
(1978) 10 P&H CK 0031

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 61 of 1974

Munshi Ram

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 25-10-1978

Acts Referred:

Income Tax Act, 1961 — Section 68

Citation : (1980) 126 ITR 663

Hon'ble Judges : S.S. Sidhu, J;Bhopinder Singh Dhillon, J

Bench : Division Bench

Advocate : K.L. Kapoor, for the Appellant; D.N. Awasthy and B.K. Jhingan, for the Respondent

Judgement

B.S. Dhillon, J.—In this reference u/s 256(2) of the I.T. Act, 1961 (hereinafter referred to as "the Act"), assessment proceedings, which got initiated before partition of the country, are still hanging fire. For the assessment year 1945-46, return was filed by Munshi Ram, the assessee, on 7th September, 1945, declaring an income of Rs. 5,354. The status of the assessee was described as an "individual". The ITO added a sum of Rs. 47,200 as income from the business, and assessed the assessee for a sum of Rs. 66,165 (vide his order dated 12th March, 1946), and the assessee filed an appeal against this order. The AAC (vide his order dated 6th August, 1947) set aside the assessment and directed the ITO to frame the assessment order u/s 23(3) of the Act. The ITO (vide order dated 17th October, 1949) assessed the total income at Rs. 60,852. This order was again set aside in appeal by the AAC, vide his order dated 10th June, 1950, on the ground that the cash credits in the account of Smt. Ram Bai had not been properly investigated and the income of the accounting year had not been taken into account.

2. Some time in the year 1946, there arose a dispute between the assessee, Shri Munshi Ram, and the other co-partners of his family regarding the business run in the name and style of Munshi Ram, B. Sc., consisting of hosiery machinery

business and clothing factory which was said to be the joint business of the family. By an agreement dated 30th October, 1946, three members of the family appointed Shri Prem Nath, advocate, as an arbitrator to divide their joint business shown as Munshi Ram, B.Sc. The arbitrator gave an award on 3rd March, 1947, partitioning the joint properties amongst the three members including the business of Munshi Ram, B.Sc.

3. When the third ITO took up the assessment proceedings for the year 1945-46 afresh, Munshi Ram filed two returns on 14th April, 1953, one return showing the status of an "individual" and the income being nil, and the other in the status of "HUF" showing the family members as Faqir Chaud, Banwari Lal and Munshi Ram and containing the income of the business, Munshi Ram, B.Sc. The ITO completed the assessment of "the business income in the name of Munshi Ram, B.Sc., in the hands of the assessee in individual status and determined a total income of Rs. 1,40,752 vide order dated 14th November, 1953. On an appeal filed by the assessee, the AAC, vide his order dated 17th November, 1958, held that the income from the business, Munshi Ram, B.Sc., including income from undisclosed sources comprising of cash credits had been correctly assessed in the hands of the assessee in individual status. However, his total income was assessed at Rs. 91,452. The assessee appealed against this order. The Income Tax Appellate Tribunal, Delhi, vide order dated 21st August, 1962, set aside the order of the AAC and restored the appeal to the file of the AAC to give a finding as to whether the business in question belonged to Munshi Ram or to the HUF. Consequently, the AAC, vide order dated 30th October, 1967, recorded a finding that the business in question till the date of partition, i.e., 31st March, 1946, belonged to the HUF, and thus the ITO was not justified in including the income of the business carried on in the name and style of Munshi Ram, B.Sc., in the assessment of the assessee. The income of the business as assessed was, therefore, excluded from the assessment of the assessee. The assessee applied to the ITO for refund of the whole tax paid by him but the ITO while giving effect to the orders of the AAC dated 30th October, 1967, took the income of the assessee at Rs. 61,200 as income from undisclosed sources.

4. The assessee then made an application u/s 154 of the Act to the AAC claiming that the grounds of appeal relating to the cash credits in the account of Ram Bai had not been discussed by the AAC and that the appellate order may be amended and finding be recorded on the specific grounds raised. The AAC, vide his order dated 24th September, 1968, recorded a finding that the Tribunal, vide its order dated 21st August, 1962, directed the AAC for deciding the point whether the business belonged to Shri Munshi Ram, individual, or to the HUF of Shri Munshi Ram and on all other points the appellate decision of the AAC dated 17th November, 1958, was allowed to remain in force. Consequently, the application for rectification was dismissed. The assessee filed an appeal against the order of the AAC dated 24th September, 1968. The ITO also filed an appeal to the Tribunal against the AAC's orders dated 30th October, 1967, and 24th September, 1968. The assessee filed cross-objections to the ITO's appeal against

the AAC's orders dated 30th October, 1967. The Tribunal dismissed the appeal filed by the ITO and so also that filed by the assessee and the cross-objections. It was contended by the assesses before the Tribunal that the cash credits of Rs. 47,200 in the account of Smt. Ram Bai appeared in the books of the family business "Munshi Ram, B. Sc.", and in all the successive assessments made for the assessment year in question the total income determined for the business unit included the said cash credits either as a part of the business income or income from undisclosed sources and that the amount of cash credits in the name of Smt, Ram Bai were entered in the account books of the family business. Thus, it was the family which was answerable to explain the credits and if the family could not satisfactorily explain the cash credits and the source thereof, the assessee could not be assessed in respect of those cash credits. This contention was repelled by the Tribunal. The assessee made an application before the Tribunal that the following question of law be referred to this court for its opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the cash credits of Rs. 47,200 in the account of Smt. Ram Bai in the account books of the joint family business formed the individual income of the assessee from undisclosed sources? "

5. This application was rejected by the Tribunal, vide order dated 29th July, 1971. The assessee then approached this court and a Bench of this court, vide order dated 18th July, 1973, having come to the conclusion that a question of law having arisen, directed the Tribunal to refer the following question for the opinion of this court:

"Whether, on the facts and in the circumstances of this case, the Tribunal was justified in law in holding the cash credit of, Rs. 47,200 as the individual income of the assessee, although this cash credit was entered in the books of account of the HUF ? "

6. As is clear from the facts which have been mentioned above, throughout the assessment proceedings till the Tribunal remanded the case, vide order dated 21st August, 1962, for determining whether the income in question belonged to the HUF or to the individual status of the assessee, the I.T. authorities treated the income in question to be that of the assessee. After the remand order, the AAC came to the conclusion that the business in question till the date of partition, i.e., 31st March, 1946, was that of the HUF and not of the assessee. It is no doubt true that the Tribunal in its order dated 21st August, 1962, copy of which is annex. "H", repelled the contention of the assessee that the returns filed by the assessee were in the status of the HUF but at the same time the Tribunal set aside the order of the AAC dated 17th November, 1958, and remanded the case for deciding whether the business in question really belonged to Munshi Ram in his individual status or to the HUF. The order of the AAC was set aside in toto and consequently the order of the ITO which stood merged in the order of the AAC was also set aside. Any finding given by the ITO or the AAC in the orders

passed before the order of the Tribunal dated 21st August, 1962, will not be of any help to the revenue, as the said findings impliedly no more hold the field. We are saying so because Shri Awasthy, the learned counsel for the revenue, took pains to take us through the assessment orders passed by the ITO and the AAC before the remand order was passed by the Appellate Tribunal to contend that there was some material before them to come to the conclusion that a sum of Rs. 47,200 which was shown in the account books of the business in the name of Smt. Ram Bai was the individual income of the assessee. It is significant to note that the moment the AAC came to the conclusion that the business in question belonged to the HUF, it would consequently follow that the account books on which reliance was being placed by the authorities, were concerning the business of the HUF. If there was any suspicious entry in the said business, it was the HUF which was liable to explain the same and if it failed to explain the same it was open to the I.T. authorities to have added the unexplained income as the income of the HUF.

7. It cannot be disputed as a proposition of law that even if some entry is found in the books of the HUF still if there is sufficient material before the I.T. authorities to come to the conclusion that the income disclosed in the books of the HUF in fact belonged to Munshi Ram, assessee, the assessee could be held to be liable for the payment of the Income Tax but that could only be done if there was any evidence to that effect. In the present case, the liability of Munshi Ram in his individual status to a sum of Rs. 47,200 was fixed: by the authorities before a finding was recorded that the income belonged to the HUF on the plea that the books of the business disclosed the entry of that amount in the name of Smt. Ram Bai and the assessee having failed to explain the source of the said income, he was individually liable. This finding was mainly arrived at because the books were held to be that of Munshi Ram, assessee, in his individual status which finding was ultimately reversed by the AAC, vide his order dated 30th October, 1967. It is interesting to note that the Tribunal in its final order dated 21st December, 1970, copy of which is annex. M-3, held that since the assessment proceedings against the HUF are time barred, the contention of the assessee cannot be accepted. This can hardly be a ground for not considering the contention of the assessee on merits. The contention of the assessee that in view of the principle as enacted in the provisions of Section 68 of the Act, the HUF should have been fastened with the liability of tax as the unexplained entry existed in the account books of the HUF was repelled by the Tribunal on the ground that the provisions of Section 68 of the 1961 Act are not retrospective and since the assessment in question related to the year 1945-46, the said provision is of no help to the assessee. It is no doubt true that the provisions of Section 68 of the Act will not be attracted as such but in our considered view the principle enacted in these provisions of law will still be applicable. The provisions of 68 of the Act are in the following terms :

"68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and

source thereof or the explanation offered by him is not, in the opinion of the Income tax Officer, satisfactory, the sum so credited may be charged to Income Tax as the income of the assessee of that previous year."

8. In Section 68 the golden rule of the law of evidence which is no more in dispute, has been enacted. If any sum is found credited in the books of an assessee, the onus is on him to explain away the said entry but if he fails to do that, it will be open to the I.T. authorities to fasten him with the liability of tax on account of the unexplained entry regarding the income. Even before Section 68 of the Act was enacted, it is clear that the golden rule of evidence referred to above was equally applicable. Reference in this connection may be made to the decision of the Supreme Court in *Lakshmichand Baijnath Vs. The Commissioner of Income Tax, West Bengal*, and of the Calcutta High Court in *Mansfield & Sons v. CIT* [1963] 48 ITR 254. As is clear from the order of the Tribunal, copy of which is annex. M-3, there was no other material before the Tribunal to come to the conclusion that the entry in the name of Smt. Ram Bai for a sum of Rs. 47,200 was the income of Munshi Ram in his individual status. As already observed, the findings recorded by the I TOs and the AAC before the remand order was passed by the Tribunal, could not be of any help to the revenue as the said findings are recorded on the basic finding that the business in question belonged to the individual status of Munshi Ram and thus the account books in which the entry in question was found, belonged to him as such. The moment this finding was reversed, the authorities could have reached the conclusion that the income of Rs. 47,200 shown in the account books of the HUF in fact belonged to Munshi Ram in his individual status, if there was any such material on the record to come to that conclusion, but no such finding has been recorded by any authority, much less the Tribunal.

9. In all fairness to Shri Awasthy, the learned counsel for the revenue, it may be pointed out that the learned counsel took pains to take us through various orders passed by the ITOs and the AAC, to contend that there is material to show that the amount in question belonged to the individual status of Munshi Ram but we do not find any such material on the record to come to that conclusion, nor any such finding has been recorded by any authority after the remand order was made by the Tribunal.

10. It was contended by Shri Awnsthy, the learned counsel for the revenue, -that in fact no question of law has arisen in this case and the Bench of this court erred in passing the order dated 18th July, 1973, directing the Tribunal to refer the question of law for the opinion of this court. We do not find any substance in this contention. As is obvious; the contention of the assessee based on the principle as enacted in the provisions of Section 68 of the new Act was repelled by the Tribunal solely on the ground that the assessee cannot take advantage of the said provisions as the said provisions were not retrospective and we having come to the conclusion that this golden principle of the rule of evidence was well established even before the provisions of Section 68 of the Act were enacted, the

question of law did arise in this case and was rightly directed to be referred to this court for its opinion.

11. For the reasons recorded above, the question of law referred to us is answered in the negative and it is held that the Income Tax Tribunal was not justified in law on the facts and circumstances of this case in holding the cash credits of Rs. 47,200 as the individual income of the assessee although this cash credit was entered in the books of account of the HUF. However, there will be no order as to costs.