A. Govindarajulu Mudaliar

Vs

Commissioner of Income-Tax Hyderabad

Civil Appeals Nos. 41-43 of 1957

(T. L. Venkatarama Ayyar, P. B. Gajendragadkar, A. K. Sarkar JJ)

24.09.1958

JUDGMENT

VENKATARAMA AIYAR J. -

These are appeals by special leave against the decision of the Income-tax Appellate Tribunal, madras, dated January 29, 1953, passed in three appeals I.T.A. Nos. 3489, 3490 and 3491 of 1952-53. The appellant carries on business in arrack. He also runs a lorry. For the assessment year 1945-46, the Income-tax Officer found that the income chargeable to tax was Rs. 54,600. Likewise, for the assessment year 1946-47, he found that the income chargeable was Rs. 27,500 and for the assessment year 1947-48, he held that it was Rs. 54,500. These amounts appear in the account books of a firm of which the appellant is a partner as credits from him. The appellant was asked to give an explanation as to how he came to possess these amounts. His explanation was in two parts. he firstly stated his farther had made a profits of about Rs. 80,000 in the arrack business conducted by him, that he had this amount with him when he died which was in the year 1936, that prior to his death he entrusted this amount to the assessee's aunt, that she died in 1944, and before here death, she handed this amount over to the appellant. As regards the balance of about Rs. 42,000, the explanation of the appellant was that they represented the profits earned in a partnership concern which carried on business in arrack during the years 1938-39 to 1944-45. The partners of that firm were two persons, viz., Ediga Thayappa and M. Govindaswamy mudaliar. the case of the appellant is that Ediga Thayappa was only a benamidar for him, and that the profits earned by the business during these years were the profits in which he had a share and that came to Rs. 42,000. This story was rejected by the Income-tax officer. Both the explanations of the appellant having been rejected, the Income-tax officer held that the amounts in question represented concealed income and imposed tax thereon. The appellant appealed to the Appellate Assistant Commissioner who again, on an investigation of the facts, agreed with the conclusions of the Income- tax officer. the appellant took the matter in further appeal to the Appellate Tribunal and by its judgment, dated January 29, 1953, the Tribunal confirmed the decision of the Appellate Assistant Commissioner. It elaborately examined the evidence as to the gift of Rs. 80,000 which was alleged to have been made by the appellant's father to his aunt, and by her to him. It rejected it as untrue. It then proceeded to examine the case of the appellant as regards the amount of Rs. 42,000. It held that there was nothing to establish that Ediga Thayappa was a benamidar for the appellant, that in the account books of the firm it was only the name of Thayappa that appeared, that the firm was registered under section 26A of the Indian Income-tax Act, and that in the application it was only the name of Thayappa that appeared as a partner. The Tribunal also points out that during this period of six years, there is no proof that Thayappa paid over to the assessee any share of the profits. It also referred to the fact that for all his trouble Thayappa was not remunerated. it rejected the evidence of Eidga Narashiah and Govindaswamy Mudaliar who were examined by the appellant in proof this portion of the case. In

the result it held that the case of the appellant with reference to the amount of Rs. 42,000 was also not established. Then it proceeded to observe :

> "As the assessee has not succeeded in proving his version that Rs. 80,000 was got from his aunt being given to her by his father and that Rs. 42,000 was earned as his share of income from Adoni and Nandyal combines, there is no alternative left but to treat them as undisclosed income."

Now the contention of the appellant is that assuming that he had failed to establish the case put forward by him, it does not follow as a matter of law that the amounts in question were income received or accrued during the previous year, that it was the duty of the Department to adduce evidence to show from what source the income was derived and why it should be treated as concealed income. In the absence of such evidence, it is argued, the finding is erroneous. We are unable to agree. Whether a receipt is to be treated as income or not, must depend very largely on the facts and circumstances of each case. In the present case the receipts are shown in the account books of a firm of which the appellant and Govindaswamy Mudaliar were partners. When he was called upon to give explanation he put forward two explanations, one being a gift of Rs. 80,000 and the other being receipt of Rs. 42,000 from business of which he claimed to be the realowner. When both these explanations were rejected, as they have been it was clearly upon to the Income-tax Officer to hold that the income must be concealed income. There is ample authority for the position that where an assessee fails to prove satisfactorily the source and nature of certain amount of cash received during the accounting year, the Income-tax Officer is entitled to draw the inference that the receipt are of an assessable nature. The conclusion to which the Appellate Tribunal came appears to us to be amply warranted by the facts of the case. There is no ground for interfering with that finding, and these appeals are accordingly dismissed with costs.

We must mention that against the order of the Tribunal the appellant applied for reference to the High Court under section 66(2) of the Indian Income-tax Act, and the learned Judges of the High Court dismissed that application. No appeal has been preferred against that a all. The present appeal is against the decision of the Tribunal itself. It is no doubt true that this court has decided in Dhakeswari Cotto Mills Ltd. v. Commissioner of Income-tax, West Bengal, that an appelies under article 136 of the Constitution of India to this court again a decision of the Appellate tribunal under the Indian Income-tax Act. But seeing that in this case the appellant had moved the High Court an a decision has been pronounced adverse to him and this has become final, obviously it would not be upon to his to question the correctne of the decision of the Tribunal on grounds which might have been take in an appeal against the judgment of the High Court. All the points urged before us were taken in the reference under section 66(2) of the Indian Income-tax Act. It would therefore follow that these grounds are not open to the appellant. However, no such objection was taken on behalf of the respondent and in deciding the appeal on the merits, we do not wish to be understood as holding that the appeal is competent.

Appeal dismissed.

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