

(1948) 03 PAT CK 0004

In the Patna High Court

Case No : Miscellaneous Judicial Case No. 95 of 1945

MESSRS. SRINIVAS RAMKUMAR

APPELLANT

Vs

COMMISSIONER OF Income Tax.

RESPONDENT

Date of Decision : 18-03-1948

Acts Referred:

Income Tax Act, 1961 — Section 66

Citation : (1948) 16 ITR 254

Hon'ble Judges : Agarwal, C.J.;Meredith, J

Bench : Full Bench

Judgement

AGARWAL, C.J. - On an application by the assessee to this Court u/s 66(2) of the Income Tax Act the Appellate Tribunal was called upon to state a case with reference to the following question of law :-

"Whether the Department was entitled to include the amount of Rs. 3,500 said to have been deposited by Kishundutt as secreted profits of the firm when it had already applied flat rates to cover suppressed incomes and whether the addition of this sum amounted to double taxation."

The assessee is a Hindu undivided family which owns property and also carries on business. For the year with which we are concerned the assessee's return showed income from property at Rs. 501 and a loss from business of Rs. 4,248. Later, the return was amended and showed a loss of Rs. 14,540. With regard to the income from property the Income Tax Officer assessed it at Rs. 3,000. With regard to the business of the assessee the Income Tax Officer found the books unreliable, and, therefore, assessed the profits of the business at a flat rate. Against the income so ascertained the assessee claimed to set off certain losses alleged to have been incurred in speculative transactions. The total amount of these losses was alleged to be Rs. 19,900. The Income Tax Officer ascertained the net amount of losses to be Rs. 3,861 by setting off against the sum of Rs. 19,900 three items totaling Rs. 16,039. Of these three items, one was an item of Rs. 8,300 which was entered in the suspense account in the books of the

assessee's head office at Gaya. The Income Tax Officer treated this as undisclosed profits. According to the assessee this sum represented deposits made by one Kishundutt, a member of the family. It consisted of three items : Rs. 1,500 alleged to have been deposited in Kartick, Rs. 2,000 in Sawan, and Rs. 4,800 in Magh. On appeal the Assistant Commissioner held that the item of Rs. 4,800 could not be taken as undisclosed profits of the accounting year in question as the month of Magh in which it was deposited was the month prior to the accounting year with which he was concerned. Accordingly, the Assistant Commissioner found that the amount of undisclosed profits was only Rs. 3,500, and it is this Rs. 3,500 which is the subject-matter of this reference.

The assessee contends that if it is undisclosed profits, it should be held that it has been included in the profits of the business which had been ascertained on the flat rate basis, and that to bring it into account again amounts to double taxation. If this sum had been brought into account as profits of the ordinary trading transactions of the assessee, the assessee's contention must have been upheld. But that was not the assessee's case before the Income Tax Officer, or in any of the proceedings which have followed the assessment. He has always maintained that this sum represents deposits by Kishundutt. For sufficient reasons the Income Tax authorities have found that Kishundutt was not in a position to make these deposits, and, therefore, the assessee's explanation with regard to it is untrue. The suspense account in the books of the head office at Gaya showed, in addition to amounts deposited, also the opening balance of the phatka account, that is to say, the account maintained for recording the speculative transactions, and the Income Tax authorities have regarded this sum of Rs. 3,500 as undisclosed profits of the speculative transaction. That is clear from the observation of the Assistant Commissioner in his appellate order where, in reference to the deposits attributed to Kishundutt, he says : "No evidence as to the nature of these credits is forthcoming, and there is justification for the Income Tax Officer to hold these credits to be suppressed income inasmuch as he has found that the appellant had extensive speculative business, part of the gains of which he had suppressed in various benami accounts and that there were investments outside the books as in the case of Ballabux Gidwani."

The explanation of the assessee with regard to this deposit being untrue, it was open to the Income Tax Officer to rely on circumstantial evidence for the purpose of ascertaining the nature of the sum entered in the books, and having found that there had been suppression of gains made in the speculative transactions of the assessee, it was not wrong for him to attribute this entry relating to Rs. 3,500 as gains from that source. It is clear, therefore, that there is no substance in the contention that this Rs. 3,500 has been doubly taxed, and the question which has been stated must be answered in favour of the Income Tax Department. The Department is entitled to the costs of this reference, Rs. 250.

MEREDITH, J. - I agree.

Reference answered accordingly.