

(1953) 02 PAT CK 0008

In the Patna High Court

Case No : Misc. J.C. No's. 264 and 265 of 1951

Ramcharitarram Harihar Prasad

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 04-02-1953

Acts Referred:

Income Tax Act, 1961 — Section 10, 26A

Citation : AIR 1954 Patna 143 : (1953) 23 ITR 301

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

Bench : Division Bench

Advocate : S.N. Dutt, Shiveshwar Pd. Sinha and Vishundeva Narayan, for the Appellant; Gopal Prasad, for the Respondent

Judgement

Ramaswami, J.—In this case the assessee is a firm consisting of four partners, Bameshwar Prasad, Ramlakhan Prasad, Ramekbal Prasad and Gopijee Maheshwar and was registered u/s 26A, Income Tax Act. The assessee is a firm carrying on considerable business in sugar, salt, kirana and other articles in the town of Kishunganj in the district of Purnea. The assessment in dispute relates to the year 1946-47 for the purpose of Income Tax. The assessment for excess profits tax refers to the chargeable accounting period 20-4-1945 to 31-3-1946. In the course of assessment proceedings the Income Tax Officer examined the account books & found that the trading account maintained by the assessee did not show the assessee's true profits. He, therefore, estimated that a sum of Rs. 20,072 should be added as profits to the amount shown in the books of account.

There was another matter in respect of which the Income Tax Officer was not satisfied with the explanation of the assessee. The account books showed that there were cash credits in the personal accounts of the four partners to the extent of Rs. 85,370. The Income Tax Officer added the two amounts of Rs. 20,072 and Rs. 85,370 and determined the assessee's income from business to be Rs. 1,44,898. Appeals were preferred by the assessee to the Appellate Assistant Commissioner who upheld the addition of cash credits of Rs. 85,370

but reduced the other item of Rs. 20,072 estimated by the Income Tax Officer from the figure of Rs. 20,072 to that of Rs. 15,644. Appeals were then filed by the assessee to the Income Tax Appellate Tribunal but the appeals were dismissed.

2. At the instance of the assessee the High Court required the Income Tax Appellate Tribunal to state a case on the following question, of law.

"Whether on the facts and circumstances of the case, the addition of Rs. 15,774 as extra estimated profit in various goods accounts & again the addition of Rs. 85,000 as income from undisclosed sources amounts to double taxation to the extent of Rs. 15,774?"

3. After hearing learned counsel for the parties I think that the question framed should be altered in the following manner:

"Whether in the facts and circumstances of the case, the assessee is liable to be taxed on the sum of Rs. 15,774 as extra estimated profit and also on the sum of Rs. 85,000 shown as cash credit but which, has been found by the taxing authorities to be income from undisclosed sources?"

4. The learned Standing counsel stated that the question may not be altered at the hearing of the reference, if any fresh facts were necessary to be stated. But there is no point in this objection. No additional statement of facts is necessary in the present case. It is settled by a long line of authorities that the High Court may without raising a new and different question resettle and reframe the question formulated by the Tribunal before answering it so as to bring out the real issue between the parties (see, for example, -- Madanlal Dharnidharka Vs. The Commissioner of Income Tax, ; -- Jethabhai Hiraji and Co. Vs. Commissioner of Income Tax, : -- Caltex (India) Ltd. Vs. The Commissioner of Income Tax, Bombay City, .

5. On behalf of the assessee, the contention of Mr. Dutt is that there was no finding that the assessee had been carrying on any other business except the business of dealing in sugar, salt and kirana for which the Income Tax Officer had made the assessment. It was pointed out that the assessee had claimed before the taxing authorities that the amount of cash credits shown in the books of account was not income receipt but it was capital receipt on account of the sale proceeds of gold belonging to the partners of the business. The explanation given by the assessee was rejected by the Income Tax Officer and by the appellate authorities who held that there was no material to show that the cash credits represented the sale proceeds of gold belonging to the partners and since the assessee has not discharged the onus of proving the source of cash credits, the whole amount should be treated as secreted profit liable to be taxed. It was contended on behalf of the assessee that upon this finding it was not open to the taxing authorities to hold that the amount of cash credit did not include the profit of Rs. 15,644 which was the estimate of the Income Tax Officer on his examination of the account books for the year in question.

To put it differently, the argument is that the Income Tax Officer made an estimate of the profits of the business for the assessment year upon examination of the account books. After making a guess of the profits on the basis of the transactions shown in the account books the Income Tax Officer reached the conclusion that the amount of profits for the accounting year was a sum of Rs. 15,644. It was argued that the amount of cash credit only supported the guess work of the Income Tax Officer that there was concealment on the part of the assessee in the method of accounting and that the assessee did not show the correct profits of the business in the books of account. The submission of Mr. Dutt was that it was open to the Income Tax, authorities either to accept the amount of Rs. 15,644 or the amount of Rs. 85,000 as the estimated profits of the assessee for the year in question but it was not open to the Income Tax authorities to hold that the estimated profit was made up of the amount of Rs. 85,000 plus Rs. 15,774 or to demand tax on this consolidated amount.

6. In my opinion the argument presented on behalf of the assessee must be accepted as correct. In the present case, the Income Tax Officer has rejected the books of account of the assessee in some respects and made an estimate of the profits of the business for the accounting year. The Income Tax Officer has further held that cash credits shown in the books of account were really secreted profits of the business. In a case of this description it is not open to the Tribunal to add up both the cash credits and the estimated excess of the profits over the amount shown in the books of account and to hold the amount so added up is taxable in the hands of the assessee. Such a course is open to the Income Tax authorities only when there is material to show that the assessee carries on an independent business apart from the business for which assessment is made. That would be a case of an exceptional nature. In the order of the Appellate Tribunal at page 14 of the paper book, there is a finding that "there is no evidence to connect the gross profit estimates with the credits in the capital accounts" and so the Appellate Tribunal refused to entertain the submission that the amount of Rs. 15,664 should not be taxed as income for the accounting year. Mr. Dutt on behalf of the assessee challenged this finding of the Tribunal, upon which the judgment of the Tribunal is based.

In the first place, there is the significant fact that the assessment has been made u/s 10, Income Tax Act. The amount of Rs. 15,664 and the other amount of Rs. 85,000 have also been included in the assessment for the purpose of calculating the excess profits tax. An attempt was made on behalf of the Income Tax Department to show that the sum of Rs. 85,000 has no connection with the sum of Rs. 15,774 which was estimate of the extra profits made by the Income Tax Officer. It was argued by the learned Standing Counsel that there was possibility that the amount of Rs. 85,000 was not secreted profits from the business but was an item of income receipt from some undisclosed source, not necessarily connected with the business of the firm in sugar, salt, kirana and other articles. There is no material whatever in the statement of the case to support the argument of the Standing Counsel that the amount of Rs. 85,000 was income

derived not from the business of the assessee firm but from some undisclosed source.

On the other hand, the attitude of the Income Tax authorities in assessing the amount in question as profits from business and the assessment of the amount also for the purpose of excess profits tax is a circumstance which, may well suggest that both these items of receipt were profits earned from the business carried on by the assessee. In this context it is important to notice that there is no material to show that the assessee carries on any independent business other than the business of dealing in sugar, salt, kirana etc. Upon the facts found by the Income Tax Appellate Tribunal it is clear that the amount of Rs. 15,664 is not unconnected with the amount of Rs. 85,000 being the cash credits shown in the books of account but treated by the Income Tax authorities as secreted profits from the business for the accounting year. It is, therefore, manifest that the amount of Rs. 85,000 which was added by the Income Tax authorities as secreted profits would include the amount of Rs. 15,664 which was the estimate made by the Income Tax Officer on examination of the book of account produced by the assessee. It follows that on the facts and circumstances of this case, the amount of Rs. 15,644 ought not to have been added to the amount of Rs. 85,000 as income of the assessee for the year of account and that the amount of Rs. 15,664 was not taxable in the hands of the assessee.

7. For the reasons expressed I think that the question of law raised in this case should be answered against the Income Tax Department. The assessee is entitled to costs of the reference. Hearing fee Rs. 250.

Rai, J.

8. I agree that the answer should be against the Income Tax Department but I would reserve my judgment on the point whether the question on which statement of the case has been called for from the Tribunal u/s 66(2), Income-tax Act can be changed by us at the time of the final hearing of the case.