
(1954) 11 OHC CK 0014
In the Orissa High Court
Case No : S.J.C. No. 24 of 1953

Seerajuddin

APPELLANT

Vs

Commr. of Income Tax

RESPONDENT

Date of Decision : 02-11-1954

Acts Referred:

Income Tax Act, 1922 — Section 66(2)

Citation : AIR 1955 Ori 111

Hon'ble Judges : Mohapatra, J; Misra, J

Bench : Division Bench

Advocate : B.N. Mohanty and C.K. Ghosh, for the Appellant; G.C. Das, for the Respondent

Final Decision : Dismissed

Judgement

Mohapatra, J.—This is a petition u/s 66(2), Income Tax Act praying for calling upon the Income Tax Appellate Tribunal to submit a statement to this Court on some points of law. The original assessee Munshi Dilwar Ali having died during the pendency of the appeal before the Tribunal his son Serajuddin was substituted as the petitioner before us. The assessment year is 1949-50 on the basis of the accounts for the year terminating on 31-3-1949. During the examination of the accounts, the Income Tax authorities found a total sum of Rs. 90,925 in the account papers of the year in question as cash credit. They called upon the assessee to explain if it was not the taxable income of the year.

The explanation submitted by the assessee is to the effect that this was not the income of the year of the business which had in fact undergone a loss of more than six thousand rupees, but it was the sum-total of the money which the assessee drew from his own Chest and put into the business. The Income Tax authorities had properly considered the explanation and giving cogent reasons and had thought fit to reject the said explanation.

2. The main two reasons which rightly weighed with the authorities are that the

assessee is not producing the accounts of two very relevant years, that is, 1946 and 1947, and further they have not accepted it as probable that the assessee, who had extensive business, does not really keep any home-chest account. Further the Income Tax authorities had before them sufficient materials to come to the conclusion that in fact this sum was the taxable income of the year from undisclosed source. In our opinion the matter seems to have been concluded by findings on facts and there is no question of law for calling upon the Tribunal to make a reference to this Court.

3. We will refer to a decision of the Patna High Court reported in -- JADUNANDAN SAHU DEOKISANRAM Vs. COMMISSIONER OF Income Tax, BIHAR AND ORISSA., where the position has been succinctly laid down that the Income Tax authorities were right in holding that a certain sum shown as cash credits in the personal ledger account of the business in the name of the family, actually represented, not, as it purported to do, capital sums brought from the home chest of the family but secreted profits of the business. It was held by their Lordships that the question really was for the Tribunal to draw the inference regarding the explanation submitted by the assessee and no question in such cases really arises for the High Court.

4. Mr. Mohanty, appearing on behalf of the petitioner-assessee, however, strongly relies upon the decision reported in -- Krishna Nandan Sahay and Another Vs. Ravaneshwar Misra and Others, . This is a Patna decision where in similar circumstances the explanation submitted by the assessee was being examined. Their Lordships did in fact interfere with the explanation in question and sent back the case to the Tribunal for disposal in accordance with law. But the main basis of the judgment of their Lordships was that there were no materials in that case from which it could be inferred that the sum as coming from undisclosed source was really the taxable income for the year.

The law seems to have been clearly laid down in the other decision of the Allahabad High Court reported in -- Mithoo Lal Tek Chand Vs. Commr. of Income Tax, United Provinces, Lucknow, that it is open for the Income Tax authorities to take the cash credit in the account books as taxable income for the year and thereafter it is for the assessee to submit explanation as to whether it is not so taxable income for the year. If the explanation is accepted, their Lordships observed, there is an end of the matter. Their Lordships however observed:

Where, however, his explanation is rejected, the Tribunal has to record a finding on such materials as may be available whether the money represents revenue taxable as income of the relevant account period. The burden in the first instance, must be on the assessee to show the true nature of the receipt and why he claims that it is not taxable income. When the assessee furnishes an explanation, if that explanation is unsatisfactory, that may in itself be a circumstance which the Income Tax Officer may be entitled to take into consideration, but it need not necessarily, in every case, lead to the conclusion that the receipt is a revenue receipt taxable as income received in a particular

year.

The question must always remain a question of fact which has to be decided on the materials available. In such cases the revenue authorities are entitled to take into consideration the fact that the explanation given by the assessee is either unreasonable or is false and then to consider whether that circumstance alone or the other materials available along with that circumstance would entitle them to hold that the amount so deposited represented the undisclosed income of the assessee in the year in question."

In the present case, as we have found above, the explanation was rightly rejected and there were sufficient materials to come to the conclusion that in fact the sum was the taxable income of the year in question. We, therefore, dismiss the petition with costs. Hearing fee is assessed at rupees fifty (Rs. 50/-).

Misra, J.

5. I agree.