(1954) 02 AP CK 0006

In the Andhra Pradesh High Court

Case No : Reference No. 625/B/5/2 of 1952

Siddamsetty Ramanadhan APPELLANT

Vs

Commr. of Income Tax RESPONDENT

Date of Decision : 22-02-1954

Acts Referred:

Hyderabad Income Tax Act, 1357 — Section 82(1)

Citation : (1954) 02 AP CK 0006

Hon'ble Judges : Mohammed Ahmed Ansari, J;Jaganmohan Reddy, J

Bench : Division Bench

Advocate : K. Srinivasan, for the Appellant; N. Narasimha Iyengar, for the Respondent

Judgement

Jaganmohan Reddy, J.—By our Order dated 30-3-1953 we had directed the Income Tax Tribunal at Bombay to state a case on the following question namely:

Whether in the circumstances of the case there was any evidence to support the findings of the Tribunal that the sales have not been proved, that the estimate has not been proved to be excessive or arbitrary and that therefore,, the addition of Rs. 25,000/- for the assessment year 1357 F. is justified.

2. It appeared to us at the time of the aforesaid order that the Appellate Tribunal had rejected the appeal of the Assessee on the mistaken ground that the kucha book which the Assessee was supposed to maintain had not been produced before the Income Tax Authorities and that in the absence of any data to prove the claim of the Assessee the Tribunal was of the view that some estimate had to be made of the sales. The Tribunal during the course of the order stated that if the Assessee had produced the subsidiary kucha book maintained by him for recording certain suppressed sales it may have felt inclined to accept it if it found nothing wrong with the book itself. It further appeared to us that the Tribunal had later discovered its mistake at the time when it, was considering the application of the Assessee under Sub-section (1) of Section 82, Hyderabad Income Tax Act. We were of the view that when a particular fact has been held

vital for arriving at a conclusion the overlooking or ignoring such a vital or crucial fact will amount to a misdirection in law, the effect of which will in itself be a question of law as well as the proper effect of proved facts.

3. In compliance with our order, the Appellate. Tribunal at Bombay has stated a case from which the following relevant extracts are given below:

The Assessee is a Hindu undivided family. The Hindu undivided family had various sources of income. One of the sources is the manufacture and sale of groundnut oil. The Income Tax Officer found (a) that the Assessee was a dishonest person (b) he was dealing in black market (c) the books maintained by the Assessee from day-to-day did not record all the transactions entered into by him and (d) that there were cash credits in the accounts, which were not satisfactorily explained. In view of all the above facts, he held that the Assessee''s books did not disclose his true profits. He, therefore, estimated the Assessee''s income from this source by making a lump sum addition of Rs. 25,000/- to the profit as disclosed by the Assessee.

4. With respect to the kucha book which the Assessee was alleged not to have produced before, the Tribunal the Tribunal states as follows:

We may clarify the position as regards the loose sheets and the book alleged to have been produced before the Income Tax authorities. The Assessee stated that the black market transactions were recorded in loose sheets maintained for the purpose at the material time. A book was prepared from loose sheets at the assessment stage. This book was not written during the accounting year in the ordinary course of the Assessee''s business. The Income Tax Officer found that at some places the book produced differed from the loose sheets. This would show that it was written up from some other book or paper. Loose sheets have not the same value as a proper bound book. It is possible to replace loose sheets or not to produce the loose sheets if it is disadvantageous to the Assessee. No proper subsidiary book recording the black market transactions and written up from day-to-day was produced before the Income Tax authorities. According to the Assessee such a book was not maintained....

At the Tribunal stage, the first question which fell to be determined was whether the Assessee returned his true profit. It was found that the Assessee is a thoroughly dishonest man and an expert black marketeer. The books of account were found to tie defective. The Assessee himself had admitted that the price shown in his books is not the selling price of the Assessee....

The, estimate made by the Income Tax Officer was found to be reasonable and, therefore, confirmed. All the facts to which reference was made at the time of the hearing were taken into account by the Tribunal in confirming the estimate of income. We may respectfully submit that the Tribunal did not neglect any document.

5. In order to see whether the Tribunal had omitted to take into consideration

any crucial facts at the time of confirming the appeal, it is necessary to refer not only to the order of Appellate Tribunal dated 21-12-1951 but also to the order of the Appellate Assistant Commissioner and Income Tax Officer, which have been annexed to the reference.

6. The Tribunal in its appellate order of 21-12-1951 observed as under:

The Assessee himself returned receipts of Rs. 26.219/- in excess of the receipts as shown in the books of account. The explanation given was that where the Assessee sold oil at prices higher than the controlled price he did not bring the item in the regular books of account, but in a subsidiary kacha book. ''This book has not been produced before the Income Tax authorities.'' He should therefore be not penalised by making a further addition of ,Rs. 25,000/-.

The Tribunal further goes to say viz.:

If the Assessee had produced the subsidiary-book maintained by him for recording such suppressed sales we may have felt inclined to accept if we found that there was nothing wrong with it''. But in the absence of any data tot, prove the claim of the Assessee some estimate has to be made of the sales. The Income tax Officer has estimated such suppressed sales, at Rs. 51,219/- as against Rs. 26,219/- returned by the Assessee. It is very difficult to modify the estimate in a case like this. It is for the Assessee to prove the correct sales. He is certainly not a law-abiding citizen as otherwise he would not have sold oil above the rates fixed by the Government.

7. From the extracts given above, particularly the passages underlined (here into) there is no doubt that the appellate Tribunal was under the mistaken impression that the kucha book had not been produced and were of the view that had it been produced & found to be in order it would have been inclined to accept it. We may also point out that there was not even a reference to the kucha book filed by the Assessee and which is described by the Tribunal as loose sheets. In the light of these observations, it is somewhat surprising to note that the Appellate Tribunal now assert that they had not omitted to consider the kucha book but had ignored it due to certain defects which they now point out and which are not dissimilar to those pointed out by the Income Tax Officer. It is regretted that this statement of fact has not been correctly recorded in the order of the Tribunal rejecting the reference. We have gone through that order which appears to justify the finding of the Income Tax Officer at that stage when the Tribunal was not competent to review its own order or to consider whether the order of the Income Tax Officer was regular or not.

8. From the Appellate Assistant Commissioner''s order it would appear that he had remanded the case with certain instructions to the Income Tax Officer and on receipt of the report from the Income Tax Officer the Assessee had submitted his objections to the said report. The Appellate Assistant Commissioner observed in his order dated 10-7-1950 as under:

The Petitioner himself accounted for a receipt of Rs. 26,219/- as received by him in such black market transactions. Taking the evidence on record at the original assessment stage, and after I made a reference to the Income Tax Officer one thing that is clear is that the Petitioner indulged in black market transactions. Whether as a result of such transactions it was only Rs. 26.219/- as admitted by the Petitioner or whether it was more I am unable to decide.

9. After stating that he is unable to decide, the Appellate Assistant Commissioner confirms the assessment made by the Income Tax Officer merely on the alleged statement of the auditor of the Assessee that the record of the black market transactions was not accurate--a fact which the auditor immediately denied at the stage of appeal before the Tribunal, and even before us.

10. In the original order before the remand of the case by the Assistant Appellate Commissioner the Income Tax Officer stated thus:

Here in the case of this Assessee the black market receipts of Rs. 26,219/- shown as received and not brought to accounts but included in the return submitted mostly represent excess payments received by sale of oil either loose or with binding permits.

11. He then goes on to point out certain defects in the statements filed and the loose sheets of account of excess received in black market transactions. The Assessee''s Advocate points out that the alleged'' defects were no defects at all and the Income Tax Officer had misunderstood the entries and had in some places made mistakes. Due to these defects in the Income Tax Officer''s Order the Assessee''s representative was able to persuade the Assistant Appellate Commissioner to remand the case for a fresh report and it is only after the remand report was received and the submissions of both parties were heard that the Appellate Assistant Commissioner observed that he was unable to decide whether the statement of the Assessee that he only made an excess profit of Rs. 26,219/- was right or not. In these circumstances, there is force in the contention of the learned Advocate for the Assessee that his client is entitled to have his figure accepted when after an exhaustive enquiry even after a remand the ''Appellate authority was unable to reject the figure of Rs. 26,219/-/., on any substantial ground except on the assumption that the Assessee is a black marketeer. For the purposes of Income Tax Act, we are not concerned with the moral, criminal or anti-social nature of the Assessee''s actions which must be the subject-matter of consideration in some other forum. All that the Income Tax authorities are concerned is with the collection of the revenue or income irrespective of the question of such income being tainted with illegality. As observed by Lord Haldane in the leading case or--Minister of Finance v. Smith 1927 AC 193 at p. 198 (A):

The Income Tax Acts are not necessarily restricted in their application to lawful business only.

12. In this view of the matter, we are constrained to observe that the Income Tax

authorities were greatly influenced by the fact that the Assessee was a black marketeer--a fact which he himself admitted and did not attempt to hide, at the time of making his return. In the state of the record and observations, the confirmation of the orders of the Income Tax Officer by the Appellate authorities is not based on sufficient or proper consideration of the material on record; at any rate as far as the Assistant Appellate Commissioner is concerned he was unable to decide even on a consideration of the material that the amount of Rs. 26,219/- shown by the Assessee as the amount of profits made due to black marketing was wrong.

13. Further the estimate of Rs. 25,000/- made by the Income Tax Officer is also arbitrary and is not computed on any basis nor on any materials on the record. The Income Tax Officer observed in his order as follows:

In the absence of positive evidence coming forth from the Assessee I have no other alternative except to estimate the suppressed profits from this source at a round sum of Rs. 25,000/- besides Rs. 26,219/- declared by him as black market receipts not brought to book.

14. It is evident from the above statement of the Income Tax Officer that he has merely guessed the figure of Rs. 25,000/- as being excess of the suppressed profits over and above the amount of Rs. 26,219/- declared by the Assessees and this is exactly what he is not entitled to do Terrel C.J. in-- Maharajadhiraja of Darbhanga Vs. Commissioner of Income Tax, at P. 86 (SB) (B) said:

Learned Counsel for the Assessee has argued that the officer is not entitled to make a guess without evidence and I agree with that contention.

This observation of Terrel C.J. was approved by their Lordships of the Privy Council in-- AIR 1933 108 (Privy Council) at P. 114 (C) in the same case which went up in appeal.

15. Having regard to what has been observed above in our view the addition of Rs. 25,000/- was arbitrary and was not based on any material, and the rejection of the figure of Rs. 26,219/- made by the Assessee as suppressed profits was made without regard to the materials on record which were not taken into account by the Appellate Tribunal at the time when it passed the order dated 21-12-1951. The reference is accordingly answered with the costs to the Applicant which we assess at Rs. 150/-.