
(1994) 11 BOM CK 0050

In the Bombay High Court

Case No : Income-tax Reference No. 96 of 1983

Laherchand Dhanji

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 09-11-1994

Acts Referred:

Income Tax Act, 1961 — Section 24, 28, 68

Citation : (1995) 213 ITR 145

Hon'ble Judges : S.M. Jhunjhunwala, J; B.P. Saraf, J

Bench : Division Bench

Advocate : K.M.L. Majele, for the Appellant; Deokinandan, for the Respondent

Judgement

Dr. B.P. Saraf, J.—By this reference u/s 256(1) of the Income Tax Act, 1961, made at the instance of the assessee, the Income Tax Appellate Tribunal ("the Tribunal") has referred the following question of law to this court for opinion :

"Whether, on the facts and in the circumstances of the case, the Income Tax authorities were precluded from examining the genuineness of deposit of Rs. 25,000 in the firm's books because the partners, Dhanji Bhavanji, had made the declaration under the Voluntary Disclosure Scheme, 1976 ?"

2. The assessee is a partnership-firm. It has two partners, namely, Dhanji Bhavanji, with 60 per cent, share and Girshchandra Dhanji with 40 per cent. share. The relevant assessment year is 1972-73. The corresponding accounting year ended on August 3, 1971. The subject-matter of controversy is the addition of a sum of Rs. 25,000 in the assessment of the assessee-firm under the head "Income from other sources" by rejecting the explanation of the assessee in regard to the source thereof. The question of law that arise for consideration relates to the power of the Income Tax authorities to examine the genuineness of the deposit in the firm's books in view of the declaration made by the partners, Dhanji Bhavanji, under the Voluntary Disclosure Scheme, 1976.

3. The material facts relevant for determination of the question, briefly stated,

are as follows : One of the partners of the assessee-firm, Shri Dhanji Bhavanji, withdrew a sum of Rs. 25,000 from the agents of the assessee-firm, Messrs. R. Ratilal and Co., Bombay, and purchased a draft of Rs. 25,000 out of the same for the purpose of payment of capitation fee for admission of his son in the medical college at Solapur. This was done on June 22, 1971. During the previous year corresponding to the relevant assessment year 1972-73, the assessee-firm credited the agents, Messrs. R. Ratilal and Co., with an amount of Rs. 25,000. Obviously no amount was received by the firms for which credit could have been given by it to the said agents inasmuch as the amount had been paid by the agents directly to the partners concerned who purchased a draft out of the said amount and gave the same to the medical college by way of capitation fees for admission of his son. In the course of assessment of the firm for the assessment year 1972-73, the Income Tax Officer asked the assessee-firm to explain the source of the amount of Rs. 25,000 for which credit was given to Messrs. R. Ratilal and Co. The assessee came up with an explanation that the said amount was paid to the firm by the partner, Shri Dhanji Bhavanji. The explanation was not accepted by the Income Tax Officer. He, therefore, included the sum of Rs. 25,000 in the total income of the assessee-firm under the head "Income from undisclosed sources". The assessee went up in appeal to the Commissioner of the Income Tax (Appeals). The Commissioner (Appeals) accepted the contention of the assessee-firm that the sum of Rs. 25,000 had been paid by the partner out of his personal cash and held that the burden of explaining the case was on such partners and not on the firm. The Revenue appealed to the Tribunal. The Tribunal did not accept the above finding of the Commissioner (Appeals). The Tribunal, on consideration of the facts and circumstances of the case, recorded the following categorical finding :

"We, therefore, have to hold that there is no material to support the contention that Rs. 25,000 deposited in the firm was a payment from the partner."

4. Before the Tribunal, it was also contended on behalf of the assessee that the partner concerned having made a disclosure of the amount of Rs. 25,000 under the Voluntary Disclosure of Income and Wealth Act, 1976, it was not open to the Income Tax Officer to examine the genuineness of the said amount in the hands of the firm. This contention of the assessee was also repelled by the Tribunal on the ground that no such prohibition was there in the Voluntary Disclosure of Income and Wealth Act as there was in the Voluntary Disclosure of Income and Wealth Act as the assessee-firm was not the declarant under the said Act. The Tribunal, therefore, set aside the order of the Commissioner (Appeals) and restored the addition of Rs. 25,000 made by the Income Tax Officer.

5. Aggrieved by the above order, the assessee applied to the Tribunal for making a statement of the case and referring two questions to this court for opinion. One of the proposed questions related to the correctness of that part of the order of the Tribunal by which it had held that the sum of Rs. 25,000 was rightly added to the income of the assessee as income from undisclosed sources. The second

question proposed by the assessee pertained to the finding of the Tribunal that the declaration having been made by one of the partners of the assessee-firm, the immunity provisions of the Voluntary Disclosure Act, 1976, were not applicable to the assessee-firm. The Tribunal did not refer the first question. It has, however, referred the controversy raised in the second proposed question to this court by the present reference.

6. Mr. Bhujle, learned counsel for the assessee, however, wants to challenge before us in this reference both the findings of the Tribunal including the findings regarding the correctness of the addition made by the Income Tax Officer. We have considered the submission. We have perused the statement of the case and the order of the Tribunal and other orders. We find that the Tribunal has recorded a categorical finding of fact that there is no material to support the contention of the assessee firm that the sum of Rs. 25,000 standing in its account to the credit of Messrs. R. Ratilal and Co. was a payment from its partners, Dhanji Bhavanji. In view of this clear factual finding which is not a subject-matter of challenge in this reference, it is not open to us to examine the same as a facet of the question referred to us.

7. So far as the question referred to us is concerned, there is no controversy about the facts. The admitted position is that the declarant under the Voluntary Disclosure Act was the individual partners and not the firm. The only question that arises for consideration is whether the disclosure made by the partners of the assessee-firm would preclude the Income Tax authorities from examining the genuineness of the deposit in the firm's books. We have perused the Voluntary Disclosure of Income and Wealth Act, 1976, and the material provisions thereof. We, however, do not find anything therein to support the contention of the assessee-firm that it was not open to the Income Tax Officer to examine the genuineness or source of the amount found credited in the book so an assessee if such amount had already been made the subject-matter of declaration by the assessee's partner. Section 8 of the said Act, which is relevant, reads :

"8. Voluntarily disclosed income not to be included in the total income. - (1) The amount of the voluntarily disclosed income shall not be included in the total income of the declarant for any assessment year under the Indian Income Tax Act, 1922 (11 of 1922), or the Income Tax Act, 1961 (43 of 1961), or the Excess Profits Tax Act, 1940 (15 of 1940), or the Business Profits Tax Act, 1947 (21 of 1947), or the Super Profits Tax Act, 1963 (14 of 1963), or the Companies (Profits) Surtax Act, 1964 (7 of 1964), if the following conditions are fulfilled, namely :-

(i) the declarant credits such amount in the books of account, in any, maintained by him for any source of income or in any other record, and intimate the credit so made to the Income Tax Officer;

(ii) the Income Tax in respect of the voluntarily disclosed income is paid by the declarant; and

(iii) the amount required to be invested in the securities referred to in sub-section (3) of section 3 is so invested by the declarant.

(2) The Commissioner shall, on an application made by the declarant, grant a certificate to him setting forth the particulars of the voluntarily disclosed income, the amount of Income Tax paid in respect of the same, the amount of investment made in the securities referred to in sub-section (3) of section 3 and the date of payment and investment."

8. It is clear from a reading of the above section that it prohibits inclusion of the voluntarily disclosed income in the total income of the "declarant" for any assessment year under the Income Tax Act. The immunity is thus available only to the "declarant" and to none else. The declaration in the instant case was made by the partner of the assessee-firm as an "individual" and not by the assessee-firm. The declarant is, therefore, the partner concerned and not the assessee-firm. Hence, no immunity is available to the assessee-firm u/s 8 of the Act in relation to the income voluntarily disclosed by its partners. It may be expedient at this stage to observe that to remove all doubts in regard to availability of the benefits of this Act to persons other than "the declarant", the Legislature itself has specifically declared in section 18 of the said act that "nothing contained therein shall be construed as conferring any benefit, concession or immunity on any person other than the person making the declaration under the Act". The section reads :

"For the removal of doubts, it is hereby declared that, save as otherwise expressly provided in the Explanation to sub-section (1) of section 13 and in sub-section (4) of section 16, nothing contained in this Act shall be construed as conferring any benefit, concession or immunity on any person other than the person making the declaration under this Act."

9. A somewhat similar controversy came up for consideration before the Supreme Court in Jamnabai Kanhaiyalal Vs. Commissioner of Income Tax, M.P., Bhopal, . The question in that case was whether the provisions of section 24 of the Finance (No. 2) Act, 1965, could be construed as conferring any right, concession or immunity on any person other than the person making the declaration under the provisions of that Act. There was no provision like section 18 of the Voluntary Disclosure Act of 1976 in the said Act. The question for consideration was whether the absence of such a provision would lead to the consequence that acceptance of a declaration u/s 24 of that Act confers a benefit which is not provided by the Act to a person other than the declarant and takes away the power of the Income Tax Officer u/s 68 of the Income Tax Act, 1961, to make an investigation into the nature and source of cash credit appearing in the books of the assessee to reject the explanation offered by the assessee as unsatisfactory and to treat it as his income from undisclosed sources. Sen J. (speaking for himself and Venkataramiah J., as he then was) observed (at page 257) :

"The scheme of the Act makes it abundantly clear that it was to protect only those who preferred to disclose the income the themselves had earned in the past and which they had failed to disclose at the appropriate time. It is undoubtedly true that the Act was brought on the statute book to unearth the unaccounted money. But there is no warrant for the proposition that by enacting the same, the Legislature intended to permit, or connive at, any fraud sought to be committed by making benami declarations. If the contentions were to be accepted, it would follow that an assessee in the higher income groups could, with impunity, find out a few near relatives who would oblige him by filing returns u/s 24 of the Act disclosing unaccounted income of the assessee as their own and claiming that the said income was kept by them in deposit with the assessee."

10. It was held (at page 258) :

"The immunity u/s 24 of the Act was conferred on the declaration only, and there was nothing to preclude an investigation into the true nature and source of the credits. The Income Tax Officer was, therefore, justified in treating the cash credits in the books of account of the assessee in the names of the creditors as unexplained cash credits."

11. The legal position was summed up thus (at page 259) :

"There was, therefore, nothing which prevented the Income Tax Officer from investigating into the nature and source of the sums credited in the books of account of an assessee and reject his explanation to the effect that the sums belonged to the persons who had made declaration about them u/s 24 of the Act."

12. Pathak J. (as he then was) reiterated the same position when he said (at page 260) :

I am of the opinion that the making of an assessment against a declaration on his disclosure statement u/s 24 of the Finance (No. 2) Act, 1965, cannot deprive an Income Tax Officer of jurisdiction to assess the same receipt in the hands of another person if, in a properly constituted assessment proceeding under the Income Tax Act, the receipt can be regarded as the taxable income of such other person."

13. The above decision in *Jamnadas Kanhaiyalal Vs. Commissioner of Income Tax, M.P., Bhopal*, was followed by the Supreme Court in *Income Tax Officer, New Delhi and Others Vs. Rattan Lal and Others*, and *Radhe Shyam Tibrewal Vs. Commissioner of Income Tax, Assam and Others*, . Referring to the view expressed in the above decision, it was observed in *Income Tax Officer, New Delhi and Others Vs. Rattan Lal and Others*, :

"This court has expressly observed that there is nothing in section 24 of the Finance Act which prevents the Income Tax Officer, if he were not satisfied with the explanation of the assessee about the genuineness or source of amounts

found credited in his books, in spite of these having already been made in the subject-matter of the declaration by the depositors/creditors, to include them as income of the assessee from undisclosed sources and that there is not warrant for the submission that section 24 has overriding effect over section 68 of the Income Tax Act of 1961, in so far as the persons other than the declarants are concerned. On the aspect of purported double taxation also this court has held that there is no question of double taxation."

14. In *Radhe Shyam Tibrewal Vs. Commissioner of Income Tax, Assam and Others*, , an attempt was made by counsel for the assessee to distinguish the said case from *Jamnadas Kanhaiyalal Vs. Commissioner of Income Tax, M.P., Bhopal*, on facts. This attempt, however, did not find favour with the Supreme Court. Speaking for the court, Tulzapurkar J., observed thus (at pages 186, 187) :

"Counsel for the assessee, however, tried to distinguish this case on facts. But we are unable to see any difference. The Tribunal has recorded a finding of fact that the assessee had failed to prove that the transactions represented by the cash credit entries in his books were really genuine in the sense that the deposits had really been made by the depositors/creditors mentioned in the entries. Both the Tribunal as well as the High Court have taken the view that the declarations made by the depositors/creditors u/s 24 of the Finance (No. 2) Act of 1965 (Act No. 10 of 1965), under the Voluntary Disclosure Scheme (which were accepted by the Commissioner so far as the declarants were concerned) as well as the letters written by the alleged depositors (the two ladies in question) were relevant materials. But when such material was placed before the Income Tax Officer, he desired the assessee to call the two ladies for examination but they were not produced by the assessee for giving evidence before the Income Tax Officer."

15. On these facts, it was held that the Tribunal as well as the High Court were right in concluding that in the absence of any satisfactory proof in that behalf, the taxing authorities were perfectly justified in holding that these amounts represented the assessee's own income from undisclosed sources.

16. The case of the Revenue in the present case being under the Voluntary Disclosure of Income and Wealth Act, 1976, is on a still sounder footing in view of the specific provisions contained in section 18 thereof. The answer to the question referred to us is, therefore, obvious and self-evident. Hence, it is answered in the negative and in favour of the Revenue.

17. Under the facts and circumstances of the case, there shall be no order as to costs.