

R. B. Seth Champalal Ramswarup

Vs

Commissioner of Income-Tax, East Punjab, Delhi and Ajmer

Civil Appeal No. 497 of 1964

(K. Subba Rao, J. C. Shah, S. M. Sikri JJ)

21.10.1965

JUDGMENT

SHAH J. -

The appellant is a Hindu undivided family which derives its income from property, managing agency, dividends and forward transactions. In proceedings for assessment for 1945-46, the appellant claimed before the Income-tax Officer, Ajmer, that as a result of speculation in silver, gold and cotton, it had suffered a net loss of Rs. 1,58,080 in the previous year. In support of its claim the appellant produced entries in the cash book, journal, ledger and as of the original contracts received from commission agents, which according to the appellant proved the losses. The appellant also contended that it had sold family ornaments of the value of Rs. 85,137 to satisfy some of the losses in speculation. The Income-tax Officer rejected the claim of the appellant that it had incurred losses in speculation and treated Rs. 85,137 as income from an undisclosed source. The Appellate Assistant Commissioner of Income-tax, B-Range, Delhi, confirmed the order of the Income-tax Officer. The Income-tax Appellate

"... we are of opinion that there is not justification for making this addition.... There is nothing improbable in the assessee selling the gold ornaments for the purpose of paying the speculation losses. They were sold, according to the books, in 4 or 5 lots. We would, therefore, direct that the addition of Rs. 85,137 may be deleted."

The appellant then applied under section 66(1) of the Indian Income- tax Act, 1922, for reference of the following questions to the High Court of Judicature at Allahabad :

"(i) Whether there is any evidence on record to justify the finding of the Tribunal that the assessee fields to prove that they had suffered speculation losses to the tune of Rs. 1,58,080 ?

(ii) Whether the loss suffered by the assessee in speculation, viz., Rs. 1,58,080, is an admissible deduction under the Indian Income-tax Act ?"

The Tribunal rejected the application holding that no question of law arose out of its order. The appellant then moved the High Court of Allahabad under section 66(2) of the Income-tax Act and prayed that the Tribunal be called upon to slate the case and refer the questions of law stated in the application. The High Court was of the view that the order of the Tribunal disallowing losses claimed by the appellant in speculative business was founded on appreciation of evidence, and no question of law arose therefrom, on which a statement of the case could be called for. But the High

Court observed :

"The argument of learned counsel for the assessee is that, in view of this finding which amounts to acceptance of the case of the assessee that there were some speculation losses, the Tribunal was entirely wrong in disallowing the claim of speculation losses at least to the extent of the sum of Rs. 85,137. In court opinion this point raised on behalf of the assessee is a question of law on which we should ask for a statement of the case from the Tribunal. In the circumstances, we direct the Tribunal to state the case on this point as indicated by us above after framing an appropriate question."

Against the order of the High Court refusing to state the case with regard to the loss of Rs. 1,58,080, the appellant has appealed to this court with special leave.

On the evidence before it, the Tribunal held that the appellant failed to prove that it had suffered losses in speculative business in the year of account amounting to Rs. 1,58,080. The case of the appellant about the losses in speculation was disbelieved, because (1) the appellant failed to produce a copy of its account with the brokers and admitted not to have maintained a *sauda mondh* for the purpose of the speculative transactions, (2) that the appellant did not maintain any proper accounts or its speculative business, (3) that "there was no guarantee" that the appellant had produced all and *ankdas*, and (4) that in the cash book of the appellant there were many cash credits which were not satisfactorily explained. The burden of proving that the appellant had suffered losses in speculation lay upon it, and the Tribunal on a review of the evidence held that the appellant failed to prove that case. No question of law arises from the finding recorded by the Tribunal.

It was urged by Mr. Shroff for the appellant that this finding was inconsistent with the order of the High Court calling for a statement of the case in respect of the amount of Rs. 85,137. The High Court directed that a statement of the case be submitted in respect of this amount of Rs. 85,137, and a reference was made pursuant to that order. We do not feel called upon to consider at this stage whether there is any inconsistency in the order. *Prima facie* the order that the amount of Rs. 85,137 is not income from undisclosed sources, and is on that account not liable to be included in the appellant's income has no direct bearing on the question relating to proof of loss Rs. 1,58,080.

We have felt greatly disturbed at the leisurely pace at which this case has reached this court. The Income-tax Appellate Tribunal passed its order in appeal under section 33 of the Act on July 2, 1951, and the application under section 66(1) was dismissed by the Tribunal on October 20, 1951. A petition under section 66(2) was moved in the High Court on April 15, 1952, and that petition was disposed of on December 11, 1957. This court was then approached for special leave on March 31, 1958, and the printed record which runs into no more than 81 pages was sent by the High Court to this court in 1964. The High Court, as we have already stated, called for a statement of the case in respect of one question, and we are informed at the Bar that the reference is still pending. These proceedings relate to assessment for the year 1945-46. More than twenty years have elapsed since the ends of the year of account and more than fourteen years have gone by since the Tribunal disposed of the appeal. It is a matter of regret.

The appeal is dismissed with costs.

Appeal dismissed.

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