

(1979) 08 MP CK 0018

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 256 of 1976

S.M. Trivedi

APPELLANT

Vs

Commissioner of Income Tax (No. 1)

RESPONDENT

Date of Decision : 30-08-1979

Acts Referred:

Income Tax Act, 1961 — Section 256

Citation : (1981) 128 ITR 265 : (1980) 3 TAXMAN 163

Hon'ble Judges : R.K. Vijayvargiya, J;G.L. Oza, J

Bench : Division Bench

Advocate : S.N. Shah, for the Appellant; A.M. Mathur, for the Respondent

Judgement

Oza, J.—This is a reference made by the Income Tax Appellate Tribunal, Indore, for answering the question :

"Whether, on the facts and circumstances of the case, the inference could be drawn that the business done in the name and style of the Dyestuffs and Insecticides at Indore in the relevant period belonged to the assessee and was not the business of his nephew, Shri Yogesh Trivedi ?"

2. It appears that initially when the petitioner-assessee approached the Tribunal to make a reference to this court the Tribunal rejected the prayer holding that no question of law arises. Thereafter, the petitioner approached this court u/s 256(2) of the I.T. Act and a Division Bench of this court in Misc. Civil Case No. 110 of 1970 by its order dated 13th August, 1973, directed the Tribunal to state a case on the question quoted above. And in consequence of the direction of this court, the Tribunal has made this reference.

3. The assessee is an individual and the assessment year under consideration is 1961-62. The accounting period was the financial year 1960-61 which ended on March 31, 1961. He was an agent of M/s. Amritlal and Company Ltd., Bombay, for the sale of dyes and chemicals on commission and he also carried on his own business in dyes and chemicals. He filed a return disclosing his business income

of Rs. 27,351 and the net dividend income of Rs. 4,245. The ITO determined his total income at Rs. 1,02,301. The addition made by the ITO included an amount of Rs. 29,762, being disallowances out of salary, bonus, commission and price differences paid to some employees and Rs. 16,498, being the profit in the business in the name of M/s. Dyestuffs and Insecticides, which was claimed to belong to the assessee's nephew, Shri Yogesh Trivedi. This addition of the profit from M/s. Dyestuffs and Insecticides was the question at issue. It is stated that Shri Yogesh Trivedi is the nephew of the assessee and he was in his employment on a salary of Rs. 1,000 per month prior to 1st January, 1961, when he left service and started his independent business in dyes and chemicals in the name of M/s. Dyestuffs and Insecticides and continued this business up to March 31, 1962. From 1st April, 1962, he again joined the service of the assessee on a salary of Rs. 500 per month plus commission. The ITO was not satisfied that the business of M/s. Dyestuffs and Insecticides belonged to Shri Yogesh Trivedi himself and, after detailed investigations and for detailed reasons stated by him in the assessment order, came to the conclusion that the business was a benami business of the assessee, Shri S. M. Trivedi, and the income therefrom was to be included in his assessment. He computed the income from the business after examining the accounts of M/s. Dyestuffs and Insecticides at Rs. 16,498 and, therefore, included this amount in the assessee's hands. Against this order of the ITO an appeal was preferred and the AAC maintained the order. On a further appeal, the Tribunal also maintained the order and on an application submitted by the assessee the Tribunal refused to make a reference.

4. The Tribunal, in the statement of case submitted to this court, has given detailed reasons on the basis of which the ITO held that the business of M/s. Dyestuffs and Insecticides was a business of the assessee only carried out benami in the name of Yogesh Trivedi. The Tribunal has also referred to the additional reasons given by the AAC and after considering all these reasons the Tribunal came to the conclusion that the ITO was right in holding that this income from M/s. Dyestuffs and Insecticides is the income of the assessee. The question that has been referred clearly goes to show that the question is as to whether the Tribunal was justified in drawing this inference on the basis of the material which was before it.

5. Learned counsel for the assessee contended that on the basis of the material the Tribunal was not justified in drawing the inference as according to learned counsel if irrelevant evidence was considered and the question of onus of proof was not considered the finding arrived at by the Tribunal could not be said to be a finding of fact. However, learned counsel could not point out that there was any fact or circumstance which was not considered by the Tribunal which according to him was necessary to be considered. He also could not suggest as to what more should have been produced for consideration before the authorities, even if the burden lay on the department, which has not been produced. Learned counsel also could not point out any fact or circumstance which the Tribunal considered and which according to learned counsel was irrelevant. Nor could he point out

any fact or circumstance which according to him was relevant and has not been considered by the Tribunal. In substance, therefore, the only contention advanced is that the facts considered by the Tribunal do not justify the inference that was drawn and it is because of this that this court by its order directed only this question to be referred to us.

6. Learned counsel for the department on the other hand contended that the inference of benami drawn on the basis of facts before the Tribunal could not be said to be a question of law when all the facts that were necessary to be considered have been considered by the Tribunal. And even if on the basis of these facts the Tribunal's view is found to be erroneous or a different view is possible, it could not be said that a question of law arises. He, therefore, contended that no question of law arises and, therefore, this court is not bound to answer the reference. Learned counsel placed reliance on the decisions in Commissioner of Income Tax, West Bengal, Calcutta Vs. Smt. Anusuya Devi, and Rameshwar Prasad Bagla Vs. The Commissioner of Income Tax, Lucknow, .

7. In Rameshwar Prasad Bagla Vs. The Commissioner of Income Tax, Lucknow, their Lordships of the Supreme Court, while considering the question of inference, observed (p. 426):

"The question with which the High Court was concerned was whether there was material before the Tribunal for arriving at the finding that the shares in question had been purchased by the assessee with a view to acquire the managing agency and control of the India United Mills Ltd. Perusal of the judgment of the High Court shows that the High Court did not discuss this aspect of the matter. On the contrary, the High Court proceeded straightaway to deal with the matter as if it had itself to arrive at an independent finding on the point as to whether the shares in question had been purchased by the assessee with a view to acquire the managing agency and control of the company. This approach of the High Court was wholly erroneous and not warranted by law. It is for the Tribunal to decide questions of fact, and the High Court in a reference u/s 66 of the Act cannot go behind the Tribunal's findings of fact. The High Court can only lay down the law applicable to the facts found by the Tribunal. The High Court and the Supreme Court, in an appeal against the judgment of the High Court given in a reference u/s 66 of the Act, are not constituted courts of appeal against the order of the Tribunal. These courts only exercise advisory jurisdiction in such references. The High Court in a reference u/s 66 of the Act can, however, go into the question as to whether the conclusion of the Tribunal on a question of fact is based upon relevant evidence. If the High Court finds that there is no such evidence to support the finding of fact of the Tribunal, this circumstance would give rise to a question of law and can be agitated in a reference. It is also well established that when a Tribunal acts on material which is irrelevant to the enquiry or considers material which is partly relevant and partly irrelevant or bases its decision partly on conjectures, surmises and suspicions and partly on evidence, then in such a situation an issue of law arises and the finding of the

Tribunal can be interfered with. The finding may also be interfered with if it be found to be so unreasonable that no person acting judicially and properly instructed as to the relevant law could have arrived at it. None of the circumstances justifying interference with the finding of fact of the Tribunal has been shown to exist in this case. In the absence of any such circumstance, the High Court in our view was not justified in interfering with the finding of fact of the Tribunal. The fact that the High Court on appreciation of evidence would have arrived at a conclusion of fact different from that of the Tribunal did not warrant interference with the finding of the Tribunal."

8. It is, therefore, clear that in an inference from facts the question of law only arises if it is found that there is no evidence to support the finding of the Tribunal or when the Tribunal acts on material which is irrelevant to the inquiry or considers material which is partly relevant and partly irrelevant or bases its decision partly on conjectures, surmises and suspicions and partly on evidence and it is only when any one of these contingencies arise that a question of law arises and the finding arrived at by the Tribunal could be interfered with. Their Lordships also found that the finding may also be interfered with if it is found to be so unreasonable that no person acting judicially and properly instructed as to the relevant law could have arrived at it. It is, therefore, clear that except in the above-mentioned cases a finding of fact arrived at by the Tribunal could not be interfered with and no question of law arises.

9. As discussed earlier, learned counsel appearing for the assessee could not point out that there was any material which was relevant and was not considered or that there was any material which was irrelevant and has been considered in this case. It is also not contended that there is no evidence to support the finding of the Tribunal. It is also not the case that the conclusion arrived at by the Tribunal is such which no reasonable person could arrive at. This is also borne out from the fact that the question that has been framed also is only, as quoted above, as to whether on the facts the inference is justified or not. Unfortunately, it only means that on the material before the Tribunal, could the conclusion be arrived at which in fact the Tribunal found ; and such a question could not be said to be a question of law in view of the observations made by their Lordships of the Supreme Court.

10. Learned counsel for the department, placing reliance on the decision in Commissioner of Income Tax, West Bengal, Calcutta Vs. Smt. Anusuya Devi, , wanted to contend that even if this court directed the Tribunal to make a reference, on hearing the reference we are not bound to answer the question if we come to the conclusion that no question of law arises. But having heard learned counsel for the petitioner at length even on all the materials which was placed before the Tribunal we feel that it could not be contended that the Tribunal was not justified in drawing the inference that it did and in this view of the matter we do not think it necessary to go into the question raised by learned counsel for the department.

11. Consequently, our answer to the question referred is in the affirmative. In the circumstances of the case, parties are directed to bear their own costs.