
(1954) 03 P&H CK 0013
In the Punjab And Haryana At Chandigarh
Case No : Civil Ref. No. 19 of 1953

Pandit Bros.

APPELLANT

Vs

Commr. of Income Tax

RESPONDENT

Date of Decision : 24-03-1954

Acts Referred:

Income Tax Act, 1922 — Section 13

Citation : AIR 1955 P&H 42 : (1954) 26 ITR 159

Hon'ble Judges : Khosla, J;Kapur, J

Bench : Division Bench

Advocate : D.K. Kapur and R.K. Gauha, for the Appellant; A.N. Kirpal and J.L. Bhatia, for the Respondent

Judgement

Khosla, J.—This is a reference made to this Court by the Income Tax Appellate Tribunal, Delhi, u/s 60 (1), Income Tax Act. The following question of law has been referred to this Court:

"Whether any addition may be made to the book version of business profits where no stock account is maintained, on the sole ground that the net profits disclosed appear to be insufficient in relation to the total turn-over?"

2. The assessee in this case is Messrs. Pandit Bros., Delhi, and the year of assessment is 1950-51. In order to understand the exact import of the issue involved it is necessary to set out briefly the facts which have given rise to this reference.

3. Messrs. Pandit Bros, had during the assessment year four branches:

- (a) Chandni Chowk, Delhi,
- (b) Connaught Place, New Delhi;
- (c) Handicrafts, New Delhi; and
- (d) The Mall, Simla.

Accounts of these four branches were maintained separately but since they were all owned by the same firm a consolidated statement of total profit and loss was prepared for the information of the Income Tax Officer. The Income Tax Officer on going through the accounts found that taxable profits should have been declared at a higher figure. He examined the accounts of each separate branch and accepted the statements given by the firm in respect of the Old Delhi and the Simla branches. With regard to the branch known as Handicrafts, New Delhi, he was of the opinion that since no stock book had been maintained by the firm the gross profits were liable to be increased by a sum of Rs. 5000/- . The exact words of his order are important and I quote them:

"There is no stock book and it is not possible to verify that the whole of the stock was accounted for. I would increase the gross profit by Rs. 5,000/- which would turn the gross loss of Rs. 1,8727- into a net profit of Rs. 3,1287-."

A similar addition of Rs. 7,000/- to the net profits was made in respect of the fourth branch Connaught Place, New Delhi. In respect of this branch the Income Tax Officer observed :

"There is no stock book and it is not possible to verify that the whole of the stock is accounted for. I would increase the gross profit by Rs. 7,000/-. The net profit would thus work to Rs. 8,073/-."

In the course of his order the Income Tax Officer observed that the expense ratio for these two branches was unusually high as compared to the expense ratio obtaining at the Old Delhi Branch. This was one of the reasons he gave for increasing the taxable figure of profits. An appeal was preferred to the Appellate Assistant Commissioner and by a brief order he dismissed the appeal. He observed:

"And the profits disclosed keeping in view the quality of goods sold by the assessee and the inflationary tendencies in the market were insufficient.

The expense ratio was very high. The employees appear to be paid not exactly on businesslike principles -- there appears to be a lot of philanthropic motives behind the very high payments made to them which are disproportionate to their qualifications and the nature of work done by them. They would not be able to get anywhere near the remunerations which the assessee is paying to them, anywhere else in the open market. Only those expenses are allowable which can be brought down to strictly business principles. Philanthropy and business are strangers.

The disallowance of Rs. 5000/- and Rs. 7000/- made by the Income Tax Officer to bring the results up to the normalities appear to be in order."

The matter was taken up again on appeal to the Income Tax Appellate Tribunal. The Tribunal also upheld the decision of the Income Tax Officer and seemed to take the view that the salaries, bonus and dearness allowance paid to the staff amounted to a large figure. It is somewhat strange that the increase did not

represent the figure which, according to the Income Tax Officer, had been paid to the employees "mala fide". Indeed, there was no determination of such figure by him or by any of the Appellate Tribunals. The Income Tax Appellate Tribunal drew attention to this circumstance and observed:

"It may be that an assessee is not a good businessman and pays larger salary to his employees. What has to be found by the tax authorities is whether the payment made is wholly and solely for the purposes of the assessee's business."

Therefore the Income Tax Appellate Tribunal did observe that the increase could not be made on this ground. The order of Income Tax Officer was upheld for the following reasons given by the Tribunal:

"There is no proper records of the goods sold. As the profit disclosed by the assessee in the year under reference is extremely low, we think that the Income Tax authorities are right in making an estimate of the appellant's income under the proviso to Section 13. Dealing with the estimate made as a whole, i.e., a net business income of RS. 26,597/- on a total turnover of about Rs. 9 lakhs, we think a very reasonable estimate has been made by the Income Tax authorities."

It is clear from these orders that two considerations were responsible for these decisions. In the first place, the Income Tax Officer, the Appellate Assistant Commissioner and the Income Tax Appellate Tribunal took the view that the profits disclosed by the firm were low. In the second place, they were influenced by the fact that no stock register had been maintained. It is clear that the account books maintained by the firm were accepted as correct, for the Income Tax Officer does not anywhere say that he rejected these account books. After the dismissal of his appeal by the Income Tax Appellate Tribunal the assessee moved the Tribunal for the statement of the case to this Court u/s 66. The case was stated and the question which has been set out in the earlier part of my judgment was drawn up and sent to this Court for decision.

4. It will be clear from what I have said that the increase was made under the proviso to Section 13, Income Tax Act. This proviso is in the following terms:

"Provided that, if no method of accounting has been regularly employed, or if the method employed is such that, in the opinion of the Income Tax Officer, the income, profits and gains cannot properly be deduced therefrom, then the computation shall be made upon such basis and in such manner as the Income Tax Officer may determine."

5. The wording of this proviso makes it quite clear that before the Income Tax Officer can reject the final statement of profit and loss given by the assessee he must either hold that there is no method of accounting or that the method employed is such that it does not, disclose the true profits and losses of the firm. In this case there was a method of accounting employed and therefore the first part of the proviso does not apply. The question therefore arises whether the second part of the proviso is attracted. It is admitted that the assessee in this

case has maintained regular accounts of his purchases and sales and these account books were accepted as correct.

One thing was, however, missing, namely a stock register. This in the opinion of the Income Tax Officer was an important: document. The Income Tax Officer could have said that the absence of the stock register was such a serious defect in the method of accounting employed by the assessee that in his opinion he could not determine the correct statement of profits and losses. He could then have adopted some basis and computed true profit taxable in a manner which he could determine under the proviso.

In all cases which fall u/s 13 there must be material before the Income Tax Officer to lead him to the conclusion that the method employed is defective or that the ease requires reconsideration and a new computation must be made. As observed by their Lordships of the Privy Council in -- AIR 1938 1 (Privy Council)

"It is the duty of the Income Tax Officer, where there is such a method of accounting, to consider whether the income, profits and gains can properly be deduced therefrom, and to proceed according to his judgment on this question."

The grievances of the assessee in this case are that (1) there was no finding by the Income Tax Officer that the method employed by him was improper or that the account books could not be relied upon as disclosing a true state of affairs, and (2) he did not compute the taxable profit on any basis as required by the proviso to Section 13.

6. I have been at some pains to quote the exact words employed by the Income Tax Officer and the Appellate Tribunal who dealt with this case. There is no finding that there was material before the Income Tax Officer to lead him to the conclusion that a proper statement of income, profits and gains could not be deduced from the material placed before him. All he said was that the profits appeared to be somewhat low and there was no stock register. In my view the fact that the profits are low is merely a warning to him to look into the accounts more carefully and see whether there is material to lead him to the conclusion that there is something false in the account books. The mere fact that the profits are low is not material upon which a finding u/s 13 can be based, because the assessee may be incompetent or his methods of business may be uneconomic. Again, the fact that there is no stock register only cautions him against the falsity of the returns made by the assessee. He cannot say that merely because there is no stock register the account books must be false. The account books in this case were accepted as correct and disclosing a true state of affairs. The absence of one register cannot amount to material and there must be material before the Income Tax Officer before he can apply the provisions of the proviso to Section 13.

7. Again, we find that the Income Tax Officer did not adopt any basis for the increase made by him. He merely took what has been described by the Privy Council in -- AIR 1933 108 (Privy Council) as a "leap in the dark" in adding the

two items of Rs. 5000/- and Rs. 7000/- to the statement of profits as given by the assessee. The Income Tax Officer could have adopted one of many courses. He could have taken a test period from the assessee's own business and computed the true profits on that basis, or he could have considered the profits made by similar firms doing similar business, but it is not for this Court to indicate what method the Income Tax Officer should adopt. The statute gives the Income Tax Officer the power to determine his own basis, but there must be a basis. He must not act in a wholly arbitrary manner. This has been pointed out in a number of cases and reference may be made to a recent decision of the Nagpur High Court in -- "Nathuram Munnalal v. Commissioner of Income Tax". AIR 1954 Nag 227 (C) where the following observations occur at p. 228:

"If after rejecting the method of accounting employed by the assessee, the Income Tax Officer were simply to add a particular amount to the income returned or to disallow a part of the business expenses properly incurred by the assessee and allowable u/s 10 of the Act, he would not be acting under the proviso to Section 13. The Income Tax Officer would be acting contrary to law if he were to disallow such business expenses or make an addition of a lump sum simply on the ground that the trading profits cannot be properly determined from the books of account. The Income Tax Officer is not entitled to discard the evidence of the books of account altogether merely because the proviso to Section 13 is attracted."

In this case it was conceded that the account books did not disclose the true state of affairs and that case therefore was much weaker from the assessee's point of view than the case before us.

8. In another case -- A. Moosa and Sons Vs. The Commissioner of Income Tax, Bombay City, C. J., observed:

"The proviso to Section 13 leaves it to the Income Tax Officer to compute the profits upon such basis and in such manner as he may determine. Although the discretion is vested in the Income Tax Officer, the discretion cannot be exercised arbitrarily or capriciously or dishonestly. He must exercise his judgment in such a manner as would make it possible for him to ascertain the profits and gains of the assessee most approximating to the truth."

His Lordship observed later:

"Therefore it is always open to the Court on a reference to consider whether the method adopted by the Income Tax Officer is a wrong method, wrong in the sense that the method is not one which is likely to result in the true profits and gains being ascertained."

A reference is made to an observation of Earl Loreburn, L. C., which I have already quoted above. In that case the assessee had maintained no stock account and in the statement of the case made by the Income Tax Appellate Tribunal the following significant observation appears:

"The Tribunal necessarily does not reject the accounts in the absence of a stock account in all cases. It takes into account various other factors and the history of the assessee's past assessments. It is only after a careful consideration of all the facts that a finding is given that the assessee's books do not disclose his true profits, or that proviso to Section 13 applies."

This observation made by the Income Tax Appellate Tribunal is all the more significant as pointing out the duties laid upon the Income Tax Officer in applying the provisions of Section 13. In that case the question referred to the High Court was:

"Whether there was material before the Tribunal to come to a finding that the assessee's books do not disclose his true profits?"

In dealing with this question Chagla, C. J., made an inquiry into whether the method adopted by the Income Tax Officer, was a just and proper method. The case before us is of a similar nature and here, too we must inquire whether the addition to the two items of Rs. 5000/- and Rs. 7000/- was made according to some just and definite basis. We find that no basis is mentioned and no method was adopted by the Income Tax Officer. All he did was to express an opinion that the profits were unduly low and therefore needed to be increased, and on this he proceeded to increase them by a sum of Rs. 12,000/-. This is scarcely acting according to the provisions of the statute.

9. I therefore find that in this case there is no definite finding by the Income Tax Officer that the case falls within the proviso to Section 13, for he does not say that the method of accounting employed by the assessee was such that in his opinion "the income, profits and gains could not properly be deduced therefrom". In the second place, even if such a finding were to be implied from his order it cannot be said that there was material before him which would enable him to come to this finding. The fact that the profits appeared to him to be insufficient and the fact that there was no stock register maintained by the assessee are not in my view materials upon which such a finding can be given, but these are circumstances which may provoke an inquiry. The Income Tax Officer must discover evidence or material "aliunde" before he can give such a finding. In the third place, I find that in increasing the taxable income he did not adopt method or basis.

10. For these reasons I would answer the question referred to us in the negative. The assessee will recover costs. I assess counsel fee at Rs. 100/-.

Kapur, J.

11. I agree.