

Esthuri Aswanthiah

Vs

Commissioner of Income-Tax, Mysore

Civil Appeal No. 631 of 1966

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

18.04.1967

JUGEMENT

SHAH, J. –

The appellant, a trader in groundnuts and other commodities in the State of Mysore, was taxed under the Mysore Income-tax Act, 1923, for the assessment years ending with the assessment year 1949-50. On July 1, 1949, the assessee brought into his books of account an opening cash balance of Rs. 1,87,000. In proceedings for assessment to tax for the year which ended on June 30, 1950, the assessee was called upon to explain that entry and to produce his books of account of the earlier years. The assessee pleaded that his books of account up to June 30, 1949, were lost and that the amount of Rs. 1,87,000 represented "cash brought from an iron safe kept in his house". The Income-tax Officer found that in each previous year when the assessee was assessed under the Mysore Income-tax Act, he had pleaded that his books of account were either lost or stolen in the succeeding year. The Income-tax Officer was of the view that the assessee had probably an amount of Rs. 50,000 on hand representing a cash balance brought forward from the previous year, and that the balance of Rs. 1,37,000 was the assessee's income from undisclosed sources. The order passed by the Income-tax Officer assessing to tax the income of the assessee for the year 1951-52 was set aside by the Appellate Assistant Commissioner on the ground that under section 2(11) of the Income-tax Act, 1922, the previous year for the income from other sources could only be the financial year ending March 31, 1950. Giving effect to this finding, the Income-tax Officer issued a notice of reassessment under section 34 of the Indian Income-tax Act for bringing to tax the amount disclosed by the books of account of the assessee for the assessment year 1950-51.

The assessee submitted a petition to the High Court of Mysore for a writ declaring that the notice under section 34 of the Act issued by the Income-tax officer was without jurisdiction, and for an order quashing the notice and proceedings consequent thereon. This petition was dismissed by the High Court of Mysore and the order was confirmed by this Court in appeal.

In the meanwhile the Income-tax Officer completed the assessment for the year 1950-51 and brought to tax Rs. 1,37,000 as income from undisclosed sources which had escaped tax. The assessee's contention that he had assets on hand exceeding Rs. 1,55,000 from his share of the joint family property, business income and other sources, and those assets were brought into his books of account on July 1, 1949, was rejected by the Income-tax Officer. The order passed by the Income-tax Officer was confirmed in appeal by the Appellate Assistant Commissioner. The assessee appealed to the Appellate Tribunal and contended, inter alia, that the evidence produced by him showed that he had with him on October 27, 1946, in his bank account Rs. 1,38,946, that he had received Rs. 55,846 as his share on partition of the joint family of which he was a member, and that,

besides these sources, he had agricultural income. The Income-tax Appellate Tribunal modified the order of the Appellate Assistant Commissioner and brought to tax Rs. 50,000 as income from undisclosed sources. The reasons recorded by the members of the Tribunal may be set out in their own words :

"It is clear that the assessee has not been able to explain the source of Rs. 1,37,000 satisfactorily. But there have been trading additions for the assessment years 1951-52 and 1952-53 of Rs. 27,899 and Rs. 85,000. But the assessee has not proved that this amount was all intact and besides, as pointed out by the Departmental Representative, the bank balance on 22-10-1946 would not have represented the cash possessed by the assessee and at the same time, it is not unlikely that the assessee had some cash having regard to the trade in jaggery, the assets got on partition in the Hindu undivided family and other sources; the Counsel for the assessee also stated that his client was prepared to be assessed on Rs. 50,000. So we direct that the addition must be confined to Rs. 50,000 only."

The Tribunal drew up a statement of the case under section 66(2) of the Income-tax Act and submitted three questions to the High Court of Mysore, of which the second and the third questions are relevant for the purpose of this appeal :

"2. Having found that the assessee was not able to explain satisfactorily the source of the credit of Rs. 1,37,000, whether the Tribunal had any material to come to the conclusion that the addition of Rs. 1,37,000 made by the Income-tax Officer as the income from undisclosed sources should be reduced to Rs. 50,000 only ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in reducing the addition of Rs. 1,37,000 to Rs. 50,000 as income from undisclosed sources ?"

The High Court answered the two questions in the negative. The High Court observed that the Tribunal's conclusion that out of the amount brought to tax by the Income-tax Officer only Rs. 50,000 represented income from undisclosed sources was based on no evidence. The High Court observed :

"The finding... shows that the Tribunal also did not accept the explanation given by the assessee as regards the cash credit entry on 1-7-1949. But strangely enough, the Tribunal, for no reason whatsoever, came to the conclusion that the unaccounted income may be estimated at Rs. 50,000. We do not know how the offer of the counsel for the assessee was at all relevant. The Tribunal's surmise about the assessee's income from jaggery trade and the receipt by him at the time of the partition in his family is not based on any material. Surmises have no place in judicial and quasi-judicial proceedings."

The judgment recorded by the Tribunal has not the merit of clarity or of consistency. The Tribunal commenced by disbelieving the explanation of the assessee relating to the source of the credit entry. After some inconclusive statements it proceeded to record that it was not unlikely that the assessee had some cash on hand from profits earned in the trade from jaggery, and assets received on partition of the joint family of which the assessee was a member. In estimating Rs. 50,000 as the income from undisclosed sources, the Tribunal merely relied upon the offer made by counsel for the

assessee. This was an unsatisfactory way of disposing of the appeal. The function of the Tribunal in hearing an appeal is purely judicial. It is under a duty to decide all questions of fact and law raised in the appeal before it : for that purpose it must consider whether on the materials relied upon by the assessee his plea is made out. Conclusive proof of the claim is not predicated : the Tribunal may act upon probabilities, and presumptions may supply gaps in the evidence which may not, on account of delay or the nature of the transactions or for other reasons, be supplied from independent sources. But the Tribunal cannot make arbitrary decisions : it cannot found its judgment on conjectures, surmises or speculation. Between the claims of the public revenue and of the tax-payers, the Tribunal must maintain a judicial balance. The order passed by the Tribunal without recording any reasons in support of the estimate of unaccounted income cannot, therefore, be sustained.

But counsel for the assessee said that the case of the assessee had not been fairly tried. He said that there was on the record evidence that in a partition suit between the assessee and his brother the assessee received on June 30, 1949 an amount of Rs. 48,500 and Rs. 14,647 and Rs. 13,116 representing "money bonds". He also said that the assessee had made a profit of Rs. 70,000 in his business in jaggery, that between November 18, 1946 and December 16, 1948, the assessee had drawn cheques "to self" on the Mysore Bank for Rs. 1,67,800 and between January 18, 1947 and November 25, 1947 the assessee had drawn cheques "to self" for Rs. 52,255, and that on October 22, 1946 the assessee had in his Bank Account a balance of Rs. 1,39,946. Counsel contended that the assessee had at the material time large funds which could have been brought into the books of account on July 1, 1949 but the Tribunal failed to consider the evidence and had merely accepted the offer made by counsel for the assessee that he should be assessed in the sum of Rs. 50,000

For the reasons already recorded, we agree with the answers recorded by the High Court on the two questions.

But it is necessary to give certain effective directions, lest a bald order of dismissal of the appeal may result in injustice, especially when the assessee had not a fair trial of his case before the Tribunal. Section 66(5) of the Indian Income-tax Act, 1922, requires the Tribunal on receiving a copy of the judgment of the High Court to pass such orders as are necessary to dispose of the case conformably to such judgment. This clearly imposes an obligation upon the Tribunal to dispose of the Appeal in the light of and conformably with the judgment of the High Court. Before the Tribunal passes an order disposing of the appeal, there would normally be a hearing. The scope of the hearing must of course depend upon the nature of the order passed by the High Court. If the High Court has agreed with the view of the Tribunal, the appeal may be disposed of by a formal order : if the High Court disagrees with the Tribunal on a question of law, the Tribunal must modify its order in the light of the order of the High Court : if the High Court has held that the judgment of the Tribunal is vitiated, because it is based on no evidence or that it proceeds upon conjectures, speculation or suspicion, or has been delivered after a trial contrary to rules of natural justice, the Tribunal would be under a duty to dispose of the case conformably with the opinion of the High Court and on the merits of the dispute. In all cases, however, opportunity must be afforded to the parties of being heard.

In *Income-tax Appellate Tribunal, Bombay & Ors. v. S. C. Cambatta & Co. Ltd.* the Bombay High Court explained the procedure to be followed in the disposal of an appeal conformably to the judgment of the High Court. Chagla C.J., in delivering the judgment of the Court, observed :

".... when a reference is made to the High Court either under section 66(1) or section 66(2) the decision of the Appellate Tribunal cannot be looked upon as final; in other

words, the appeal is not finally disposed of. It is only when the High Court decides the case, exercise its advisory jurisdiction, and gives directions to the Tribunal on question of law, and the Tribunal reconsiders the matter and decides it, that the appeal is finally disposed of.... it is clear that what the Appellate Tribunal is doing after the High Court has heard the case is to exercise its appellate powers under section 33.... The shape that the appeal would ultimately take and the decision that the Appellate Tribunal would ultimately give would entirely depend upon the view taken by the High Court."

A similar view was expressed by the Bombay High Court in *Rajkumar Mills Ltd. v. Income-tax Appellate Tribunal*.

The High Court has held, and we agree with the High Court, that the judgment of the Tribunal is based on no reasoning and is on that account speculative. But by recording that answer, it is not to be implied that the order of the Appellate Assistant Commissioner is confirmed. It will be the duty of the Tribunal, conformably with the judgment of the High Court, to dispose of the case after hearing the assessee and the Commissioner in the light of the evidence and according to law.

Subject to this direction, the appeal is dismissed. The appellant will pay the costs of the Commissioner in this appeal.

Appeal dismissed.

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