

(1978) 03 CAL CK 0019

In the Calcutta High Court

Case No : Income-tax Reference NO. 503 of 1975

Tara Devi Goenka

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 09-03-1978

Acts Referred:

Income Tax Act, 1961 — Section 256(2)

Citation : (1980) 122 ITR 14

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

Bench : Division Bench

Advocate : R.N. Bajoria and S. Banerjee, for the Appellant;Suhas Sen, for the Respondent

Judgement

Sudhindra Mohan Guha, J.—This reference arises in respect of the assessment year 1964-65 for which the relevant year was D.S.Y. 2020.

2. In that year of assessment the assessee disclosed in her wealth-tax return jewellery worth Rs. 65,000. The ITO required the assessee to explain the source of the acquisition of the said jewellery. A month's time was sought for, but ultimately no explanation whatsoever was tendered by her. As a result, the ITO assessed the entire value of jewellery as her income from undisclosed sources.

3. The assessee preferred an appeal to the AAC. It was contended before him that the addition was entirely presumptuous and was not supported by any evidence. It was further contended before him that the jewellerys were received at the time of the assessee's marriage from her grandfather, father and father-in-law. The AAC, after accepting that the assessee belonged to a rich family and she must have received some ornaments in her marriage and that it was difficult for her to prove the source of acquisition after 35 years of her marriage when some of her relations making gift or presentations to her were dead, held that she could normally have possessed jewellerys worth Rs. 25,000. The balance of Rs. 40,000 was treated as her acquisition from unexplained sources, and confirmed the addition to that extent.

4. The assessee appealed to the Tribunal, It was submitted that the lady became assessable to wealth-tax for the first time in the assessment year 1964-65 and had, therefore, disclosed the value of jewelleries in her return of wealth which on estimate was shown at Rs. 65,000 in the assessment year 1964-65 and was revalued at Rs. 96,750 in the assessment year 1969-70. It was further submitted that the AAC had committed an error in deducting Rs. 17,106 being the value of the sold out articles in 1953 and 1954 from the sum of Rs. 20,000, being the value of the jewelleries in the possession of the assessee at 1935 price level. The value of sold out jewelleries at 1935 price level was said to be Rs. 6,000 only. A detail of the jewelleries which the assessee claimed were received by her from her grandfather, father, father-in-law and mother-in-law was also given. Besides, reliance was placed on two certificates dated 20th January, 1969, and 5th December, 1938, purported to have been issued by the assessee's mother-in-law and her late father-in-law. Both of them had certified the fact of having presented certain jewelleries to the assessee. On behalf of the revenue, it was pointed out that the ITO had given, a clear opportunity to the assessee to explain the source of acquisition of her jewelleries and that nothing was done before him. As for the certificates it was argued that it was difficult to believe how these persons could remember the exact details of the ornaments presented by the parents-in-law to the assessee.

5. In the opinion of the Tribunal, if the entire jewelleries had in fact been received by the assessee at the time of her marriage, there was hardly any difficulty for her to offer that explanation before the ITO. The Tribunal further observed that the certificate dated 20th January, 1969, from the assessee's mother-in-law hardly inspired any confidence as it was given 33 years after the event and as it furnished minute details which could not be given from memory. Similarly, the Tribunal could not give any credence to the certificate dated 5th December, 1938, issued by the assessee's father-in-law as there was no occasion to issue any such certificate in 1938. So, the Tribunal concluded that there was no sufficient evidence to hold that the assessee received the entire jewellery on her marriage as presents. The Tribunal, therefore, confirmed the addition of Rs. 40,000 as sustained by the AAC.

6. On the aforesaid facts, the following questions of law as directed by the High Court were referred u/s 256(2) of the I. T. Act, 1961, for the opinion of this court.

"1. Whether, on the facts and in the circumstances, there was any material before the Tribunal to hold that a sum of Rs. 40,000 (rupees forty thousand only) represented income from undisclosed sources of the assessee ?

2. Whether, on the facts and in the circumstances, the findings given by the Tribunal were defective, unreasonable, perverse and vitiated ?

3. Whether, on the facts found, there was any justification on the part of the Tribunal to hold that the sum of Rs. 40,000 (rupees forty thousand Only) represents income of the assessee ?"

7. The assessee was married in the year 1935 and the value of the ornaments received as gifts or presents was valued at Rs. 65,000 in the year 1964-65. It would not be unjustified to conclude that the value of the same was not more than Rs. 15,000 or Rs. 16,000 in the year 1935. The ornaments consisted of (1) four bangles with diamonds, (2) one nose ring with diamonds, (3) one nose pin with diamond, (4) one diamond forehead ornament (borla), (5) one necklace with diamonds, (6) two raiphul with pearl, (7) four bangles (chhad) with pearl, (8) four bangles with pearl, (9) four kangan with pearl, (10) two imitation gold kanthi with locket, (11) eight gold meena bangles and (12) four pieces of guineas. All these were valued at Rs. 65,000. Item No. 2 and item No. 4 were said to have been received from the grandfather of the assessee, late Rai Bahadur Ramjidas Bajoria, a well known businessman of Calcutta and founder of S.V.S. Marwari Hospital, Calcutta. Item No. 8, item No. 9 and item No. 1 were said to have been received from the father of the assessee, late Babu Baijnath Bajoria, member of the Upper House (Central). Item No. 5, item No. 6 and item No. 7 were said to have been received from the father-in-law of the assessee, late Babu Ram Narayan Goenka, a colliery owner, and the rest of the ornaments and four guineas were said to have been received from the mother-in-law of the assessee, Sm. Panna Debi.

8. The statement of income of the assessee's husband, Shri Shew Bhagwan Goenka, was also furnished. The income was shown as Rs. 33,238 in 1962-63, Rs. 88,230 in 1963-64 and Rs. 96,151 in 1964-65. A copy of the assessment order of the assessee's father, Shri Baijnath Bajoria, for the assessment year 1945-46 was filed to show the total assessed income at Rs. 80,202. A copy of assessment order of estate duty in the case of the assessee's father-in-law showing the principal value of the estate left by the deceased at Rs. 5,06,263 on the date of death, i.e., 11th January, 1954, was put in. From the materials on record it is amply clear that the lady-assessee belonged to a family of substance and affluence. She was married to a family of equal status and riches. In this background, it is to be ascertained whether it was likely for such a lady to receive ornaments at the time of the marriage valued at Rs. 65,000 on the standard of valuation in 1964-65. It would appear from the copy of the order dated 8th February, 1971, passed by the IAC of Income Tax, Range-XVIII, Calcutta, dropping penalty proceedings on account of the alleged concealment of income of Rs. 70,000 that the present value of the jewellery was about 5 point higher than that prevailing in 1935, the year of the marriage. It was also found by him that the assessee belonged to a rich and respectable family and her parents had sufficient income to make presentations and gifts to the assessee. The addition made by the ITO was said to be based on mere presumption and suspicion in respect of which the assessee could not be said to have concealed the particulars of income.

9. Having regard to the status and riches of the parents and parents-in-law of the assessee, there is hardly any reason to disbelieve the contention that the assessee had received ornaments worth Rs. 65,000 at the time of her marriage.

10. As to the certificate of 5th December, 1938, issued by the father-in-law of the assessee testifying that certain jewellerys were given by him in 1935 in favour of the assessee, it was argued that there was no occasion to issue such certificate. The assessee belonged to an undivided Hindu family and it could not be said to be unnatural for a father-in-law to mention in black and white what particular ornaments had been given to his daughter-in-law at the time of her marriage for avoiding future disputes, if any. It was never hinted that this certificate was got up and the signature of Ram Narayan Goenka was a forgery. The gentleman breathed his last on 11th January, 1954. In case of any doubt the signature of the deceased could be compared with the admitted signatures which could be found in old documents. Anyway, there is absolutely no justification to discard this piece of evidence which was issued as far back as on 5th December, 1938.

11. Next, as to the certificate dated 20th January, 1969; issued by Padma Debi Goenka, a doubt was cast as to the power of her memory to recollect what ornaments had been given to the assessee by her. It should be noted that apart from four guineas as one nath, eight gold meena bangles and two imitation gold kanthi with loft kit had been presented by the mother-in-law. She did not mention the weight or the value of each item of the ornaments. It is quite natural for a mother-in-law to recollect what ornaments had been given to a particular daughter-in-law in an auspicious ceremony like marriage.

12. The objection is raised on behalf of the revenue that no reliance could be placed on the explanation offered by the lady, as she had failed to offer any explanation at the earliest opportunity before the ITO. An appeal is a continuation of the assessment and it is undisputed that the AAC is empowered to admit additional evidence at the time of the hearing. Moreover, the AAC allowed her to offer an explanation on which he acted. It should be mentioned in this connection that no such objection was raised at any stage of the appeal. In this view of the matter, the objection seems to be without substance.

13. In our opinion, there would be absolutely no reason to discard the explanation offered by the lady as to the acquisition of the ornaments.

14. It should be remembered that the assessing authorities did not dispute that the assessee belonged to a rich family and that she must have received some ornaments at her marriage; and it was also pointed out that it was difficult for her to prove the source of acquisition after 35 years of her marriage, when some of her relations making gifts and presentations were already dead. According to such authorities she could normally have possessed jewellery worth Rs. 25,000. This, the authorities treated as the jewellerys' worth, and the balance of Rs. 40,000 as an acquisition from unexplained sources.

15. The addition is said to have been made on surmises and conjectures or in other words the addition was said to be entirely presumptuous and not supported by any evidence. According to the assessee, the addition cannot be supported in

law. The learned counsel for the assessee refers to the observations of the Supreme Court in *Mehta Parikh and Co. Vs. Commissioner of Income Tax, Bombay*, . In this case, the appellants encashed on the 18th January, 1946, high denomination notes of Rs. 1,000 each of the face value of Rs. 61,000, After examining cash balances from 20th December 1945, to 18th January, 1946, the ITO found that in order to sustain the contention of the appellants that this amount did not represent undisclosed profits, he would have to presume that there were 18 high denomination notes on the 1st January, 1946, and that all such receipts thereafter up to 18th January were received in notes of Rs. 1,000 which he found impossible to do, and assessed the whole amount. It was held that, applying the true principles as to interference with findings of fact of the Tribunal, the court was under the circumstances entitled to consider whether the finding that Rs. 30,000 represented undisclosed profits was correct and that the view of the Tribunal that it was impossible for the appellants to have had 61 notes on 18th January and the rejection of 30 such notes was based on pure surmise and, as the appellants had furnished a reasonable explanation for possession of 61 notes, there was no justification for having accepted their explanation in part and discarded it in relation to the sum of Rs. 30,000, and no part of the sum of Rs. 61,000 could, in the circumstances of the case, have been assessed as undisclosed profits. Having regard to the observation of the Supreme Court it is argued that, as the assessee had furnished reasonable explanation for possession of ornaments valued at Rs. 65,000 there was no justification for the assessing authorities in accepting her explanation in part and including the sum of Rs. 40,000 as acquisition from unexplained sources. Such findings are said to be based on pure surmise.

16. The same principle was reiterated by the Supreme Court in a subsequent case, namely, *Lalchand Bhagat Ambica Ram Vs. Commissioner of Income Tax, Bihar and Orissa*, . In this case, the Appellate Tribunal came to the conclusion that the sum of Rs. 1,41,000 comprising 141 high denomination notes was not satisfactorily explained. The appellant was a HUF which maintained two accounts in its cash books, one showing the cash balances from day to day and the other known as "the Almirah account" wherein were kept large balances which were not required for the day to day working of the business but were held to provide monies which might be required at short notice at the different branches of the appellant. Their Lordships of the Supreme Court held that the Tribunal in arriving at its conclusion indulged in suspicions, conjectures and surmises and acted, without any evidence or upon a view of the facts which could not reasonably be entertained.

17. On behalf of the revenue, reference is made to the decision of the Supreme Court in *Smt. Srilekha Banerjee and Others Vs. Commissioner of Income Tax, Bihar and Orissa*, . In this case, the Supreme Court held that there were materials to show that the sum of Rs. 51,000 did not form part of the cash balance of the assessee and the source of the money not having been satisfactorily proved the department was justified in holding it to be the

assessable income of the assessee from some undisclosed source. The decision hereunder is of title assistance. In this case, the assessee having failed to prove the source of income, the department was found to be justified in assessing that amount as income from undisclosed source. In the instant case, the explanation was not wholly discarded or disbelieved. The assessing authorities acted on it partly, namely, a part of the value of the ornaments was said to have arisen from undisclosed source of income. This apportionment is rightly said to be based on suspicions, conjectures and surmises and that again, according to the assessee, should not be sustained. It is for the revenue either to accept or to discard the explanation offered by the assessee. There is no scope for apportionment. Such apportionment is without any evidence and cannot be sustained.

18. Having regard to the facts and circumstances of the case, we are of the opinion that there was no justification for the Tribunal to accept the explanation offered by the assessee in part. We are further of opinion that having regard to the status and the wealth of both the families it was not unnatural for the assessee to receive all the ornaments in connection with her marriage.

19. Accordingly, we answer question No. 1 in the negative and in favour of the assessee. Question No. 2 is answered in the affirmative and against the revenue. Question No. 3 is also answered in the negative and in favour of the assessee.

20. Each party to pay and bear its own costs.

Sabyasachi Mukharji, J.

21. I agree.