
(1974) 04 P&H CK 0016
In the Punjab And Haryana At Chandigarh
Case No : Income-tax Reference No. 6 of 1972

Sat Parkash Ram Naranjan	Vs	APPELLANT
Commissioner of Income Tax		RESPONDENT

Date of Decision : 29-04-1974

Acts Referred:

Income Tax Act, 1961 — Section 68

Citation : (1975) 100 ITR 130

Hon'ble Judges : R.N. Mittal, J;P.C. Pandit, J

Bench : Division Bench

Advocate : Ashok Bhan, for the Appellant; D.N. Awasthy and S.S. Mahajan, for the Respondent

Judgement

R.N. Mittal, J.—The facts of the present reference are as follows: The assessee is a registered firm and derives income from arhal and karyana business. It has five partners, namely, Dharam Chand, Sat Parkash, Ram Naranjan, Ved Parkash and Nand Lal. The share of Dharam Chand, who is the father of the other partners, is four annas and that of Sat Parkash and others is three annas each. The Income Tax Officer, while examining the account books making an assessment for the assessment year 1954-55, found cash credits totalling to Rs. 47,996 to the credit of four ladies as detailed below:

Sl. No.

Amount

Date

Name

(1)

Rs. 11,980

16-7-19J3

Smt. Shanti Devi, wife of Shri Ved Parkash, partner.

(2)

Rs. 11,980

17-7-1953

Smt. Raj Rani, wife of Shri NandLal, partner.

(3)

Rs. 11,980

30-12-1953

Smt. Lajjya Wanti, wife of Shri Ram Naranjan, partner.

(4)

Rs. 11,980

22-1-1954

Smt. Suhag Wanti, wife of Sat Parkash, partner.

2. The explanation given by the assessee was that Bhagwanti Devi, wife of Dharam Chand, died on April 12, 1953. After her death, her almirahs and trunks were ransacked and jewellery, gold and cash in addition to her wearing apparel were found. They were distributed amongst her daughters and daughters-in-law on April 14, 1953, in the presence of a panch. The three daughters received the jewellery and little cash and the daughters-in-law received the aforesaid amounts as cash. The Income Tax Officer disbelieved the version of the assessee and added the aforesaid amount of Rs. 47,996 as income from undisclosed sources. The assessee went up in appeal against the order of the Income Tax Officer to the Appellate Assistant Commissioner who upheld the assessment. The assessee then filed an appeal before the Tribunal. The Tribunal felt that the explanation given by the assessee was improbable and, therefore, rejected the appeal. The assessee made an application under Sub-section (1) of Section 66 of the Indian Income Tax Act, 1922, (hereinafter referred to as "the Act") for making a reference to the Tribunal which was rejected by it. It then moved this court under Sub-section (2) of Section 66 of the Act for directing the Tribunal to make a reference. This court accepted the application and directed the Tribunal to refer the following question for decision to this court:

" Whether, on the facts and circumstances of the case, the Income Tax authorities were justified in treating Rs. 47,996 as income of the assessee-firm from undisclosed sources ?"

3. It is contended by the learned counsel for the assessee that the amount was credited in the account books of the assessee in the names of third persons. In case the amount stands in the names of third persons, the onus of proof is not

on the assessee to show the source or nature of the cash credit but it lies on the department to show by some evidence that the amount standing in the name of a third party does not belong to it but belongs to the assessee. He further submits that in the present case the department did not lead any evidence to show that the amount standing in the names of third persons, namely, Suhag Wanti, etc., in the account books of the assessee-firm belonged to the assessee. He also urges that unless there was any evidence to show that, in fact, the amount belonged to the assessee, the same could not be added to its income. On the other hand, the learned counsel for the revenue has vehemently urged that the burden of proof is on the assessee to show that the amounts deposited in its books belong to the persons in whose names they stand. If they fail to show, then the assessing authority can safely infer that the amount is liable to be taxed as an income in the hands of the assessee from undisclosed sources.

4. The question argued by the learned counsel for the parties is not *res integra*. The same question came up before a Division Bench consisting of Subba Rao C.J. (as he then was) and Viswanatha Sastri J. of the Andhra Pradesh High Court in *P.V. Raghava Reddi and Another Vs. Commissioner of Income Tax*, . In that case, the assessee, a Hindu undivided family, had opened in its ledger an account in the name of R, the wife of one of the members of the family, and an amount of Rs. 6,500 was credited in her favour. The entry indicated that the amount represented the sale proceeds of a diamond necklace. The assessee explained that the jewel was sold by R to one S in support of his contention. He got produced the account books of S. The Income Tax Officer rejected the account books of S on the ground that she was a close relative of the assessee and that the entry in the account books was made collusively. The explanation of the assessee was rejected and the amount was treated as profit of the family from an undisclosed source. A similar argument was raised before the Bench. Subba Rao C.J., speaking for the court, observed as follows :

" We do not think that the question of burden of proof can be made to depend exclusively upon the fact of a credit entry in the name of the assessee or in the name of a third party. In either case, the burden lies upon the assessee to explain the credit entry, though the onus might shift to the Income Tax Officer under certain circumstances. Otherwise, a clever assessee can always throw the burden of proof on the Income Tax authorities by making a credit entry in the name of third party either real or pseudonymous."

5. This view was followed by another Bench of the Andhra Pradesh High Court in *M. M. A. K. MOHIDEEN THAMBY and CO. Vs. COMMISSIONER OF Income Tax, MADRAS*., wherein it was observed that with regard to credit entries in the names of partners as well as credit entries in the names of third parties, appearing in the accounts of a partnership, the burden is on the assessee (partnership) to explain the entries and show positively their nature and source. It is further observed that, in the absence of a satisfactory explanation, it is open to the department to infer that the moneys belong to the assessee and represent

suppressed income,

6. A similar argument that is taken by Mr. Ashok Bhan was advanced before the Supreme Court in *A. Govindarajulu Mudaliar Vs. Commissioner of Income Tax, Hyderabad*, . The argument was rejected. The relevant portion of the judgment is as follows :

"Now the contention of the appellant is that assuming that he had failed to establish the case put forward by him, it does not follow as a matter of law that the amounts in question were income received or accrued during the previous year, that it was the duty of the department to adduce evidence to show from what source the income was derived and why it should be treated as concealed income. In the absence of such evidence, it is argued, the finding is erroneous. We are unable to agree. Whether a receipt is to be treated as income or not, must depend very largely on the facts and circumstances of each case. In the present case the receipts are shown in the account books of a firm of which the appellant and Govindaswamy Mudaliar were partners. When he was called upon to give explanation he put forward two explanations, one being a gift of Rs. 80,000 and the other being receipt of Rs. 42,000 from business of which he claimed to be the real owner. When both these explanations were rejected, as they have been, it was clearly open to the Income Tax Officer to hold that the income must be concealed income. There is ample authority for the position that where an assessee fails to prove satisfactorily the source and nature of certain amount of cash received during the accounting year, the Income Tax Officer is entitled to draw the inference that the receipts are of an assessable nature."

7. The question has again been decided by the Supreme Court in *KALE KHAN MOHAMMAD HANIF Vs. COMMISSIONER OF Income Tax, MADHYA PRADESH AND BHOPAL*., in which the above view was followed. In that case while dealing with the assessment for the year 1948-49, the Income Tax Officer noticed various credit entries in the assessee's books of account which had all escaped his attention at the time of the assessment for the years 1945-46 and 1947-48. One of the entries showed a loan from a third person, Yakub Manihar, of Rs. 20,000. The other entries are not relevant for the purposes of this case. One of the questions that was referred in the reference was whether the burden of proving the source of cash credits was on the assessee. The Supreme Court replied to the question as follows:

" It seems to us that the answer to this question must be in the affirmative and that is how it was answered by the High Court. It is well established that the onus of proving the source of a sum of money found to have been received by the assessee is on him. If he disputes liability for tax, it is for him to show either that the receipt was not income or that if it was, it was exempt from taxation under the provisions of the Act. In the absence of such proof, the Income Tax Officer is entitled to treat it as taxable income: see *A. Govindarajulu Mudaliar Vs. Commissioner of Income Tax, Hyderabad*, ."

8. This view was followed by the Calcutta High Court in *SRIRAM JHABARMULL (KALIMPONG) LTD. Vs. COMMISSIONER OF Income Tax,* . We are bound to follow the observations of the Supreme Court in *Kale Khan Mohammad Hanif's* case.

9. The learned counsel for the assessee has referred to some cases where a contrary view seems to have been taken. He has placed reliance mainly on *S.N. Ganguly Vs. Commr. of Income Tax,* , wherein it has been held that there is no presumption in law that an amount standing in the name of the wife belongs to the husband. In the absence of evidence to the contrary, the money standing in the name of the assessee's wife must be presumed to belong to her and the assessee cannot be taxed in respect of such an amount. It is also held that the onus of proof in such a case will not be on the assessee but will be on the department to show by at least some material that the amount standing in the name of the assessee's wife does not belong to her but belongs to the assessee. The above case is distinguishable on facts. In that case, the amount which was alleged by the assessee to be of his wife and added to his income was not entered in the account books of the assessee and that the wife had an independent source of income. Ratio in other cases is that if a credit entry exists in the name of a third party in the books of the assessee, the onus of proof shifts to the department to show that the amount does not belong to that third party but belongs to the assessee. Reference in this connection may be made, inter alia, to *Nabadwip Chandra Roy Vs. Commissioner of Income Tax Assam,* . The aforesaid view runs counter to the observations of the Supreme Court in *KALE KHAN MOHAMMAD HANIF Vs. COMMISSIONER OF Income Tax, MADHYA PRADESH AND BHOPAL,* . The learned counsel for the assessee cannot derive any benefit from it. The learned counsel for the assessee has also placed reliance on a Division Bench judgment of this court in *BASANT LAL OM PARKASH Vs. COMMISSIONER OF Income Tax, PUNJAB,* . In that case the accounts of the assessee-firm showed an amount of Rs. 20,000 standing to the credit of R, who was a cashier of the co-operative society, drawing a salary of Rs. 100 per month. R had purchased land of Rs. 10,000 after about 13 months of the withdrawal of the amount of Rs. 20,000. The Tribunal, after taking into consideration the facts, came to the conclusion that the amount of Rs. 20,000 was not deposited by R, but had been brought into the books by the partners of the firm themselves. The learned Bench observed that the aforesaid finding was a finding of fact based on the material on the record. It further held that the observations in *S. N. Ganguly* and *Nabadwip Chandra Roy's* case did not apply to it. In the present case also, the Income Tax Officer and the appellate authorities have rejected the explanation given by the assessee and the depositors regarding the source of money. It was observed by the Tribunal that the money belonged to the firm and the names of the ladies had been merely used as a cloak. The same view had been taken by the Income Tax Officer as well as the Appellate Assistant Commissioner. The said finding is a finding of fact based on the material on the record. The aforesaid facts show that *BASANT LAL OM PARKASH Vs.*

COMMISSIONER OF Income Tax, PUNJAB., does not help the assessee. It, on the other hand, supports the contention of the revenue. We are of the opinion that in the case of entries in the name of third persons in the account books of an assessee, it is upon the assessee to explain them. If he fails to give a satisfactory explanation, the department can treat such amounts as undisclosed income of the assessee. Our view is fortified by the observations of the Supreme Court in KALE KHAN MOHAMMAD HANIF Vs. COMMISSIONER OF Income Tax, MADHYA PRADESH AND BHOPAL., . It also finds support from P.V. Raghava Reddi and Another Vs. Commissioner of Income Tax, . The above principle has been given statutory recognition in the Income Tax Act, 1961, by introduction of Section 68 which says that where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Income Tax Officer, satisfactory, the sum so credited may be charged to Income Tax as the income of the assessee of that previous year. Kanga in his treatise, Law and Practice of Income Tax, sixth edition, says that the section gives statutory recognition to the principle that cash credits which are not satisfactorily explained may be assessed as income.

10. In view of the aforesaid reasons, we answer the above-mentioned question in the affirmative, that is, in favour of the revenue. The assessee shall be liable to pay the costs of the department in this reference. Counsel's fee Rs. 150.

P.C. Pandit, J.

11. I agree.