

SUREME COURT OF INDIA

Udhavdas Kewalram

Vs.

Commissioner of Income-Tax, Bombay City I

(J Shah, S Sikri and V Ramaswami JJ.)

14.04.1967

JUDGMENT

SHAH, J.

1. The High Court of Judicature at Bombay refused to call upon the Income-tax Appellate Tribunal to state a case and to submit questions of law arising out of the order of the Tribunal. The assessee appeals to this court with special leave.

2. In November, 1947, the assessee migrated from Pakistan to India and set up a money-lending business in Bombay. The assessee opened a set of books in the name of his wife Gopi Bai, and made credit entries therein totalling Rs. 7,85,712 between 1947 and 1952. In proceedings for assessment of income-tax, the Income-tax Officer accepted the claim of the assessee that out of the amount credited, Rs. 4,51,843 represented the value of assets brought by the assessee when he migrated to India and rejected his claim for the balance. The Income-tax Officer, in proceedings for reassessment commenced under section 34 of the Income-tax Act, brought to tax Rs. 79,989 in the assessment year 1948-49, Rs. 1,89,800 in the year 1949-50 and Rs. 64,880 in the year 1952-53. The Appellate Assistant Commissioner accepted the case of the assessee that the three amounts were part of the assets brought with him either in cash or as jewellery when the assessee migrated to India. The Income-tax Appellate Tribunal confirmed the order of the Appellate Assistant Commissioner in so far as it related to the assessment years 1948-49 and 1949-50. But the Tribunal held that the assessee had failed to prove the claim that Rs. 55,293, out of the amount of Rs. 64,880 assessed to tax in 1952-53, represented the value of ornaments, which the assessee claimed were sold by him after the death of his wife, Gopi Bai. The Tribunal accepted the claim of the assessee that the balance of Rs. 9,537 represented cash gifts received by Ishwari Bai. The Tribunal accordingly set aside the order of the Appellate Assistant Commissioner and directed that Rs. 55,293 be brought to tax in the assessment year 1952-53.

3. The assessee then applied to the Tribunal praying that a statement of the case be drawn up and the following questions arising out of the order of the Tribunal be submitted to the High Court :

"(a) Whether there was evidence before the Tribunal to hold that the credit of Rs. 55,293 in the account of the wife of the assessee did not represent the sale proceeds of her gold ornaments ?

(b) If the answer to question No. 1 is in the affirmative, whether the sum of Rs. 55,293 could be held as the 'undisclosed income' of the assessee himself ?"

4. The Tribunal rejected the application holding that they had not accepted the case of the assessee about the sale of the ornaments of Gopi Bai.

5. The assessee then applied to the High Court of Bombay for an order under section 66(2) of the Indian Income-tax Act directing the Tribunal to state a case and refer the questions of law arising out of the order of the Tribunal. The High Court rejected the application.

6. It appears from the order of the Appellate Assistant Commissioner that the assessee had produced considerable documentary evidence in support of his case that in May, 1947, a quantity of gold jewellery was given by him to a refinery for melting the that 518 tolas of gold were sold by him on May 17, 1951. It was the case of the assessee that gold jewellery melted was out of the "outmoded ornaments" of Gopi Bai, his first wife. The Appellate assistant Commissioner, in dealing with the claim for excluding Rs. 55,293 from the amount brought to tax on reassessment observed :

"..... the appellant has filed a copy of the voucher for the sale proceeds of 518 tolas of gold sold after the refinement to Ambalal Amichand of Bombay on May 17, 1951. The sale proceeds are duly supported with vouchers as also with the melting charges paid and also with a list of the ornaments received by her from several relatives..... On the face of the overwhelming evidence produced by the appellant, I am unable to understand the Income-tax Officer's contentions that the credits did not represent the sale proceeds of gold or that the account was a 'benami' account of the appellant."

7. In determining whether the "version" of the assessee was true, the Tribunal was impressed by the improbability of the claim : the Tribunal did not consider the documentary evidence produced by the assessee. In rejecting the application for a reference under section 66(1) the Tribunal observed that there was no "conclusive proof of the assessee's version that gold ornaments were melted and sold."

8. The Income-tax Appellate Tribunal performs a judicial function under the Indian Income-tax Act : it is invested with authority to determine finally all questions of fact. The Tribunal must, in deciding an appeal, consider with due care all the material facts and recorded its finding on all the contentions raised by the assessee and the Commissioner in the light of the of the evidence and the relevant law.

9. The judgment of the Tribunal suffers from a manifest infirmity. The Tribunal has not adjudicated upon the truth of the case of the assessee on the light of the evidence adduced by the assessee in support of his case. The infirmity becomes more pronounced when regard is had to fact that, relying upon the documentary evidence tendered by the assessee, the Appellate Assistant Commissioner had accepted the claim of the assessee relating to the sale of Gopi Bai's ornaments. The Tribunal was undoubtedly competent to disagree with the view of the Appellate Assistant Commissioner. But in proceeding to do so, the Tribunal had to act judicially, i.e. to consider all the evidence in favour of and against the assessee. An order recorded on a review of only a part of the evidence and ignoring the remaining evidence cannot be regarded as conclusively determining the questions of fact raised before the Tribunal.

10. It is for the income-tax authorities to prove that a particular receipt is taxable. In deciding whether an item of receipt is taxable as income, the Tribunal may consider the evidence in the light of the statements made by the assessee, his conduct and the probabilities, but in arriving at its conclusion there must be a fair and reasonably full review of the evidence.

11. In our view, questions of law set out in the application of the assessee under section 66(1) did arise out of the order of the Tribunal.

12. The order passed by the High Court is set aside and the Tribunal is directed to draw up a statement of the case to submit the two questions which we have set out earlier to the High Court of Bombay. Costs in this appeal will be the costs in the High Court.

13. Appeal allowed.