
(1976) 03 BOM CK 0017

In the Bombay High Court

Case No : Income-tax Reference No. 99 of 1966

Ram Kumar Jalan

APPELLANT

Vs

Commissioner of Income Tax (Central), Bombay

RESPONDENT

Date of Decision : 15-03-1976

Acts Referred:

Income Tax Act, 1961 — Section 254

Citation : (1977) 108 ITR 301

Hon'ble Judges : R.M. Kantawala, C.J.;V.D. Tulzapurkar, J

Bench : Division Bench

Advocate : D.H. Dwarkadas, for the Appellant; R.J. Joshi, for the Respondent

Judgement

Kantawala, C.J.—u/s 66(2) of the Indian Income Tax Act, 1922, the following question is referred to us for our determination :

"Whether the Tribunal erred or misdirected itself in law or failed to act in proper exercise of its discretion in not allowing the applicant to raise the additional grounds regarding the amount of Rs. 7,93,837 ?" The assessee was assessed to tax in the status of a registered firm. In the computation of its business income the assessee claimed loss of Rs. 4,75,488 and various other deductions. The loss was disallowed as fictitious and added back. So also some of the allowance claimed were disallowed and added back. Aggrieved by the order passed by the Income Tax Officer disallowing the loss and some of the allowances claimed the assessee preferred an appeal before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner confirmed the order of the Income Tax Officer and upheld the disallowance of the loss and some other disallowances added back. Against that order a passed by the Appellate Assistant Commissioner the assessee filed a second appeal before the Appellate Tribunal. In the memo of appeal the assessee challenged the correctness of disallowance in respect of the loss and the other items claimed. When the appeal came up for hearing before the Tribunal, by an application dated March 23, 1963, the assessee sought to raise additional grounds of appeal before the Appellate Tribunal. These grounds

of appeal are given at page 37 of the reference book. In support of the plea to raise these additional grounds the assessee wanted to contend that in respect of some other assessee by name, Jalan Trading Company Private Ltd., a sum of Rs. 7,93,837 was treated as a capital expenditure and the claim made on the footing of deduction as expenditure was disallowed. Relying upon the said order of the Tribunal in respect of the other assesses by name, Jalan Trading Co. Private Ltd., the above additional grounds of appeal were sought to be raised on the footing that if they were not permitted to be raised there would be double taxation.

2. This application of the assessee to raise additional grounds of appeal was disallowed by the Tribunal. The Tribunal pointed out that none of the relevant facts on the basis of which the additional grounds were sought to be urged was to be found in the order of assessment passed by the Income Tax Officer or the order passed by the Appellate Assistant Commissioner. Actually, the grounds which were sought to be urged by way of additional grounds of appeal were not even raised before the Income Tax Officer or the Appellate Assistant Commissioner. In fact, the assessee itself had filed the return on the footing that the said sum was a revenue receipt. The Tribunal found that the case of the assessee had to be decided on the facts on record and it was not possible to go into the additional grounds of objection unless fresh investigation of facts was made at the stage of the second appeal before the Tribunal. On that footing the Tribunal rejected the application of the assessee to urge additional grounds of appeal. The question above referred to arises from this order of the Tribunal.

3. Mr. Dwarkadas on behalf of the assessee submitted that the Tribunal misdirected itself in not permitting the assessee to raise the additional grounds of appeal, especially when no other material was required to be seen except the order of the Tribunal in the appeal preferred by Jalan Trading Co. Private Ltd. He, therefore, submitted that the discretion that was vested in the Tribunal as regards permitting the assessee to raise additional grounds of appeal was not judicially exercised and the order passed by the Tribunal rejecting the application of the assessee to raise such additional grounds is erroneous.

4. By the additional grounds of appeal of the assessee wanted to contend that a sum of Rs. 7,93,837 received by it was not a revenue receipt but a capital receipt and both the Income Tax Officer and the Appellate Assistant Commissioner erred in holding that it was a revenue receipt. The assessee in its own return showed that the said amount was a revenue receipt. So there was no question of investigation before the Income Tax Officer on the ground that it was a capital receipt and was not, therefore, liable for payment of tax, nor was such a plea raised before the Appellate Assistant Commissioner. It may be pointed out that when the Income Tax Officer initially passed the assessment order and when the Appellate Assistant Commissioner passed the order in appeal, even the order of the Tribunal in the case of Jalan Trading Co. Private Ltd. was not there. In fact such an order was passed later on. Thus, the Tribunal was right in rejecting the application of the assessee to raise additional grounds of appeal, because, on the

facts of the case of the assessee, there was no material on record on the basis of which the additional grounds were sought to be urged. In the absence of any material before the Income Tax Officer or the Appellate Assistant Commissioner or in the absence of any plea before them in that behalf it was impossible for the Tribunal to hold that either of the two authorities erred in taking the view which they took.

5. Reliance was placed by Mr. Dwarkadas upon the decision of this court in the case of J.S. Parkar Vs. V.B. Palekar and Others, . In this case one of the questions that was argued before the Bench was whether a plea of set-off could be decided on the facts existing on record. The Division Bench has pointed out that such a plea did not require any fresh facts. The case before us is not similar. On the contrary, as stated by the Tribunal, the plea which was sought to be raised by additional grounds of appeal could not be decided by the Tribunal in the absence of material before either the Income Tax Officer or the Appellate Assistant Commissioner.

6. In the result, the question referred to above is answered in the negative. The assessee shall pay the costs of the revenue.