

(1951) 06 CAL CK 0034
In the Calcutta High Court

Case No : Income-tax Reference No. 69 of 1950

NARAYAN CHANDRA BAIDYA

APPELLANT

Vs

COMMISSIONER OF Income Tax.

RESPONDENT

Date of Decision : 04-06-1951

Acts Referred:

Income Tax Act, 1961 — Section 22(2), 22(4)

Citation : (1951) 20 ITR 287

Hon'ble Judges : Das Gupta, J;Chakravartti, J

Bench : Full Bench

Judgement

CHAKRAVARTTI, J. - The assessee in this case is one Narayan Chandra Baidya who is a dealer in paddy and rice and had in or about the year of account two places of business one at Diamond Harbour and another at Falta. In respect of the accounting year 1352 B. S., the assessment year 1946-47, a notice u/s 22 (2) of the Income Tax Act was served upon him but no return was submitted. The explanation offered by the assessee appears to have been that his business at Diamond Harbour had been closed down in 1350 B. S. and as the business at Falta was also being wound up, the staff was otherwise busy and had no time to spare for the preparation of the return. Thereafter a notice was served u/s 22 (4) of the Act, calling for accounts but there appears to be no definite finding as to whether the accounts were actually produced or not. In any event there was something like a profit and loss account which the assessee prepared and submitted at the suggestion of the Income Tax Officer. Ultimately as there had been default in submitting the return the Income Tax Officer made a best judgment assessment u/s 23 (4) of the Act. So far as the making of a best judgment assessment is concerned on the income derived from the assessee's own business included in the assessment no question arises in this reference.

In addition to the income from the business directly carried on by the assessee the Income Tax Officer included in the assessment a further sum of Rs. 7,629, as the income from a rice mill which he treated as the income of the assessee,

although ostensibly the partner of the firm carrying on the rice mill business was an adult son of his. It is to this sum of Rs. 7,629 that this reference relates.

It appears that on the 30th of June, 1947, the Income Tax Officer sent a notice to the assessee requiring him to show cause why the income accrued to his son Chittaranjan Baidya as a partner in the firm styled as Sri Govind Rice Mills should not be included in his total income. To this letter a somewhat irrelevant and rambling reply was sent on the 10th of July following. The assessee merely stated that he had closed down his business about two years ago and was therefore unable to produce his books on the date fixed as asked for and he should therefore, be granted a months time. The notice to which this reply purports to be an answer had said nothing about the production of any books and one does not understand what the assessee meant by sending the letter which he wrote on the 10th of July. Be that as it may, the Income Tax officer ultimately included the sum of Rs. 7,629, as the assessee's partnership income from the rice mill earned in the name of the son Chittaranjan Baidya.

The question which has been referred to this Court reads thus :-

"Whether on the facts and in the circumstances of this case the sum of Rs. 7,629, the partnership income from Sri Govind Rice Mills in the name of the applicants son, was rightly added to the income of the applicant as his own ?"

The question looks like a question of fact and had there been a firm finding by the Tribunal as regards the material on which the sum of Rs. 7,629 had been added, we would have no difficulty in disposing of the question against the assessee at once. But it appears that the Tribunal upheld the addition only on the ground that the assessee had been asked to show cause why the income received by his son from the rice mill should not be treated as his own income and he failed to show any cause. The question that has been referred to us therefore really means whether there was evidence before the Tribunal on which it could uphold the Income Tax Officers action in adding the sum of Rs. 7,629.

I am of opinion that in the facts and circumstances of the case it must be held that the addition of Rs. 7,629 is not supported by proper or indeed any evidence. It is true that the assessment was a best judgment assessment. It is also true that the assessee was not co-operating except perhaps by producing some books if he produced any at all. It is also true that the Income Tax Officer is not by law bound to disclose to the assessee on what information he proposed to add a particular item of income. Granting all this it is still necessary as has repeatedly been pointed out that although the strict letter of the law might not require it natural justice at best requires that before charging any person with financial liability he should be informed of the material on which the charge was going to be imposed and given an opportunity to relent the effect of the material if he can. In this particular case all that the Income Tax Officer informed the assessee was that his son was a partner in the rice mill and that he was to show cause why the sons income should not be treated as his own. The letter by which the

assessee was asked to show cause conveyed no information as to the material on which the Income Tax Officer had come to form a suspicion that the son was in fact a benamidar for the father. So much about the initial stage. As regards the last stage at which the sum was actually added, again the order of the Income Tax Officer does not given any indication as to whether he had any material at all on which he could properly hold that the son was a mere name-lender. All that was before him appears to have been that Chittaranjan was the son of the assessee, that Chittaranjan an adult son was a partner in a rice mill and that - this this I shall assume - some information had reached him that Chittaranjan was a benamidar. I am not prepared to hold that on this material alone particularly without confronting the assessee with any information which he might have had the Income Tax Officer was justified in adding the sum of Rs. 7,629 straightaway.

The principles on which the Income Tax Officer should act even in cases of a best judgment assessment were explained by the Judicial Committee in the case of Commissioner of Income Tax v. Laxmi Narain Badridas. Those principles are well known and need not be repeated by me. Mr. Meyer referred to Sections 106 and 114 of the Indian Evidence Act and submitted that the matter that was being investigated by the Income Tax Officer was a matter within the special knowledge of the assessee and if he failed to give information from that special knowledge he Income Tax Officer was justified in drawing the presumption warranted by the aforesaid sections of the Act. I do not see that it can be said that there was anything in this case which was in the special knowledge of the assessee. If he was not interested in the rice mill and if his was not in fact that benamidar for him he would have merely to prove the negative. In any event as it has often been pointed out even after an Income Tax Officer rejects the evidence adduced by the assessee he must indicate in his order on what material he ultimately bases his conclusion. That irreducible minimum even is absent in the present case. There may be reasons for a strong suspicion that the son is really a benamidar for the father but unfortunately it is not clear from the record that the Income Tax Officer proceeded on any definite material and the Tribunal has not found that he did. The definite material need not necessarily be in the form of legal evidence but there must be something which at the first stage should be brought to the notice of the assessee and if the Income Tax Officer in default of any response from the assessee adds something more the additional material also should appear in the order. I desire to add that if the question had been one of estimating the assessee's income from the admitted sources very different considerations would apply that this was a case where the Income Tax Officer was importing an item from a source outside the assessee's own business and attributing it to him without indicating where he found a link between that source and the assessee.

As the tests indicated above are not satisfied in this case, I hold that the answer to the question referred to this Court must be in the negative.

There will be no order for costs in this Reference.

DAS GUPTA, J. - I agree.

Reference answered accordingly.