
(1979) 07 RAJ CK 0022

In the Rajasthan High Court

Case No : Civil Income Tax Reference No. 91 and 92 of 1974

Roop Narain

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 24-07-1979

Acts Referred:

Income Tax Act, 1961 — Section 256, 271(1), 69

Citation : (1980) 123 ITR 315

Hon'ble Judges : N.M. Kasliwal, J; Dwarka Prasad, J

Bench : Division Bench

Advocate : B.L. Khetan, for the Appellant; S.M. Mehta, for the Respondent

Judgement

Dwarka Prasad, J.—These two reference applications have been filed u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for directing the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur, to state the case and refer certain questions, said to be arising out of the orders of the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur (hereinafter called "the Tribunal"), to this court. The reference case No. 91 of 1974, arises out of the assessment proceedings, while the other reference case No. 92 of 1974, arises out of the penalty proceedings relating to the same assessee and the same assessment year 1966-67. As the assessee and the assessment year are the same, it would be proper to dispose of these two reference applications by a common order.

2. The circumstances, which have given rise to these two reference cases, may be briefly stated :

The petitioner, Roop Narain, is the ex karta of a HUF. The relevant accounting year is that which ended on Diwali Svt. 2021, i.e., on October 24, 1965, pertaining to the assessment year 1966-67. The HUF, of which the petitioner was the karta, filed a return of income in the sum of Rs. 20,503. The ITO, K-Ward, Jaipur, was the assessing authority. However, the assessing authority determined the income of the assessee at Rs. 68,188 making an addition of Rs. 33,623 as

income from undisclosed sources. On appeal, the AAC disagreed with the contention advanced by the petitioner and dismissed his appeal. The petitioner filed a further appeal, which was heard and decided by the Tribunal by its order dated July 29, 1972. The Tribunal held that a part of the house, to the extent of 700 sq. ft. was already built up, up to the year 1956, and the estimated cost of construction taken by the ITO as Rs. 1,04,118 also included the value of 700 sq. ft., which was already constructed long back. Thus, the Tribunal allowed the assessee the benefit of Rs. 18,561, which was spent on the partial construction of the building up to the year 1956. However, the Tribunal considered that the difference between the estimated cost of the remaining building constructed, between the years 1962 to 1965, was Rs. 90,597 as against Rs. 70,495, which was disclosed according to the books of account of the assessee. Thus, an amount of Rs. 20,102 was considered by the Tribunal to be the income of the assessee from undisclosed sources, instead of a sum of Rs. 33,623 computed by the ITO. Further the Tribunal held that out of the aforesaid amount of Rs. 20,102, which represented the income of the assessee from undisclosed sources, only Rs. 13,000 should be considered to relate to the year of account pertaining to the assessment year 1966-67. The basis on which the figure of Rs. 13,000 appears to have been arrived at by the Tribunal is that the amount of income from undisclosed sources spent over the construction of the house of the assessee during the assessment year 1966-67, should bear the same proportion to the total amount of Rs. 20,102, which was estimated by the Tribunal to have been spent by the assessee on the construction of the house, over and above the amount accounted for by the assessee.

3. On the basis of the aforesaid findings, the Tribunal partly allowed the appeal filed by the assessee. The assessee, thereafter, submitted an application seeking that four questions said to be arising out of the order of the Tribunal be referred to this court, which are as under :

"1. Whether the Appellate Tribunal was justified in sustaining the addition of Rs. 13,000 to the income of the assessee in the assessment year 1966-67, on account of the provisions contained in Section 69 of the Income Tax Act ?

2. Whether the finding of the Tribunal is not vitiated by the fact that it based its decision partly on relevant and partly on irrelevant material ?

3. Whether, on the facts and circumstances of the case, the addition of Rs. 13,000 was legally justified ?

4. Whether, on the facts and circumstances of the case, the Tribunal was justified in upholding the interest levied u/s 139(1), prov. (iii), of the I.T. Act, 1961 ?"

4. The Tribunal by its order dated June 30, 1973, expressed the opinion that question No. 4 was a question of law, which arose out of its order and referred the same to this court along with statement of the case. That reference has been registered as D.B. Civil Income Tax Reference No. 5 of 1974 in this court and is pending for disposal. However, the Tribunal held that the first three

questions, which the assessee sought to be referred were questions of fact and were not required to be referred. It is in respect of the order of the Tribunal dated June 30, 1973, refusing to refer the first three questions mentioned above, that the Reference Application No. 91 of 1974, u/s 256(2) of the Act has been filed by the assessee in this court.

5. It was argued by the learned counsel, appearing for the assessee, that in view of the provisions of Section 69 of the I.T. Act, 1961, the year in respect of the income from undisclosed sources should have been considered to be the financial year preceding the assessment year and in that view of the matter, the income of the assessee from undisclosed sources between April 1, 1965, to March 31, 1966, alone could have been added by the Tribunal in the income of the assessee relevant to the assessment year 1966-67. But, what the Tribunal appears to have done is that it has estimated the income of the assessee from undisclosed sources between Diwali 1964 and Diwali 1965 at Rs. 13,000 and has added the same to the total income of the assessee. The learned counsel relied upon the decision of the Punjab High Court in HUKAM CHAND ULFATRAI Vs. COMMISSIONER OF Income Tax DELHI., and the decision of their Lordships of the Supreme Court in Baladin Ram Vs. Commissioner of Income Tax, Uttar Pradesh, in support of his contention that the previous year in respect of the income of the assessee from undisclosed sources should be considered to be the financial year preceding the assessment year in question in accordance with the provisions of Section 69 of the I.T. Act.

6. In our view, two questions of law do arise out of the order of the Tribunal, on the basis of the aforesaid submission of the learned counsel for the assessee. However, it appears to us that the second question sought to be referred by the assessee is based upon a finding of fact recorded by the Tribunal and the same does not appear to be based on any irrelevant evidence. We have reframed questions Nos. 1 and 3, sought to be referred by the assessee, into one simple question, which is to the following effect:

" 1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was legally justified in treating a sum of Rs. 13,000 as the income of the assessee from undisclosed sources, during the assessment year 1966-67, in derogation of the provisions of Section 69 of the Income Tax Act, 1961 ?"

7. The other Reference Application No. 92 of 1974 arises out of the penalty proceedings in respect of the same assessee relating to the same assessment year, as we have already pointed out above. The assessee desired the Tribunal to refer, the following four questions to this court:

" 1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in sustaining the order of the Inspecting Assistant Commissioner of Income Tax and holding that the assessee has concealed particulars of income within the meaning of Section 271(1)(c) read with Explanation to the section ?

2. Whether, on the facts and in the circumstances of the case, the penalty could be rightly imposed, as the estimate of the income of the assessee was not accepted and was substituted by the estimate made by the authorities ?

3. , Whether, on the facts and in the circumstances of the case, the assessee was guilty of concealment ?

4. Whether the order dated June 11, 1971, of the Inspecting Assistant Commissioner of Income Tax imposing penalty was valid in law, after the HUF had been partitioned with effect from June 30, 1968 ? "

8. The Tribunal, by its order dated January 18, 1973, did not feel inclined to refer any of the aforesaid four questions, proposed by the assessee, to this court and rejected the application for making a reference and, thereafter the assessee has come up to this court by way of an application u/s 256(2) of the I.T. Act, 1961. We are in agreement with the Tribunal that questions Nos. 2, 3 and 4, as proposed by the assessee, could not be referred as questions Nos. 2 and 3 are based on findings of facts arrived at by the Tribunal which could not be allowed to be challenged, while the answer to question No. 4 is self-evident and need not be referred, in view of the provisions of Sub-section (8) of Section 171 of the Act. So far as the first question is concerned, in view of the fact that we have called for a reference in the assessment proceedings, it would be proper to call for a reference in the penalty proceedings also. However, we have refrained, the questions, so as to bring out clearly the extent of dispute between the parties. The question, which we desire the Tribunal to refer to this court is as under:

"Whether, on the facts and in the circumstances of the case, the assessee was guilty of concealment of income to the extent of Rs. 13,000 and was liable to pay a penalty on the sum of Rs. 13,000 even if the order passed in the quantum proceedings is varied to the advantage of the assessee in the reference called for in such proceedings ? "

9. We, therefore, partly allow both the reference applications and direct the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur, to state the cases in both these proceedings and refer the questions as mentioned above to this court for its opinion.