

SUPREME COURT OF INDIA

Ladhu Ram Taparia

Vs.

Commissioner of Income-Tax (Central), Calcutta

(J.C.Shah and M. Hidayatullah JJ.)

03.01.1961

JUDGMENT

SHAH, J.

1. These are four appeals with special leave under article 136 of the Constitution. Two of these appeals, Civil Appeals Nos. 652 of 1957 and 654 of 1957 are against the order of the High Court of Judicature at Calcutta declining to call for a statement of the case from the Income-tax Appellate Tribunal, Calcutta, under section 66 (2) of the Income-tax Act. The remaining two, Civil Appeals Nos. 651 of 1957 and 653 of 1957, are against the orders of the Income-tax Appellate Tribunal holding that the four firms, firm "Ladhuram Taparia", "Jagannath Hanumanbux", "Jagannath Harnarain" and "Ganpatrai Jorawarmall" belonged to the same group of persons, viz., Ladhuram Taparia and Ganpatrai Taparia and their respective sons, and that the income earned in the business in cloth and yarn carried on in those names was liable to be amalgamated for purposes of assessment in the hands of the appellant firm and refusing to renew registration of these firms under section 26A of the Income-tax Act.

2. There was originally a firm carrying on business in cloth and yarn in the name and style of "Jagannath Harnarain" at 37, Armenian Street, Calcutta. Of this firm, Ladhuram, Ganpatrai and their brother and several outsiders were partners. On account of disputes between the partners, this firm was dissolved sometime in the year 1943. In anticipation of dissolution of the firm or shortly thereafter, six firms were stated and separated deeds of partnership were executed in respect thereof. The deed of partnership in respect of firm Ladhuram Taparia was executed on October 16, 1941, and the firm was registered with the Registrar of Firms on July 19, 1943. The firm, it was claimed by the appellants, commenced business on February 28, 1941, and consisted of three partners, Ladhuram Taparia, Ganpatrai Taparia and Bhairudan Maheshwari. Firm Ladhuram Taparia was registered for purposes of income-tax under section 26A in the assessment years 1942-43, 1943-44 and 1944- 45. Besides the firm of Ladhuram Taparia, the other five firms which came into existence for conducting business in cloth and yarn were "Jagannath Hanumanbux", "Jagannath Harnarain", "Ganpatrai Jorawarmall", "Seth Ladhuram Taparia" and "Seth Ladhuram Taparia & Co."

3. The following table sets out the names in which the firms carried on business, the dates on which

they commenced business, names of partners and the shares of each of the partners:

Firm Name of firm Date of Partners' Share of No. commencement name each of business. partner.

Rs. As. Ps.

I. Ladhuram Taparia 28-2-1941 1. Ladhuram 0 8 0 -----

2. Ganpatrai 0 4 0

7-6-1941 3. Bhairodan

Maheshwari 0 4 0

II. Jagannath

Hanumanbux 28-6-1941 1. Hanumanbux 0 12 0

2. Ganpatrai 0 4 0

III. Jagannath

Harnarin 11-8-1941 1. Ganeshmal 0 12 0

2. Sovachand 0 4 0

IV. Ganpatrai Jorawarmall 21-10-1943 1. Ganpatrai 33 3/4 pies.

2. Hanumanbux 10 1 1/4 pies.

3. Malchand Baid 45 pies.

4. Kanayalal Lohia 12 pies.

Rs. As.

Ps.

V. Seth Ladhuram

Taparia 8-3-1943 1. Ladhuram 0 6 0

2. Ganpatrai 0 2 0

3. Rupnarain Gaggar 0 5 0

4. Chunilal Lakhotia 0 3 0

VI. Ladhuram 1-3-1944 1. Ladhuram 0 10 6

2. Ganpatrai 0 3 0

3. Kisenlal Karwa 0 3 0

4. Out of the partners of these firms, Ladhuram Ganpatrai are full brothers. Sovachand partner of firm No. III is the son of Ganpatrai. Hanumanbux partner of firms Nos. II and IV and Ganeshmal partners of firm No. III are the sons of Ladhuram. Bhairodan Maheshwari partner in firm No. 1, Malchand Baid and Kanayalal Lohia partners in firm No. IV, Rupnarain Gaggar and Chunilal Lakhotia partners in firm No. V, and Kisenlal Karwa partner in firm No. VI, are strangers to the family of Taparias. Ganpatrai is a partner in firms Nos. I, II, IV, V and VI and in firm No. III Sovachand his son is a partner. Ladhuram is a partner in firms Nos. I, V and VI and in firms Nos. II, III, and IV his sons are partners. In assessment proceedings before the assessment year 1945-46, firm Nos. I, II, III and V were registered under section 26A of the Income-tax Act and tax was assessed on that footing. Firms Nos. IV and VI submitted their returns for the first time for assessment of income-tax for the assessment year 1945-46. In the course of the assessment proceedings, the Income-tax Officer (Central) Circle II, Calcutta, having received information that Ladhuram and his brother Ganpatrai has started diverse concerns in different names and they had also started innumerable shops benami and that all these business belonged to Ladhuram and his brother Ganpatrai, started investigation into the status and ownership of the six firms. The Income-tax Officer called for information from banks in which accounts were maintained on behalf of the different firms. He also examined Bhairodan Maheshwari, Sovachand, Hanumanbux and Ganeshmal and issued subpoena for the examination of Rupnarain Gaggar, Chunnilal Lakhotia and Kisenlal Karwa, but these three persons did not appear before him. After a detailed examination of the books of account, the Income-tax Officer held that:

"The nature of the business of firms I to IV is practically the same. The businesses are mainly dealings in piece-goods and yarn. Dealings are mostly wholesale in each case. Regarding firms Nos. V and VI, the business consisted in dealings in standard cloths supplied by Government. It has been found that each of the firms had been considerably financed by the other firm. It is noteworthy that almost the same outside parties had financed the aforesaid firms, namely, I to VI. On analysing the trading account of the various firms it is found that huge purchases have been made from and huge sales have been made to allied concerns (excepting for firms Nos. V and VI which did handling of agency work under the Government of Bengal). It appears that the goods had been shifted from one concern to another and only a divided portion of profits is actually shown by each of the firms. It is further found that most of the outside parties to whom goods had been sold and from whom goods had been perched were the same for each of the firms I, II, III and IV. Other points of striking similarity, viz., (a) the business of the firms had been carried on nearly at same place, (b) the rent register produced by the landlord of the premises showing that the rent register produced by the landlord of these premises showing that the rent of all the firms had been paid in most cases on the same date during the month, (c) goods had been insured with the same company, viz., Jupiter general Insurance Co. Ltd., are also noticed."

5. On an analysis of the replies received from the banks in which accounts were maintained by the firms, the Income-tax Officer observed that the declarations made by the partners to the banks "were mostly conflicting with the constitution of the firms declared before" him, that Ladhuram had control over the business carried on by firm No. II though he was not a partner of that firm and that

he had in fact authority to operate some of the accounts, that Ganpatrai had declared himself to be partner of firm No. III to the Nath Bank Ltd. even though he was not a partner of that firm, that declaration of the constitution of the firms given before the banks did not in a majority of cases tally, that the employees of some firm declared themselves to be proprietor of other firms, that Ladhuram and his sons Hanumanbux and Ladhuram and Ganeshmal jointly operated some accounts indicating that they were not separate and that Ganeshmal, son of Ladhuram, had operated some of the accounts of firms Nos. I and IV in which he was not a partner. According to the Income-tax Officer it appeared from the declarations given to the banks that "little discrimination" was observed between Ladhuram and his sons in the matter of control of funds of the firm. He, therefore, concluded that all the same firms belonged to one and the same group of persons, namely, Ladhuram and his sons and Ganpatrai and the Ladhuram was the "real man behind the scene and he played the principal part." The Income-tax Officer accordingly refused to register the firms under section 26A of Income-tax Act for the year of assessment 1945-46 and treated the aggregate income of the six firms as assessable in the hands of firm No. I. The Appellate Assistant Commissioner, Range "C", Calcutta, agreed with the view of the Income-tax Officer that the partnership deeds were not genuine and were not intended to be acted upon and that the firms belonged to a group of person Ladhuram, Ganpatrai and their respective sons and the outsiders had no interest in the business of the firm. The Appellate Assistant Commissioner, however, reduced the assessable income by Rs. 10,756 but subject to that modification, dismissed the appeal. In appeal against that order, the Income-tax Appellate Tribunal held that firms Nos. I to IV only belonged to Ladhuram, his brother Ganpatrai and their respective sons, and that the outsiders in these firms were nominally introduced in the firms with a view to lend a semblance of genuineness to the partnership deeds. The Tribunal further held that in Firm No. II, the unexplained cash credits totalling Rs. 36,766 could not be added to the aggregator assessable income in the assessment year 1945-46, because the credits were all posed before April 1, 1944. The Tribunal accordingly held that incomes of firms I to VI were properly amalgamated in firm No. Is hands, but the Tribunal directed that out of the income of those firms, Rs. 36,776 be excluded. The appellants applied to the Tribunal for a reference under section 66 (1) of the Income-tax Act claiming that seventeen questions set out in an annexure to the petition arose out of the order of the Tribunal. At the hearing of the petition, counsel for the appellants restricted his claim for reference to the following five questions:

- "1. Whether in view of the fact that the questions set out in the petition referred to in paragraphs 29 and 30 of the statement of facts in annexure "A" before the Tribunal were pure questions of law, not involving any questions of fact, the Tribunal was right in disallowing the same ?
2. Assuming all the facts found by the learned Tribunal to be correct, whether these amount to any evidence to uphold the inference that the businesses of the 3 firms in question, namely, firms Nos. II, III and IV belong to firm No. I ?
3. Whether in view of the fact that the firms I to IV were all registered under the Indian partnership Act, 1932, and in view of the provisions of section 68 (1) read with section 58 (1) of the said Act, it was open to the taxing authorities to question their constitution and to treat them as one concern for the purposes of taxation ?
4. Whether the Appellate Tribunal was right in omitting to consider and record the reasons for its decision rejecting the points urged regarding the several amounts added to the income of the several firms in assessing their taxable income, profits or gains ?

5. Whether while dealing with the questions of quantum of the assessment, it was the duty of the Tribunal to pronounce its opinion on the posts regarding the several items of amounts added to the profits of the several firms ?"

6. The Tribunal having rejected this application holding that no question of law arose out of their order, the appellants applied to the High Court of Judicature at Calcutta that the Tribunal be called upon to submit a statement on those five questions. The High Court rejected this application summarily.

7. In these appeals with special leave counsel for the appellants conceded that the High Court was right in declining to call for a statement of the case from the Tribunal on the first three questions. It is manifest that question No. 2 does not raise any question of law and question No. 1 was not raised before the Tribunal. Again, because a partnership is registered under the partnership Act, the income-tax authorities are not obliged to register it under section 26A. The concession made by counsel for the appellants was, therefore, properly made. It was urged that statements of accounts prepared by the appellants and submitted to the Tribunal were not taken on there and were not considered. But these statements, it is admitted were prepared from the books of account produced before the income-tax authorities. These statements might have facilitated the work of the Tribunal, but if the Tribunal did not think it necessary to look into those statements and they were willing to look into the original record, it cannot be said that in refusing to admit the statements on the record of the appeal, any error of law was committed. It was also urged that the Tribunal did not consider the arguments advanced at the bar as to the quantum of the taxable income of the appellants on the footing that the income of firms I to IV were liable to be amalgamated for the purpose of assessment and therefore the High Court should have called for a statement of case on questions 4 and 5. Counsel submitted that detailed arguments were advanced before the Tribunal on diverse items having a bearing on the quantum of assessable income, but the Tribunal only dealt with one items, viz., the unexplained cash credits of Rs. 36,776 in the account of firm No. II, and did not consider the remaining items. We are unable to accept this argument. The Tribunal in paragraph 13 of its order, after referring to the unexplained cash credit of Rs. 36,776 and directing that they be deleted from the total assessable income, observed:

"There is no ground to interfere in any other respect".

8. In their order refusing to state a case, in paragraph 7, the Tribunal observed that counsel for the appellants "had said nothing about the reasons given by the Income-tax Officer and the Appellate Assistant Commissioner for rejecting the accounts." They also observed:

"It was clear that profits had in all these firms to be estimated under the proviso to section 13. About the estimates of profit, the main argument of the assessee's counsel was that as there had been purchases and sales by firms Nos. I, II, and III inter se, that fact should be taken into consideration in estimating profits. The Tribunal took into consideration all the submissions of the assessee but came to the conclusion that no case had been made out for the Tribunal's interference with the estimates of profit in the various concerns. In our opinion, the decision of the Tribunal on this points in concluded by findings of fate which are based on ample material on the record and no question of law arises out of this part of the order."

9. Our attention was invited to an item of Rs. 2,39,796, which was added back in assessing the taxable income. Counsel for the appellants contended that in respect of this item, the Tribunal

should have given a considered finding. We do not think that failure by the Tribunal to deal with this item expressly justifies interference by this court. The Income-tax Officer found that "Jagadishprosad & Co., Jagmohan Jayantilal, Jewanbhai Jewandas, Ramgopal Agarwala and Rupnarain Gaggar" were merely benami concerns of Ladhuram and his brother, Ganpatrai. He observed that the genuineness of the accounts had not been established although the appellants were given an opportunity to do so. The appellants in their written statement dated January 4, 1950, merely overheard that the nature of the credits will be apparent from the "narrations" in the book of account "which will speak for itself." He further observed:

"The explanation given is not at all convincing and absolutely no evidence has been produced to substantiate the nature and source of the credits appearing in accounts Nos. (1) to (5) above as well as the genuineness of those parties. In view of what has been fully discussed before it appears to me quite that the credits in those accounts represented nothing but assessee's undisclosed income."

10. The Appellate Assistant Commissioner observed that the appellants had not been able to establish by "any fresh evidence" that the evidence on which the Income-tax Officer based his finding was wrong or that there was anything to show that the concerns referred to in the Income-tax Officer's order were not benami concerns of the appellants. The Tribunal, it is true, did not expressly refer to the five accounts, but observed that the fact the appellants "put themselves to such shifts and devices to bolster up false story showed that they were uneasy under the knowledge that the ostensible firms were anything but real." They also observed in paragraph 13 of their order that there was no ground to interfere in any other respect (i.e., except the amount of Rs. 36,776) with the order of the Appellate Assistant Commissioner.

11. In paragraph 7 of the Appellate Tribunal's order under section 66 (1), they also made the observations already set out. In this state of the record, we do not think that there is a substance in the plea that the Tribunal had not considered the question whether the amount of Rs. 2,39,796 was properly added to the income of the appellants as undisclosed profits.

12. In our view, the High Court was right in holding that no question of law arose out of the order of the Tribunal. We are also of the view that no case is made out justifying interference in the appeals filed directly against the orders of the Tribunal.

13. The appeals therefore fail and are dismissed with costs. One hearing fee.

14. Appeals dismissed.