

(1954) 02 PAT CK 0011
In the Patna High Court
Case No : Misc. Judl. Case No. 162 of 1950

Radhakrishna Behari Lal

APPELLANT

Vs

Commr. of Income Tax

RESPONDENT

Date of Decision : 15-02-1954

Acts Referred:

Income Tax Act, 1922 — Section 4

Citation : AIR 1955 Patna 249 : (1954) 26 ITR 344

Hon'ble Judges : Ramaswami, J;Ahmad, J

Bench : Division Bench

Advocate : Tarkeshwar Prasad and B.N. Jain, for the Appellant; R.J. Bahadur, for the Respondent

Judgement

1. In this case the assessee is a Hindu undivided family called Messrs. Radhakrishna Biharilal, consisting of two brothers of whom Radha Krishna is the Karta. The business of the family was trade in rice and grain and besides this the family had share in other partnership concerns. For the assessment year 1944-45 the Income Tax authorities found an item of cash credit in the books of the assessee in the name of one Kedarnath Agarwala. The amount of the cash credit was Rs. 35,000 and the claim of Kedarnath was that he deposited the amount in two lots, one of Rs. 15,000 on 16-4-1943 and the other of Rs. 20,000 on 2-5-1943. The Income Tax authorities treated the amount of cash credit as belonging to Kedarnath and interest of Rs. 1,120 was allowed to be deducted from the taxable income of the assessee. When the assessment for the year 1945-46 was taken up the Income Tax authorities noticed that the amount of Rs. 35,000 was transferred by Kedarnath to his daughter Mt. Chandra Kumari Devi. It was explained on behalf of the assessee that there was a registered deed of gift dated 3-4-1944 by which Kedarnath transferred the deposit in the name of his daughter. The Income Tax Officer allowed the deduction of Rs. 1,596/- as interest paid to Mt. Chandra Kumari Devi on the deposit but the order was made subject to verification.

An enquiry was later on made from the Income Tax authorities at Calcutta. A reply was received that Kedarnath could not be found at the address given in the books produced by the assessee. On receipt of the reply the Income Tax Officer started proceedings u/s 34, Indian Income Tax Act against the assessee. In the course of this proceeding Kedarnath was examined and the registered deed of gift made by Kedarnath in favour of Mt. Chandra Kumari Devi was also produced before the Income Tax Officer, who, however, came to the conclusion that the amount of Rs. 35,000/- shown in the books of the assessee for the assessment year 1944-45 was really secreted profit and that the amount did not belong to Kedarnath or to his daughter Mt. Chandra Kumari Devi. The assessee took the matter to the Appellate Assistant Commissioner who allowed the appeal upon the finding that there was no material to hold that the amount of Rs. 35,000 represented the secreted profit of the assessee. The Income Tax Department preferred an appeal to the Appellate Tribunal who allowed the appeal and restored the order of the Income Tax Officer and held that the amount of Rs. 35,000/- was secreted profit of the assessee and should be assessed to Income Tax under the provisions of Section 34, Income Tax Act.

2. In this state of facts the Income Tax Appellate Tribunal has referred the following question of law for the opinion of the High Court-

"Whether on the facts and circumstances of the case there was definite information to the Department in consequence of which discovery was made that a sum of Rs. 36,120 escaped assessment in the Assessment year 1944-45?"

3. After hearing counsel for the parties we think that the question should be reframed in the following manner in order to bring out more effectively the real point in controversy between the parties:

"Whether there was any material before the Income Tax authorities to hold that a sum of . Rs. 36,120/- belonged to the assessee and should be assessed to Income Tax under the provisions of Section 34, Indian Income Tax Act?"

4. In the approach to this question it is necessary to bear in mind the distinction between a case where there is cash credit in the name of the assessee and a case where the cash credit is found not in the name of the assessee but in the name of a third party. If the cash credit stands in the assessee's name the burden of proof is upon the assessee to show that the item of receipt is not of an income nature. It is for the assessee in such a case to prove positively the source and nature of the amount shown in the item and if the assessee fails to furnish satisfactory explanation the Income Tax authorities are entitled to draw inference that the receipt is of an income nature. That is the principle laid down by two authorities of this Court -- JADUNANDAN SAHU DEOKISANRAM Vs. COMMISSIONER OF Income Tax, BIHAR AND ORISSA., ; and -- S.N. Ganguly Vs. Commr. of Income Tax, . But the position is different in regard to a sum which is shown in the assessee's books in the name of a third party. In such a case the onus of proof is not upon the assessee to show the source or nature of the

amount of the cash credit; on the other hand, the onus shifts to the Department to show by some material that the amount standing in the name of the third party does not belong to that third party but belongs to the assessee; That is the principle laid down by a Division Bench of this Court in *S.N. Ganguly Vs. Commr. of Income Tax*, ". There is a decision to a similar effect in an earlier case --"*Ramkinkar Banerji v. Commr. of Income Tax*, B & O AIR 1936 Pat 267 .

5. Applying the principle to the present case we have formed the opinion that there is no material before the Income Tax authorities to justify the inference that the amount of Rs. 36,120/- was secreted profits in the hands of the assessee. The onus of proving that this amount was secreted profits made by the assessee was certainly upon the Income Tax Department and, in our opinion, that onus has not been discharged in this case. The Appellate Assistant Commissioner had taken the view that the deed of gift was a genuine document, that the amount of Rs. 35,000/- really belonged to Kedarnath who had sold the ornaments of his wife for Rs. 20,000/- and the balance of Rs. 15,000/- represented the saving made by Kedar Nath while working as a "dalal". The finding of the Assistant Commissioner was set aside by the Income Tax Appellate Tribunal, firstly on the ground that Kedarnath had a monthly earning of Rs. 707/- and it was not possible that he should save the amount of Rs. 15,000/-. As regards the item of Rs. 20,000/- the Income Tax Appellate Tribunal took the view that the sale of ornaments should not be believed since Kedarnath did not know at which shop he sold the ornaments. :

There was also some dispute between the parties on the question whether Kedarnath was living at 1-2 Jagabandhu Boral Lane, Calcutta, at the time of the execution of the deed of gift. The proceeding u/s 34 of the Indian Income Tax Act was started mainly on the ground that the Income Tax authorities of Calcutta reported that Kedarnath never lived at the address indicated but in the course of the enquiry Kedarnath appeared before the Income Tax authorities and produced not only the registered deed of gift but also rent receipts showing that he was residing at 1-2 Jagabandhu Boral Lane, Calcutta, on the material date. We are therefore unable to attach any importance to the argument addressed by the learned Standing Counsel that the assessee had deliberately given a wrong address in his account books so as to mislead the Department and to cover up the fact that he had made secreted profits.

Turning now to the facts upon which the Appellate Tribunal relied we find it extremely difficult to hold that these facts constitute any material upon which to build up the inference that the sum of Rs. 36,120 represented the secreted profits of the assessee. The Appellate Tribunal states that . Kedar Nath was a man of no substance and that he was not able to show satisfactorily how he saved the amount of Rs. 15,000/- from his professional earnings. It is also said that he failed to remember at what shop he sold the ornaments of his deceased wife. The finding of the Appellate Tribunal appear to us to be purely arbitrary and capricious. Where is the material for the Appellate Tribunal for holding that the

money really belonged to the assessee? There is in fact no proximate connection between the facts stated by the Appellate Tribunal and its conclusion that the money belonged to the assessee firm. In the eye of law, therefore, it must be taken that there is no material to support the finding of the Appellate Tribunal. It is, on the contrary, not controverted that Kedarnath executed a registered document with respect to the whole money of Rs. 35,000/- in favour of his daughter Mt. Chandra Kumari Devi. This transaction is destructive of the Department's case that the money belonged to the Hindu undivided family, for Kedarnath would not in such a case transfer the whole money to Mt. Chandra Kumari Devi, wife of Radha Krishna, one of the two brothers. In our opinion the Income Tax Department has failed to discharge the onus which lay upon them of establishing by some material that the amount of Rs. 35,000/- plus interest of Rs. 1,120 did not belong to Kedarnath but belonged to the assessee.

6. We hold that there is no material before the Income Tax Department to justify the assessment of Income Tax on the amount of Rs. 36,120/- under the provisions of Section 34, Indian Income Tax Act and the question should be answered in favour of the assessee. We do not propose to make any order as to the costs of this reference.