was a difference-a bona the difference-in the method of computation adopted by the assessee on the one hand and the Income Tax authorities on the other and that the concealment was not deliberate.

In this connection Mr. Peare Lal Banerji on behalf of the assessee has drawn out attention to the fact that assessee honestly believed that the was entitled to certain deductions and if those deduction be taken into consideration the assessee has not derived any profit beyond what was shown in the return. We have already said that by the time the matter was finally settled by the Commissioner the assessee's income from the investment said to be concealed was held to be Rs. 8,212 and this was in excess of what was shown the return but Mr. Banerji contends that the assessee was honestly of the opinion that the last mortgage by Hiralal in the sum of Rs. 7,200 had become a bad debt and could be set off against such income which the assessee might have received on the two earlier mortgage of 1918. He further points out that Rs. 1,500, costs of court-fee stamps and poundage money in respect of the properties purchased in auction of Sahil village and the house at Lohar Gali and the equity of redemption of Shankerganj property were also legitimate expenses for which deduction could be claimed and the cost of obtaining a decree against Hiralal amounted to Rs. 855 and that too could have been set off against such income as might have been received by assessee. There wa a further contention that when village Sahil was purchased in the end of 1929 for Rs. 56,000 it was open to the assessee to say that Rs. 36,000 was the amount of interest and Rs, 20,000 went towards the principal. The Income Tax authorities had given the assessee relief only to the extent of Rs, 16,000 treating Rs. 40,000 as having been received towards the principal and Rs. 16,000 as having been received towards interest and as this profit was received by Rs. 36,000. Reliance was placed upon the case of the Commissioner of Income Tax, Bihar and Orissa v. Kameshwar Singh of Darbhanga. It may be observed that this point was nowhere taken by the assessee till it was taken for the first time before us in the course of argument. Apart from that, whatever may be the right of the assessee so far as

appropriation is concerned, when a sum of money is paid in cash by the debtor to the creditor, but when property is purchased in satisfaction of the debt, the law has been clearly laid down in the case of *Raghunandan Prasad v. The Commissioner of Income Tax*. The assessee received a transfer of the property at the value of the purchase price in satisfaction pro tanto of the liability of the mortgagors for principal and interest and to the extent therefore that the purchase price exceed the principal sum due there was a relation of interest, that is, a payment of interest. WE have thought fit to refer this contention out of courtesy to the argument of learned counsel but that really does not affect the question which is under discussion. The question that we are discussing relates to the income of Rs. 8,000 odd which the Commissioner found was assessable and was not shown in the return and herein Mr. Banerji argued that the assessee honestly thought that h was entitled to set off the sum of Rs. 7,200 as a bad debt and to obtain credit for the sum of Rs. 855 and Rs. 1,500 to which reference has already bee made. The assessee never regarded the sum of Rs. 7,200 as irrecoverable in the accounting year. The assessee went on executing the decree which he had obtained against Hira Lal on the basis of this mortgage up till January 1934, even after the close of the accounting year, namely November 1933, and the mere fact that some evidence was adduced to show that Hiralal had become insolvent on the 17th of November 1926 is of no avail. It may well be that there was some other property belonging to the assessee which was capable of being proceeded against as is clear from the application for execution in January 1934. As to the sum of Rs. 1,500 it is clear from Raghunandan Prasads mentioned before that the expenses incurred by the assesseees in completing that title and entering into possession after the sales had become absolute are not deductible by the assesseees from their taxable profits. This was held by their Lordships of the Privy Council in connection with the seventh question formulated by the Commissioner. Apart from this, if we were satisfied that the assessee had made a bona fide error we would have answered the first question in favour of the assessee and against the Department, but all the Income Tax authorities have held and rightfully held that the assessee was guilty of deliberate concealment. He never showed these investments in his regular account account books nor did he ever show any of the profit received from these properties in his books of account. Question No. 1 as formulated by the Commissioner is answered in the affirmative.

The next question that is referred to us is as follows :-

"Whether the Income Tax authorities were entitled to impose penalty when the returns for the years in which concealment is alleged to have been made, were not filed by the present assessee, but by their ancestors who were dead before the year under assessment, especially when the said act was of quasi-criminal nature? "

The learned Commissioner says that the records show that the return for the assessment year 1934-35 was field over the signature of Bhoori Singh on behalf

of the Hindu undivided family and Bhoori Singh is still alive. Learned counsel for the assessee had to admit that this question was misconceived and we, therefore, content ourselves by saying that the question does not really arise in view of the admission made by learned counsel.

The third question referred to us is as follows :-

"Whether the method of computing profit adopted by the Income Tax authorities is correct and whether the figure arrived at was assessable during the year in question? "

We have already in the course of our judgment referred to the various contentions advanced by learned counsel for the assessee and we have made it clear that relief to the fullest extent was given to the assessee by the Assistant Commissioner of Income Tax and by the Commissioner of Income Tax and there is no further item for which any deduction can be claimed by the assessee. We might mention that the assessee claimed a sum of Rs. 4,087-7-6 as having been spent in reconstruction of Shankerganj property which was destroyed by floods and it was said that there ought to have been a deduction for this sum, because it was wrongly taken into consideration on the credit side. It, however, appears that this sum spent on rebuilding certain property damaged by floods was taken into account and adjusted against rents of the property collected by the assessee during the course of the mortgage and was not included in the sum of Rs. 72,637, subject to which the Shankerganj property had been sold for Rs. 1,200. The other items have already been discussed by us and we think that the method of computing and the figure arrival at by the Income Tax authorities were correct, and we answer the question in the affirmative.

The assessee must pay the costs of the Department and we fix the fee of the Advocate - General at Rs. 200. A copy of our judgment shall be sent to the Commissioner of Income Tax under the seal of the Court and the signature of the Registrar.