

(1979) 07 AHC CK 0022

In the Allahabad High Court

Case No : Income-tax Reference No. 295 of 1976

Ram Prasad Sharma

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 23-07-1979

Acts Referred:

Income Tax (Appellate Tribunal) Rules, 1963 — Rule 29
Income Tax Act, 1961 — Section 250(1)
Income Tax Rules, 1962 — Rule 46A

Citation : (1979) 119 ITR 867

Hon'ble Judges : R.R. Rastogi, J;C.S.P. Singh, J

Bench : Division Bench

Advocate : R.K. Gulati, for the Appellant; Ashok Gupta, for the Respondent

Judgement

R.R. Rastogi, J.—The assessee, as individual, used to carry on contract business. For the assessment year 1970-71, he did not file his return of income voluntarily u/s 139(1) of the I.T. Act, 1961. He, however, filed it u/s 139(4) after receipt of notice u/s 139(2), disclosing an income of Rs. 4,273. During the course of the assessment proceeding the assessee did not put in appearance nor did he furnish evidence as required and hence the assessment was made u/s 144 of the Act. The ITO computed the income from contract business at Rs. 15,000. He had found from the copy of the account filed by the assessee that the assessee had taken two loans during the relevant previous year from Sri Ram Swarup Bhalla and Sri A. N. Nayyar of Rs. 20,000 and Rs. 8,000, respectively. Since the assessee did not produce any evidence whatsoever to prove the genuineness of those loans, the ITO treated the same as the assessee's income from undisclosed sources.

2. The assessee filed an application u/s 146 of the Act which was rejected by the ITO and against the order there was no further appeal. The assessee, however, preferred an appeal against the best judgment assessment order. The AAC reduced the income from business and sustained an addition of Rs. 5,000 to the

disclosed income. In regard to the addition for the cash credits, the assessee, at the time of hearing of the appeal, sought permission to produce the certificate of the depositors. The AAC did not admit that fresh evidence and observed that " I am afraid these evidences filed only now at the appellate stage cannot be admitted as the Income Tax Officer had given adequate opportunities to the appellant at the time of hearing of assessment to prove the genuine character of the cash credits in question ". Accordingly, he confirmed the addition of the aforesaid amount of Rs. 28,000.

3. The assessee took a further appeal before the Income Tax Appellate Tribunal and it was urged on his behalf by his counsel before the Tribunal that he had sought adjournments before the ITO on the ground that the creditors were not available and were also not willing to oblige the assessee by giving confirmation letters. The Appellate Tribunal did not accept this oral assertion made before it and, referring to the orders of the Income Tax authorities that despite repeated opportunities given, no evidence had been filed to prove the genuineness of the disputed deposits, confirmed the addition and also agreed with the AAC that fresh evidence could not be admitted at the appellate stage.

At the instance of the assessee the following question of law has been referred for the opinion of this court I

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in confining itself to the material on record before the Income Tax Officer and in not admitting fresh evidence for the purposes of examining the taxability of Rs. 27,000 as income from undisclosed sources ?"

4. It was urged before us on behalf of the assessee by his counsel, Sri R. K. Gulati, that the AAC did not admit fresh evidence on a mistaken view of his jurisdiction and the same was the position with regard to the Appellate Tribunal and reliance was placed on several decisions, viz., *SUNDERMUL and CO. Vs. COMMISSIONER OF Income Tax A. P.*, , *M. M. Muthuwappa Vs. Commissioner of Income Tax, Madras*, , *T.C.N. Menon Vs. Income Tax Officer, B-Ward*, , *Controller of Estate Duty Vs. R. Saraswathi Ammal*, and *BRIJ MOHAN RAMESHWAR DASS Vs. COMMISSIONER OF Income Tax, DELHI.*, . We do not think that these decisions apply to the present case. They deal with the power of the AAC u/s 31 of the Indian I.T. Act, 1922, the corresponding provision of which is contained in Sections 250 and 251 of the present Act. There can be no dispute with the proposition that the power to make further enquiry u/s 250(1) includes the power to admit fresh and additional evidence. It is, however, within the discretion of the AAC to admit or not to admit further evidence at the appellate stage. The discretion is regulated by Rule 46A of the I.T. Rules, 1962. That rule reads as under :

" 46A. Production of additional evidence before the Appellate Assistant Commissioner.--(1) The appellant shall not be entitled to produce before the Appellate Assistant Commissioner any evidence, whether oral or documentary,

other than the evidence produced by him during the course of proceedings before the Income Tax Officer, except in the following circumstances, namely :--

(a) where the Income Tax Officer has refused to admit evidence which ought to have been admitted; or

(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Income Tax Officer; or

(c) where the appellant was prevented by sufficient cause from producing before the Income Tax Officer any evidence which is relevant to any ground of appeal; or

(d) where the Income Tax Officer has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(2) No evidence shall be admitted under sub-rule (1) unless the Appellate Assistant Commissioner records in writing the reasons for its admission.

(3) The Appellate Assistant Commissioner shall not take into account any evidence produced under Sub-rule (1) unless the Income Tax Officer has been allowed a reasonable opportunity ;

(a) to examine the evidence or document or to cross examine the witness produced by the appellant, or

(b) to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.

(4) Nothing contained in this rule shall affect the power of the Appellate Assistant Commissioner to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal, or for any other substantial cause including the enhancement of the assessment or penalty (whether on his own motion or on the request of the Income Tax Officer) under clause (a) of Sub-section (1) of section 251 or the imposition of penalty u/s 271."

5. It would be seen that according to this rule the appellant shall not be entitled to produce before the AAC any evidence, whether oral or documentary, which was not produced in the course of the proceedings before the ITO except in specified circumstances. Thus, the appellant has a right to produce additional evidence only in the circumstances specified in the rule and the appellant may be permitted to produce additional evidence in a fit case which falls outside the specified circumstances. The present case does not fall within the first category and the appellant has no right to produce additional evidence before the AAC. He may have been permitted to produce additional evidence but that was a matter of discretion with the AAC. In the present case repeated opportunities were given by the ITO to produce evidence to prove the genuineness of the disputed deposits but no evidence whatsoever was given. It cannot be said that in these circumstances the AAC exercised his discretion arbitrarily or capriciously while refusing to admit fresh evidence at the appellate stage.

6. As for the stage of the appeal before the Appellate Tribunal, Rule 29 of the I.T. (Appellate Tribunal) Rules, 1963, provides that the parties to the appeal shall not be entitled to produce additional evidence, either oral or documentary before the Tribunal, but if the Tribunal requires any document to be produced or any evidence to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause or if the ITO has decided the case without giving sufficient opportunity to the assessee to adduce evidence either on the points specified by him or not specified by him, the Tribunal may allow such document to be produced, or evidence to be examined or affidavit to be filed or may allow such evidence to be adduced. It would be seen that under this rule the powers of the Tribunal to admit additional evidence are limited and the Tribunal has a discretion which, of course, must be exercised reasonably to refuse leave to a party to take additional evidence.

7. The question which has been referred to us does not say that the AAC or the Appellate Tribunal failed to exercise the jurisdiction which they had under the provisions of the Act in this behalf. In our opinion, on the facts of the instant case, it cannot be held that the AAC, in refusing to give permission to adduce fresh evidence, acted arbitrarily. In regard to the Appellate Tribunal also, our view is the same and hence our answer to the question would be in the affirmative.

8. We, therefore, answer the question referred to us in the affirmative, in favour of the department and against the assessee. The department is entitled to Rs. 200 as costs.