
(1978) 01 CAL CK 0028

In the Calcutta High Court

Case No : Income-tax Reference No. 246 of 1970

Smt. Kamala Devi Jhawar

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 19-01-1978

Acts Referred:

Income Tax Act, 1961 — Section 256(2)

Citation : (1978) 115 ITR 401

Hon'ble Judges : Sudhindra Mohan Guha, J; Sabyasachi Mukharji, J

Bench : Division Bench

Advocate : S.L. Saraf, for the Appellant; A. Sengupta and P. Majumdar, for the Respondent

Judgement

Sabyasachi Mukharji, J.—This reference relates to assessment year 1960-61, for which the relevant accounting year is the financial year ending on the 31st March, 1960. The assessee is the wife of Sri Banshilal Jhawar. The assessee had filed her return of income for the assessment year 1960-61 on 9th August, 1964, showing income from interest to the extent of Rs. 2,788. During the course of assessment proceedings the ITO found that the assessee had made an aggregate investment of Rs. 57,500 to the following extent: Rs. 55,000 on 31st July with Sreekant Trading Co. (P.) Ltd. and Rs. 2,500 on the 19th August, 1959, with Precision Component Makers. When the assessee was asked to explain the sources of the said investments it was stated on behalf of the assessee that the said investments were made by her out of the gifts and presents received at the time of her marriage and out of the accumulation of interest thereon. The ITO found that the assessee was married in the year 1949. The ITO further found that she never maintained any books of accounts, that she did not have any trade licence for carrying on money-lending business and according to the ITO she could not produce rent receipts in respect of her business premises or for her residence at No. 63, Ratan Sarkar Garden Lane, Calcutta. Further, according to the ITO, the statements of profit and loss account and balance-sheet filed by the assessee did not have any evidentiary value and that she had filed voluntary

returns for the assessment years 1956-57 to 1959-60, showing, according to the ITO, a false address in the returns and that the said returns were filed with the intention of creating evidence, according to the ITO again, to explain the investments of Rs. 57,500. The ITO further held that the voluntary returns filed for the assessment years 1956-57 to 1959-60, were filed on the 2nd July, 1960, all together and as such were filed subsequent to the dates on which the investments had been made by the assessee. It also came to the knowledge of the ITO that the assessee did not reside or carry on business at the address as given in the returns of her income; that her husband had resided at Ahmednagar where she was expected normally to reside and that enquiries revealed that there was no such company styled as Sreekant Trading Co. (P.) Ltd. at the address furnished by the assessee. The ITO further found that the Precision Component Makers, which was a partnership concern, was started in September, 1959, with Sri Banshilal Jhawar, husband of the assessee, as one of the partners. The ITO reached the conclusion that the unexplained investments of Rs. 57,500 represented the assessee's income from undisclosed sources. He was also of the opinion that the returned income of Rs. 2,788 under the heading "Interest" actually did not represent the assessee's interest income but because the same was shown in the return, the same was assessable under the head "other sources". There was an appeal from the aforesaid order of the ITO to the AAC.

2. The AAC observed that the two debtors with whom the deposits were alleged to have been made by the assessee had acknowledged the respective transactions. It was urged on behalf of the assessee that the ITO could not question the findings given in the earlier years unless those findings were set aside or varied by higher authorities. The assessee also informed the AAC that her husband was assessed separately by the ITO, Burdwan-Birbhum. According to the assessee, she had an opening balance of capital of Rs. 60,034 for the year in question, out of which she had made deposits of Rs. 55,000 and Rs. 2,500 with Sreekant Trading Co. (P.) Ltd. and Precision Component Makers, respectively. The AAC found force in the said submissions and also found that she had been assessed at an aggregate income of Rs. 28,685 in the immediately preceding four assessment years and that her initial capital was Rs. 20,000 and there were accumulated interest thereon in respect of the assessments prior to 1956-57, In the view of the AAC, if the said facts were to be challenged by the departmental authorities the earlier proceedings could be reopened under the law, but for the consideration of the present facts in the assessment year 1960-61, the assessee's accumulated capital in the past should be taken to have been proved, which had been invested in the shape of two advances made by the assessee to the said two parties. The AAC, therefore, deleted the addition of Rs. 57,500 made by the ITO.

3. Being aggrieved by the aforesaid decision of the AAC, the revenue preferred an appeal before the Tribunal. The Tribunal considered in detail the history of the case and found that the voluntary returns for the assessment years 1956-57 to 1959-60 were filed by the assessee on the 2nd July, 1960, and the said

assessments were completed on the 26th July, 1960, that is to say, after a few days of the filing of the returns. The incomes returned by the assessee in respect of the money-lending business were accepted by the ITO with small additions. With respect to the capital as at the beginning of the assessment year 1960-61, and regarding the source of investment of Rs. 57,500, the explanation of the assessee was that the original capital was Rs. 20,000 and the interest received between 1949 and 1955 was Rs. 14,779 and the amounts shown for the assessment years 1956-57 to 1959-60 were Rs. 29,555. Therefore, the total was Rs. 64,334. The assessee's case was that she had sufficient money to make the investments in question as was amply demonstrated by the assessment orders made on her for the assessment years 1956-57 to 1959-60. The Tribunal came to the conclusion that no details on interest income claimed by the assessee for the year 1956-57 were produced and there were really no books of accounts either for the years under consideration or for earlier years and therefore, the ITO's reference to the books of accounts in the assessment order for 1956-57 could not be accepted. The Tribunal also did not accept the assessee's explanation that she was residing with a relative at Calcutta and that in the view of the Tribunal the ITO was justified in coming to the conclusion that the assessee was not carrying on any money-lending business as alleged and that there was no proof that she had either Rs. 20,000 as her initial capital or that she had earned substantial amounts subsequently, out of which she could have made the investments in question. According to the Tribunal, the mere fact that the assessments had been made on the assessee for earlier years did not debar the departmental authorities from going behind the assessments. The assessee had to prove with reference to the facts in the relevant year under consideration that she had actually carried on money-lending business and, therefore, the ITO was entitled to go into the question afresh and independently to find out whether the sources of investment of Rs. 57,500 were explained or not. In the absence of evidence before him, the past assessments of the assessee could not prove the existence of the sources of investment. In the view of the Tribunal in Income Tax matters the conclusions arrived at in an assessment year were valid and binding in so far as that assessment year was concerned and could be departed from in the subsequent assessment year by another ITO. Accordingly, the Tribunal upheld the ITO's finding and set aside the order of the AAC. But the Tribunal was of the opinion that it would be equitable to adjust the tax which had been received from the assessee in the prior assessment years against the demand for the present year, because it was in substance the tax on the same amounts due to the assessee's attempt, which had now proved to be infructuous, of avoiding tax on Rs. 57,500. Therefore, the Tribunal restored the sum of Rs. 57,500 in the assessment and set aside the order of the AAC. There was an application for reference which the Tribunal refused as in the view of the Tribunal no question of law arose. Thereupon there was a direction by this court u/s 256(2) of the I.T. Act, 1963, and the Tribunal has referred the following question :

"Whether, on the facts and in the circumstances of the case, and in view of the

assessment orders previously made for the assessment years 1956-57 to 1959-60, the Tribunal was right in holding that the investment of Rs. 57,500 was income of the assessee for the instant assessment year ?"

4. In this case, the main question is whether Rs. 57,500 which was alleged to have been invested by the assessee in two firms was the assessee's income from undisclosed sources or the assessee's capital which had been explained. The main contention of the assessee was that the source of this money was the amount that she had explained in the previous assessment proceedings and this amount had been carried forward from the previous assessment years and was the opening balance in the relevant assessment year. The main question, therefore, is whether the assessee has furnished proper and satisfactory explanation with regard to the investment of Rs. 57,500 made by her in the year of account and in determining this question it is also necessary to consider whether the revenue authorities were in any way precluded from making findings on this aspect of the matter by the finding in assessments made earlier on the assessee. On this aspect, the principles are now well settled. The doctrine of res judicata does not apply so as to make a decision on a question of fact or of law in the proceeding of an assessment of one year binding in another year. The assessment and the facts found are conclusive only in the year of assessment. The findings on questions of fact may be good and cogent evidence in the subsequent years when the same question falls to be determined in another year but they are not binding and conclusive. (See observations of the Supreme Court in the case of *M.M. Ipoh and Others Vs. Commissioner of Income Tax, Madras*,). The Supreme Court expressed similar views in the cases of *Raja Bahadur Visheshwara Singh and Others Vs. Commissioner of Income Tax, Bihar and Orissa*, ; *Dwarkadas Kesardeo Morarka Vs. Commissioner of Income Tax, Central Bombay*, and *Commissioner of Income Tax, West Bengal Vs. Brij Lal Lohia and Mahabir Prasad Khemka*, . In the instant case, the main plank of the assessee's standpoint was that the sources of these investments had been accepted in the previous assessment years and by the order of the Tribunal in effect the said assessments for the earlier years were being nullified and counsel for the assessee contended that in the instant case the revenue was indirectly nullifying and setting aside the assessments without recourse to the procedure of rectification and reopening of the previous assessments. We are, however, unable to accept this position. The assessments for the previous years, viz., for the assessment years 1956-57 to 1959-60, stand good so far as these years are concerned. But simply because an investment had been accepted as correct in those assessment years that source cannot be accepted as proved or conclusive in this instant assessment year. The ITO is free to examine the source and come to his own conclusion on materials produced before him. In the instant case, the assessee's case was that she had the money, firstly, from gift during the marriage, and, secondly, that money had got accumulated by earning of interest by her from the money-lending business she had carried on. Therefore, the question is, whether she had the original gift, and, secondly, whether she had

carried on any money-lending business. The ITO has considered these questions on the evidence before him. He has found that in view of the fact that the assessee had no trade licence and that she could not produce any evidence of residence or of business at Calcutta from where she was alleged to have carried her money-lending business and the fact that her husband had carried on the business at a place other than Calcutta, the assessee had not been able to prove that the assessee carried on any business, in fact, of money-lending. It cannot be said that such a conclusion of the ITO was based on no evidence or was perverse. Indeed, in the reference before us, there is no question of challenging the said finding of the ITO as either being perverse or based on no evidence. Secondly, the ITO has noted that the assessee had not been able to produce any books of account. There is some dispute as to whether the assessee's representatives had stated that the assessee maintained no books of account for the earlier years as well as for this year. Be that as it may, it is the common case that for the relevant assessment year, the assessee did not and could not produce any books of account and also said that the assessee did not maintain any books of account. There is some dispute as to whether the assessee had maintained any books of account for the earlier years in respect of which assessments had been completed but there is no dispute in any event that the said books of account were not made available for examination at the time of this assessment when these were called for. In view of these factors, which the ITO has taken into consideration in coming to his conclusion that the assessee had not been able to explain satisfactorily the source of his investment, we cannot say that the ITO has acted perversely or unreasonably.

5. Then comes the fact that the source of this investment had been partly explained in the assessment year 1956-57 to 1959-60. As we have mentioned before, findings in such assessments are neither conclusive nor binding for the consideration of the question in this relevant assessment year. Such assessments of course are good pieces of evidence but their evidentiary value would depend upon the manner in which such assessments were made. It is indisputable that the returns were filed after the alleged investments had been made by the assessee. It is also not in dispute that the returns were filed on the 2nd July, 1960, and assessments were completed on the 26th July, 1960. It is also apparent that the husband of the assessee also filed returns subsequently and the firm in which these sums were alleged to have been invested was a firm in which one of the partners was the husband of the assessee. If, in the background of these facts, the ITO did not put much value on the previous assessment orders, it also cannot be said that he acted perversely or unreasonably. The findings of the ITO, as mentioned hereinbefore, have not been challenged and indeed cannot be challenged.

6. On behalf of the assessee, our attention was drawn to the observations of the Judicial Committee in the case of (1938) 6 ITR 414 (Privy Council) , in support of the proposition that assessment once made is final and cannot be reopened or touched upon except by the procedure provided under the Act. There cannot be

any dispute with the proposition that the assessments for the completed years in this case, viz., assessments for the years 1956-57 to 1959-60, are final and cannot be affected except by reopening. That proposition has nothing to do with the findings arrived at in this assessment. Such findings are relevant and require consideration in the subsequent assessment years. But such findings are not conclusive for this year. Reliance was also placed on the observations of the Supreme Court in the case of Income Tax Officer, V Circle, Madras, and Another Vs. S.K. Habibullah, , where the Supreme Court reiterated the views of the Judicial Committee referred to hereinbefore that once the assessment is made, it cannot be reopened except in circumstances detailed in Sections 34 and 35 of the Act and within the time prescribed. The same view was also expressed by the learned single judge of the Andhra Pradesh High Court in the case of SMT. KANTAMANI VENKATA SATYAVATHI Vs. Income Tax OFFICER, B-WARD, RAJAHMUNDY, . Our attention was also drawn to the decision of the Supreme Court in the case of Mahendra Mills Ltd. v. P. B. Desai, AAC [1915] 99 ITR 135, where the Supreme Court observed that the closing stock of the assessment year 1959-60 formed a part of the evidence relevant to the assessment for the assessment year 1960-61. There cannot be any dispute about that position but where an investment of a particular assessment year is being questioned then the source of that investment has to be independently examined and established. In view of the facts mentioned hereinbefore and what we have mentioned above, in our opinion, the Tribunal was right. The findings of the Tribunal cannot be interfered with in this reference.

7. In the premises, the question referred to us has to be answered in the affirmative and in favour of the revenue. The assessee will pay the costs of this reference.

Guha, J.

I agree.