

Raja Sharda Narain Singh

Vs

Commissioner of Income-Tax, U. P.

Civil Appeal No. 1165 of 1966

(J. C. Shah, S. M. Sikri, V. Ramaswami-I JJ)

17.04.1967

JUDGMENT

SIKRI J. -

This appeal by special leave is directed against the judgment of the Allahabad High Court in Miscellaneous I. T. Case No. 176 of 1957, refusing to direct the Income-tax Appellate Tribunal to state a case under section 66(2) of the Indian Income-tax Act, 1922.

In order to appreciate the points raised before us, it is necessary to set out the relevant facts. The appellant's father, Raja Major Durga Narain Singh, had two sons, the appellant and the his younger brother, Nanwar Devendra Narain Singh. The appellant was born in 1929, and attained the age of majority in 1947. Up to 1952, he was a student. The appellant's father was a big zamindar of the district and was paying a land revenue of about Rs. 2 lakhs a year. He enjoyed income from property, flour mill, hire of kothies, oil mill, money-lending and other sources. He died on September 2, 1944. The Income-tax Officer, for the year of assessment 1949-50, noticed that on November 3, 1947, Rs. 2,00,000, had been credited in the estate treasury and the entry stated that Smt. Rani Bahadur Sahiba had given Rs. 2 lakhs from the private money of the deceased Raja Saheb for deposit. The Income-tax Officer was not satisfied with the explanation given on behalf of the assessee and included the sum of Rs. 2 lakhs in the tota

The Income-tax Officer rejected the assessee's contention that the sum of Rs. 2 lakhs was out of the private purse of the late Raja Durga Narain Singh and was not the revenue income of the assessee for the year under consideration. It is not necessary to set out the reasoning of the Appellate Tribunal. We have gone through the order and it is sufficient to state that there was material on which the Tribunal could come to the conclusion that the sum of Rs. 2 lakhs was the revenue income from undisclosed sources.

The Tribunal then considered the question whether the revenue income was the income of the accounting year relevant to the assessment year 1949-50. It observed on this point :

"There can hardly be any doubt that the sum represented the revenue income of the year under consideration. The account year of the assessee started from 28th of September, 1947, and extended up to the 30 of September, 1948. The deposit appears on 3rd of November, 1947. The assessee is a man of great status. He is the Raja of an estate and owns considerable income from zamindari, sayar, money-lending, etc. He has been assessed in the past on considerably large amounts and his potential capacity to earn income is certainly great. The deposit appears in the account books

of the assessee during the accounting period. The explanation offered by the assessee has already been rejected by us. The amount is undoubtedly big but the assessee with his potential capacity to earn income could not have found it difficult to earn a sum of Rs. 2 lakhs from sources known to him but undisclosed to the department. On these facts, the only inference that can be drawn is that the sum of Rs. 2 lakhs represents not only the income

The assessee then filed an application under section 66(1) of the Income-tax Act before the Appellate Tribunal. The Appellate Tribunal, however, rejected the application on the ground that the findings recorded by the Tribunal were purely of fact.

The assessee had suggested that following question of a law to be referred :

"(1) Whether, in the circumstances of the case, the department succeeded in proving that the sum of rupees two lakhs was the income of they year commencing from 1st October, 1947, to 20th September, 1948 ?

(2) Whether, on the facts of the case, the Tribunal was justified in drawing an inference that the sum of rupees two lakhs represented not only the income of the assessee but also his income for the year in question ?

(3) Whether, considering that the previous year commenced on 1st October, 1947, it could be said that the assessee had made an income of rupees two lakhs within a short period of one month and three days ?

(4) Whether there was any evidence on the record to justify a finding that rupees two lakhs was the income from nazrana, etc., or from other undisclosed sources ?"

The assessee then applied to the High Court under section 66(2) of the Income-tax Act, asking the same questions to be referred. The counsel pressed two points in support of the application before the High Court :

"(1) Whether an amount of Rupees two lakhs included in the total income of the assessee in as income from some undisclosed source was not assessable in the assessment year 1949-50 on basis of the accounting year of the assessee from 1st October, 1947, to 30th September, 1948, but was assessable only in the assessment year 1948- 49 with reference to the financial year 1st April, 1947, to 31st March, 1948 ?

(2) Whether there was material for the finding that the said amount of rupees two lakhs was the income of the assessee from some undisclosed source ?"

The High Court, as already stated, rejected the application. The assessee having obtained special leave, the appeal is now before us.

The learned counsel for the assessee, Mr. S. T. Desai, urges that the four questions set out above should have been referred. In our view, the only questions that should have been referred by the Appellate Tribunal are question Nos. 1 and 2 which are similar to the first question which was pressed before the High Court.

We may mention that Mr. Desai referred to Commissioner of Income-tax v. P. Darolia & Sons, Commissioner of Income-tax v. Sheolal Ramlal, and Sushil Chandra Ghose v. Income-tax Officer in support of the proposition that if undisclosed income was found to be from some unknown source other than the regular business of the assessee, the financial year had to be taken as the previous year for such income. At this stage we are not called upon to decide whether these case were correctly decided, but Mr. Desai is certainly entitled to rely on them to show that a serious question of law arose out of the order of the Appellate Tribunal.

The learned counsel for the respondent says that no such question was argued before the Appellate Tribunal. We have already extracted the relevant paragraph from the order of the Appellate Tribunal. It appears from the order of the Appellant Tribunal that they considered the question whether the income could be held to be the income of the relevant accounting year. This question was a wide question and included the aspect which is now being put in the forefront. It is true that the case relied upon by Mr. Desai were not mentioned by the Appellate Tribunal but we are unable to agree with the learned counsel for the respondent that an aspect of a question cannot be the subject- matter of a reference, if that aspect is a not considered by the Appellate Tribunal.

We agree with the High Court that the second question pressed before it, namely, whether there was material for the finding that the said amount of rupees two lakhs was income of the assessee from some undisclosed source need not be stated by the Tribunal as there is material on the record in support of the finding of the Appellate Tribunal.

In the result, the appeal succeeds and we direct the Appellate Tribunal to draw up a statement of the case and refer the following question to the High Court :

"Whether the sum of rupees two lakhs included in the total income of the assessee as income from some undisclosed source was not assessable in the assessment year 1949-50 on the basis of the accounting year to the assessee from 1st October, 1947, to 30th September, 1948, but was assessable only in the assessment year 1948-49 with reference to the financial year 1st April, 1947, to 31st March, 1948 ?"

The costs incurred in this court will be costs in the cause.

Appeal allowed.

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