(1925) 10 PAT CK 0006

In the Patna High Court

Case No : Misc. Judicial Case No. 143 of 1924

Nope Chand Mangniram — APPELLANT

Vs

Commissioner of Income Tax — RESPONDENT

Date of Decision : 27-10-1925

Acts Referred:

Citation : (1925) 10 PAT CK 0006

Judgement

Dawson Miller, CJ.

1. This is a reference u/s 66(3) of the Indian income tax Act, 1922, relating to the assessment of income tax of the firm of Nope Chand Mangniram for the year 1923-24.

The questions in dispute cover three items of Rs. 5,357, Rs. 5,278 and Rs. 20,155 which have been included in the assessment as taxable income of the assessee. From the books of account produced these sums appear to have been paid out of the gross profits of the firm to various persons. The question with regard to the first two items is whether they represented interest on loans taken by the firm from the persons to whom the sums were paid. The question with regard to the third item is whether the sum of Rs. 20,155 which was paid to persons outside British India should be treated as part of the assessee''s income, or whether under the provisions of section 42 of the Act, it should be treated as the income of the recipients and the tax collected from the assessee as agent on their behalf. In the latter event the rate would be lower than if the sum in question were treated as part of the assessee''s income.

2. It appears that the assessee carries on business at Monghyr and other places in this Province as well as at Calcutta. For the purposes of the present assessment Monghyr has been treated without objection as the principal place of business and the assessment was finally made by the income tax Officer there, the sum assessed being Rs. 45,228-13-3 including the items in dispute. From this assessment the assessee appealed to the Assistant Commissioner of income tax at Patna with the result that the assessment was reduced to Rs. 27,794 to

which was added the sum of Rs. 7,161 being the assessment of the Nirmali branch of the firm, making a total assessment of Rs. 34.955. On review the Commissioner of income tax reduced the assessment by a further sum of Rs. 3,000 but refused a prayer to state a case with respect to the items now in dispute. In January last on the application of the assessee and after hearing Counsel for the Commissioner of income tax, the Court directed the Commissioner to state a case with regard to the three items above mentioned.

3. From the case stated and from the documents filed it appears that on the 24 th May 1923 notice was served on the assessee to file a return of income in the prescribed form. On the 29 th June the return was filed showing a loss of over Rs. 40,000. On the 9 th August the assessee was directed to appear with his accounts on the 27 th August. The time was extended to the 14 th September when certain accounts were produced and others were called for. On the 2 nd September further accounts in an unadjusted state were produced and the assessee was ordered to produce further evidence by the 1 st November. On that date further time was given up to the 26 th November for the production of accounts. The accounts were then examined in the office with the result that a recommendation was made that the assessee should be assessed at the sum of Rs. 45,228-13-3. On the 25th January 1924 he was served with notice to show cause by the 3rd February why he should not be assessed at that sum. He failed to appear on the day fixed but on the following day filed a petition saying he was ill and could not appear and asked that he might be assessed on the basis of his accounts already produced. On the 6th February he was also served with notice to show cause by the 14th why he should not be treated as agent of the persons residing outside British India to whom payment of interest amounting to the sum of Rs. 20,155 had according to his return been made. Again he failed to appear and in the result in the absence of any evidence either that the sums in dispute had been paid or that they represented interest on loans these sums were treated by the income tax Officer as taxable income.

4. The main contentions on behalf of the assessee were, first, that as the return was not accepted by the income tax Officer the assessee was entitled to a notice u/s 23(2) requiring him to attend at the income tax Office or to produce or cause to be produced any evidence on which he relied in support of his return and that this was not done and, secondly, with regard to the sum of Rs. 20,155 that it was not within the competence of the income tax Officer to treat this sum as part of the assessee''s income after he had been called on to show cause why he should not be treated as the agent of the recipients.

5. The answer to the first point seems to me to be that the provisions of section 23(2) were complied with when notice was issued to the assessee on the 25 th January 1924 to show cause why he should not be assessed at the sum therein named. He was then given every opportunity of appearing and producing any further evidence he might reply on but he failed to take advantage of the opportunity and asked that the assessment should be made on the evidence

already produced. It was not, in my opinion, a case where the assessee failed to comply with a notice issued under subsection (2) of section 23 so as to make it incumbent on the income tax Officer to make the assessment under sub-section (4) of section 23. The evidence that the assessee wished to rely upon was all before the income tax Officer and assessment was rightly made u/s 23(3) . It was suggested in the course of argument that the assessment could not in the circumstances be made under the third-sub-section but should have been made under sub-section (4) as the terms of the notice, if any, were not complied with, but even so and assuming the assessment should have been under sub-section (4) , this would not help the assessee as in that case no appeal would lie u/s 30 and consequently no right to have a case stated would arise. Indeed, the Commissioner in the case stated has taken this point urging that the assessment must have been under sub-section (4) of section 23 and consequently under the proviso of section 30 no appeallay to the Assistant Commissioner and the order passed u/s 31 was ultra vires and consequently under the provisions of section 66(2) and (3) the Court had no jurisdiction to order a case to be stated. As I have already pointed out the assessment was not made under sub-section (4) . Had it been so the demand notice would have shown that no appeal lay and certainly no appeal would have been entertained. Moreover if the Court had no jurisdiction to pass an order u/s 66(3) the point should have been raised on behalf of the Commissioner when the rule was heard but the income tax authorities and everybody else until the case was stated have treated the assessment as being made u/s 23(3) and I think rightly.

6. With regard to the second point I am of opinion that the notice calling upon the assessee to show cause why he should not be treated as agents for the recipients of the sum of Rs. 20,155 did not preclude the income tax Officer form treating the sum in question as the income of the assessee. He had already been called on to show cause why he should not be assessed at a figure which included this item as part of his income and the later notice was merely an alternative in the event of the sum being proved to be interest on loans due to persons outside British India. Both questions might have to be considered but the second would only arise in the event of the sum in question being found to be interest on loans and in my opinion the notice of the. 6 th February did not preclude the income tax Officer from treating the sum in question as part of the assessee''s taxable income in the absence of any explanation or any evidence to the contrary.

7. With regard to the two sums of Rs. 5,357 and Rs. 5,278 the Commissioner was further directed to consider the question whether there was any evidence that these sums were paid to the recipients thereof as interest on partners''* capital. With regard to the first sum which was paid to Ghatsiram Lachmi Narayan of Jaipur no evidence was offered that money had been borrowed from Ghatsiram for the purposes of the assessee''s business on such terms or conditions as would make the interest deductible u/s 10 sub-section (2) clause (3) of the income tax Act. It further appeared that the assessee owed him a sum

of Rs. 1,35,000. The income tax Officer inferred that it was highly improbable that Ghatsiram residing in Jaipur would allow a Behar firm to remain in his debt for so large an amount unsecured unless he held an interest in the firm as proprietor and no evidence to rebut this inference was offered by the assessee either before the income tax Officer or before the Assistant Commissioner on appeal or before the Commissioner on review. I think that in the circumstances the income tax Officer was perfectly justified in drawing the inference. With regard to the sum of Rs. 5,278 again no explanation was offered as to this amount. It did appear, however, from the evidence produced that over Rs. 1,000 of this was paid partly to Nope Chand Mangniram and partly to his karpardaz and the rest to relatives mostly women. In the absence of any evidence in support of the deduction of the item the income tax Officer refused to believe that these servants and relatives had lent money to the firm and acting upon his special knowledge and experience of the manner in which Indian trading accounts are usually kept, he concluded that these payments represented interest on a partner''s capital debited as frequently happens in the names of various relations. Again I think the income tax Officer was in the circumstances justified in drawing this inference.

8. I have already dealt with the questions in dispute as to the item of Rs. 20,155. I may add that it appears from the Commissioner''s statement of the case that during the pendency of the appeal the assessee in a petition stated that he was not the agent of the persons to whom this sum was paid although at a later age when the matter was before the Commissioner on review the assessee''s pleader stated that he wished to be assessed as agent. As the Commissioner of income tax has stated "When the assessee, so far from offering any evidence, cannot even make up his own mind what status he should be regarded as possessing, the Department has no alternative-hut to compute, the income on the materials before it." It may be pointed out that if the assessee seeks to deduct from his business profits certain items on the ground that they are allowances within the meaning of section 10 of the Act, the onus of proving that such allowances are permissible rests with him. In the present case I think that the assessment was right and that the assessee''s petition should be dismissed with costs. Hearing fee Rs. 200 including the sum of Rs. 100 already deposited.

Foster, J.:-I agree.

