
(1956) 06 GAU CK 0001
In the Gauhati High Court
Case No : Civil Rule No. 182 of 1954

Safiullah

APPELLANT

Vs

Ram Labhaya and Commissioner come Tax

RESPONDENT

Date of Decision : 11-06-1956

Acts Referred:

Income Tax Act, 1922 — Section 13, 23(2), 66(2)

Citation : (1956) 06 GAU CK 0001

Hon'ble Judges : Ram Lambhaya, J;Deka, J

Bench : Division Bench

Advocate : S.M. Lahiri and P. Chaudhuri, for the Appellant; S.K. Ghose and P.K. Gupta, for the Respondent

Judgement

Ram Labhaya, J.—This is a petition u/s 66 (2), Income Tax Act. The Petitioner, Haji Safiulla, v. Tinsukia, has prayed that the Income Tax Appellate Tribunal, Calcutta, be called upon to state case and refer to this Court the following three questions:

(1) Whether, in the facts and circumstances of the case, there was any material before the Tribunal to justify its inference that the sum of Rs. 1,09,200/- represented income of your Petitioner from undisclosed business?

(2) Whether when the Tribunal formulates¹ the principle that the intangible addition made in the Trading Account of an Assessee In a particular year account for a part of the cash credits made during the said year, the Tribunal should not extend; the said principle with reference to intangible additions made to the immediately earlier years?

(3) Whether when the amount of purchases is proved, the Tribunal is right in applying a flat rate assessment on an imaginary turnover.

2. The facts leading to the reference may be briefly stated. The Assessee filed his return for the year of assessment 1947-1948. The accounting period was the year 1946-47. A notice was issued to the Assessee u/s 23 (2), Income Tax Act,

1922. The Assessee's son appeared with a pleader and produced cash-books, ledger and certain vouchers of purchases. The return disclosed some loss. The Income Tax Officer came to the conclusion that the books of the Assessee were not reliable and his income could not be ascertained from" his account-books.

He found that the opening stock in the books was unsupported by any evidence. There was no stock-register for the principal items and, therefore, the closing stock figure also could not be accepted. There was no opening trial balance, no bank pass-book and no creditor and debtor account, though in previous years some credit transactions were shown. Besides, though the purchases were made in Calcutta, the accounts did not disclose any remittances. The conclusion of the Income Tax Officer was that the books of the Assessee did not represent the true state of his business. He, therefore, felt bound to assess the income on estimate.

He made local enquiries and visited the shop of the Assessee. He found that the stock-in-trade in the shop was the largest in the part of the State, including Jorhat, Dibrugarh and Digboi. He estimated the turnover at Rs. 8,00,000/- and applied a flat rate of 12 P.C. for determining profit. The gross profits thus came to Rs. 96,000/-. He took into consideration the low rate of profit in cigarette and also the fall of the rate of profits in certain articles when determining the flat rate to be applied in the case. Allowing Rs. 20,000/- towards expenses, the net profit was calculated at Rs. 76,000/-.

3. He also included in the income of the Assessee Anr. item of Rs. 1,09,200/-. The Assessee purchased a house at 11, Zakaria Street, Calcutta, during the accounting year for Rs. 1,09,5,00/-. On 26-9-46, a sum of Rs. 9,200/- was shown as having been received from Hazi Safiulla¹ for house-purchase. The item was shown on the credit side, but a sum of Rs. 1,09,200/- was needed. The balance on 26-9-46 appeared to be Rs. 1,43,685/11/-. The Income Tax Officer has found that the figure of "1" towards the left of the balance on 26-9-46 was an interpolation made on that date.

The actual balance was Rs. 48,685/11/-, and, in order to support ? this interpolation, the figure of "1" towards the left was interpolated in all previous balances in the book excepting a balance of the previous date in which the omission was found to have been occasioned by oversight. Even the receipt of Rs. 9200/- from Hazi Safiulla shown on 26-9-46 was not ledgerised. The interpolation of the figure in different balances, the entry of cash-credit of Rs. 9200/-, the payment of Rs. 1,09,200/-, all these are entries which were found to have been in the same ink.

In these circumstances, the conclusion reached was that the property was purchased not from the funds of the business, but from the concealed profits. The Assessee's explanation was that the amount of Rs. 1,09,200/- represented the accumulated profits of previous years; which were brought into the accounts during the accounting year. The onus was on him to prove that the amount represented profits of previous years, on which he had been assessed. The

Income Tax Officer could not accept the explanation.

The Assessee kept no accounts during the years preceding the accounting year. He further found that at the close of the War, there were many opportunities for businessmen in this part of Assam to earn money, and some persons earned fabulous sums by dump purchase of medicines and other articles from American and British army, personnel who, at the end of the war, disposed of, goods and commodities at throw-away prices. The Assessee was an influential businessman of the locality and was known to the military authorities due to his extensive business in different commodities and also in gold. In the absence of any proof that the cash-credit- of Rs. 1,09,200/- was the result of profits of; previous years, on which tax had been paid, lie treated the amount as profits earned in the accounting year from undisclosed business, and made the assessment on a total amount of lis. 1,85,200/- consisting of two items of . Rs. 76,000/- and Rs. 1,09,200/- respectively. The Assistant Commissioner of Income Tax upheld the assessment.

4. The appellate Tribunal disposed of appeals against three assessments, namely, for 1947-48, 1948-49 and 1949-50 by a single order. One point was common to all the three assessments.

5. The Assessee had shown his sales at Rs. 2,41,000/-, Rs. 1,71,000/- and Rs. 1,15,000/- for the [three years respectively. The Income Tax officer's estimate Of the sales was Rs. 8,00,000/-, Rs. 6.00,000/-, and Rs. 5,00,000/- for the three years respectively. The Income Tax Officer applied a flat rate of pro-" fit at 121/2 per cent, in the third year. After allowing expenditure, the net income found for the three, years, was Rs. 76,000/-, Rs. 52,000/- and Rs. 40,000/- respectively.

6. The .cash credit of Rs. 1,09,200/- appeared in the accounts of 194647 and was, therefore, to fee considered: in relation to the assessment of 1947-48, with which we are concerned in this case.

7. Mr. Qupta who appeared for the Assessee, .before the Tribunal did not dispute the applicability of the proviso to S. 13 of the Act to these assessments, He agreed that there were material defects in the accounts, and the Income Tax Officer was justified in making an estimate of the income under the proviso. His contention in regard to the assessment in question was that profits from the trading account should not have been estimated at all in view of the fact that the Income Tax Officer had taken the items of cash credit amounting to Rs. 1,09,200/-, income from disclosed sources".

His second contention was that the estimates of the sales were excessive. The Tribunal came ; toT the , conclusion that the Income Tax Officer I.T.O. was fully justified, in the circumstances of, the case, to; add the items of cash credit to misestimate of income from the business of the Assessee. It however interfered with the estimates of profits and reduced them to Rs. 30,000/-, Rs. 40,000/- and Rs. 32,000/- respectively for the three years. A drastic reduction of income in regard to the year in question was accounted for by the Appellate Tribunal by the

possibility that the cash, credit of Rs. 1,09,200/- may possibly have included some income of the Assessee's business which he was carrying on openly and to which his accounts related.

8. In this case the Assessee by petition u/s 66(1) requested the Appellate Tribunal to refer the three questions of law which have been reproduced above, to this Court. The Tribunal declined to make the reference. In regard to the third question, the Tribunal pointed out that it was based on the assumption that the amount of purchases had been proved. It was pointed out that Sris assumption was erroneous. No part of the acquaints of the Assessee, including that deal- ing with the purchases, was dependable, and, therefore, the sales as also the purchases had to be estimated.

Since income had to be estimated on the basis of an estimate of the sales, the I. T. O. had no the account option except to apply a fiat rate of profits. The question therefore was concluded by a decision on a question of fact. They further observed that as the taxing authorities had no option but to estimate income under the proviso to S. 13 of the Act, a position which was conceded by the learned counsel for the Assessee, no question of law arose in regard to the quantum of estimate, which was no more than a question of fact. In regard to the other two questions, arising from the addition of the two items of cash credits amounting to Rs. 1,09,200/- also, their answer was that they represented concealed income of the Assessee and, therefore, the matter was concluded by findings of fact.

9. It is not necessary to deal with the three questions on which the Petitioner has requested this Court to obtain a statement of the case from v. f. countffoy the Appellate Tribunal, The learned Counsel for the Assessee has not urged that these questions as formulated in paragraph" 9 of the petition, arise from the order of the Tribunal. He did not dispute the finding of the taxing authorities that a sum of Rs. 1,09,200/- represented the income of the Petitioner from undisclosed business, and did not urge that any question of law arose from this finding, nor did he urge that the second question, as formulated in the petition, arose from the order of the Tribunal.

He did not object to the application of the flat rate either. The three questions contained in the petition, therefore, admittedly do not arise from; the order of the tribunal. Mr. Lahiri the learned Counsel for the Appellant has, however, argued that two questions of law do arise from the order of the Appellate Tribunal. These questions, as formulated by him, are as follows:

(1) That the item of Rs. 30,000/- representing income from Assessee's business, could not be added to the item of cash credits which, according to the taxing authorities, represented profits from undisclosed business.

(2) That the assessment of income from the Assessee's ordinary (disclosed) business was conjectural in character, and the question that arose was whether the assessment was illegal.

10. These questions were not included in the petition made to the Tribunal u/s 66 (1) of the Act, The Appellate Tribunal was not asked to refer these questions to this Court. They also do not arise from the order of the Tribunal; Objection to the estimate of profits from the trading account was raised on the basis that the items of cash credit was income from disclosed sources. This argument was contrary to facts; the finding was that the cash credits represented income from undisclosed sources. These new questions were not included in the petition to this Court as well. They have been raised at the hearing.

11. Mr. Lahiri has relied on - Ramcharitarram Harihar Prasad Vs. Commissioner of Income Tax, in support, of his contention that the item of Rs. 30,000/- could not be added to the item of cash credits lift" purposes of assessment. This case is obviously distinguishable on facts. It was found in this case that a sum of Rs. 85,000/- was income derived from the business of the Assessee's firm and not from undisclosed sources. In these circumstances, it was held that Anr. amount of Rs. 15,644/-iwa." Rs. 85,000/ books Fee authorizes cable, retested accord been fable credit ness counting Income Tax assessec added to, which sfpu The flgyr the two The !lffise the of to betness won of the comfitimal of ther incospe to the vgrli conolts (B) title 15,6447- was not unconnected with the amount of Rs. 10,000/-, being the cash credit shown in the books of account, but treated by the income tax: authorities as secreted profits from the business for she accounting year.

It is this finding that makes the case inapplicable. If it had been found by the taxing authorities in this case that the cash credit represented secreted profits of the year from the trading account of the disclosed business it could have been a question whether the addition of a sum of Rs. 30,000/- is the item of cash credits was justifiable. The finding in this case is that the cash credits represented the profits of undisclosed business which accrued to the Assessee during the accounting period. In addition to these profits, the income from the trading account had also to be assessed.

On principle, therefore, the two items could be added together. There is Anr. reason also which justifies the totalling up of the two items. _ The figure of cash credits was brought into account by or before 26-9-46. Any overlapping of the two figures could be only before that date. The Assessee was doing business after 2 to the end of the year. So, his business profits had to be added to the profits of his undisclosed business. The only question that would remain would be whether the assessment of the profits of the trading account was correct, or not.

12. The decision in the Patna case does not lay down any general principle. It is based on its own facts. In fact no rule of general or universal application can be laid down on this quesj tion. Cash credits during an accounting period, which are left unexplained and unaccounted for by the Assessee, in certain circumstances represent income in addition to the income of the disclosed business. On the other hand, assessable in-come may be determined for a whole year on estimate, and if cash-credits are found to be income of the year from the

business under assessment, there would be no justification for adding the item of cash credits to the estimate.

It is in these circumstances that an item of income from business was not allowed to be added to the item of cash credits in the Patna case. In *MESSRS. SRINIVAS RAMKUMAR Vs. COMMISSIONER OF Income Tax.*, it was held that taxing authorities were entitled to include the sum of Rs. 3,500/- as sec , reted profits of the firm; this did not amount to , in double taxation inasmuch as it was brought into account not as profit of the trading transactions but as undisclosed profit of speculative transactions. This case is on all fours with the present case and brings out -the circumstances under which cash credits may be added to the estimated income. The addition of Rs. 30,000/- to the cash-credits was unavoidable on facts found. It gives rise to no question of law.

13. The second contention of the learned Counsel is that the assessment in this case is purely conjectural; it has got no valid basis or foundation and, therefore, its validity, when attacked, gives rise to a question of law." The question assumes that the assessment is wholly conjectural and without any foundation. This does not pear to be the case. The assessee did file a return. He was given an opportunity to produce his account books, and they were examined. It was found that the books contained interpolated entries. A sum of Rs. 1,09,200/- was introduced into the accounts in the middle of the year when a house was purchased, for which this amount had to be paid. All the taxing authorities concurred in the view that the books were tenderly unified.

The accounts had no support for the opening or the closing stocks. There was no account of remittances, no pass-books, and no creditors' and debtors' account was shown. The income, therefore, had to be assessed on estimate. This course was unavoidable. The position has not been disputed. In making the estimate, the I. T. O. considered all the material that was available to him. He made local enquiries and visited the shop, took into consideration the stock in the shop and made graded assessments for three years according to business conditions. All the material that the Assessee could produce was considered. It is not possible to say in this case that the assessment was conjectural or based on pure guess.

14. In *Commissioner of Income Tax, Madras Vs. K.R.M.T.T. Thiagaraja Chetty and Co.*, their Lordships of "the Supreme Court held that though there was evidence that the Assessee followed the mercantile system of accountancy, still the Income Tax Officer had full authority under the proviso to S. 13 to compute the profits upon such basis and in such manner as he thought fit. Once the accounts are rejected, the proviso comes into operation. Under the proviso, the powers of the taxing authorities are very wide. The estimate could be made "in such manner and on such basis as they fit, in the words of their Lordships of the Supreme Court. In (1937) 5 ITR 464 , a decision relied on by Mr. Lahiri it was held that "the only section under which the method of computing income for the purposes of Sections 10, 11 and 12 is provided is Section 13, and the only section under which an assessment can be made, or in other words, the amount

of rate at which an Assessee is to be assessed, is Section 23, and no other. To divorce, therefore, Section 13 from Section 23 or to consider that they occupy detached positions, one having no connection] with the other, is to misappreciate the whole tenor of the income tax law if the accounts tendered by the Assessee are found to be incorrect or incomplete, if they are "cooked" or "fictitious", it will not be wrong to say that the method of accounting is such that it is not possible to deduce the total income of the Assessee there from. Mr. Ghose has no quarrel with this proposition. His case is that the income was, in the circumstances of the case, determined on estimate under the proviso to Section. 13 of the Act.

15. In *Anraj Narain Dass Vs. Commr. of Income Tax, Delhi*, it was held) that "proceedings under the Indian Income Tax Act, 1922 are not judicial proceedings in the sense in which the phrase "judicial proceedings" is ordinarily used, and Evidence Act 1872 does not apply to such proceedings. Consequently, it is within the competence of the Tribunal to rest their decision on a question of fact *inter alia* on the information gathered by the Tribunal from the judgment of a criminal Court".

In view of the above decisions it cannot be said that the assessment in this case was purely conjectural or that the taxing authorities did not base the assessment on any material whatsoever. Where an Assessee deliberately conceals the true state of affairs, he takes the risk of being assessed on an estimate. From the very nature of things the estimate is approximate. The estimate may in a given case be in Assessee's favour. The condition of the market, the reputation of the Assessee, his previous assessment, the nature of his business & its quantum, are all circumstances that bear on the estimate. The Assessee has not shown that any relevant evidence or circumstance was not considered or that he was not given full or reasonable opportunity for; placing his case before the taxing authorities.

16. The sheet-anchor of Mr. Lahiri's argument, however, is *Dhakeswari Cotton Mills Ltd. v. Commissioner " of Income Tax, West Bengal* 1955 SCA S6: ((S) AIR 1955 SC 65) (P). This case is one of its own kind. Its facts are very peculiar. In this case, their Lordships held that "in making the assessment u/s 23 (3) of the Income Tax Act, the Income Tax officer is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. There must be something more than bare suspicion to support the assessment u/s 23 (3).: The circumstances under which the assessment was made in this case were that .at one stage of the proceeding, the Assessee furnished the return of its income, but it was not a complete document as the Assessee did not produce all his account books. On " receipt of the return, a notice was issued to the Assessee u/s 23(2) of the Act calling upon him to supply further information on a number of points and to prepare certain statements indicated in the notice.

The requisition had to be complied with by a given date. On that date the Chief Accounts Officer of the Assessee Company appeared before the In-come-Tax Officer and asked for further time till the middle of the following week for

furnishing the requisite particulars. This request was, however, refused and assessment was completed on 20-3-48. The assessment thus was made by the Income Tax Officer without considering the accounts or any material that the Assessee could produce for the purposes of assessment.

17. Their Lordships further found that the appellate Tribunal, when disposing of the appeal, violated certain fundamental rules of justice. In arriving at its conclusion, it did not disclose to the Assessee what information was supplied to it by the Departmental representative. It did not give any opportunity to the Company to rebut the material furnished to it by the Department. Lastly, it declined to take all the materials that the Assessee wanted to produce in support of their case. The result was that the Assessee has not had a fair hearing. In these circumstances, the assessment was set aside in the exercise of the extraordinary powers of the Court under Article 136 of the Constitution of India. Their Lordships did not hold that the Appellate Tribunal was wrong in refusing to refer the case or that the High Court erred in not calling for a statement. The assessment was set aside on the ground that the principles of natural justice were violated by the Tribunal, and the assessment of I. T.- O. which had been confirmed by the Assistant Commissioner of Income Tax, was purely conjectural.

This case has nothing in common with the case before us. Even Mr. Lahiri has not been able to contend that any principle of natural justice was contravened by any of the taxing authorities, nor can we say that the assessment in this case is purely conjectural as in the case before their Lordships of the Supreme Court, where accounts were neither produced nor seen. This case is easily distinguishable. As the assessment is based on a consideration of all the material which was available to the taxing authorities and which they were entitled to consider, the contention that the assessment is conjectural is erroneous and unfounded. Whether the estimate is correct or not, is a pure question of fact and unless it could be said that there was no basis whatsoever for the assessment except suspicion, no question of law can be said to arise.

18. The petition is dismissed with costs. The Rule is discharged. Hearing fee Rs. 100/-.

Deka, J.

19. I agree.