

Commissioner of Income-Tax, U. P.

Vs

Devi Prasad Vishwanath Prasad ([1968] 69 I. T. R. (Sh. N.) 41

Civil Appeal No. 592 of 1967

(J. C. Shah JJ)

01.08.1968

JUDGMENT

SHAH J. -

The respondent is a firm dealing in handloom cloth and silk fabrics and has its head office at Banaras and a branch office at Madura. In proceedings for assessment for the assessment year 1946-47 the Income-tax Officer declined to rely upon the books of account of the assessee, and estimated the business profits of the assessee by applying a flat rate of 12 1/2% to the turnover of the business. The Income-tax Officer also found in the books of account an entry dated January 15, 1945, of a deposit of Rs. 20,000 in the name of Messrs. Banshidhar Rawatmal of Ratangarh. The Income-tax Officer called upon the assessee to prove the nature and source of this deposit and, after considering the evidence produced by the assessee, rejected the plea of the assessee that the amount was deposited by Messrs. Banshidhar Rawatmal. In the view of the Income-tax Officer the amount of Rs. 20,000 represented the assessee's income from some undisclosed source.

The order relating to the addition of Rs. 20,000, in addition to the estimated income, was challenged before the Appellate Assistant Commissioner and before the Tribunal, but without success. The tribunal was of the view that the evidence of Banshidhar of Messrs. Banshidhar Rawatmal that he had Rs. 20,000 which he received from his jajman was unreliable, and that the Income-tax Officer was right in estimating the turnover from sales and in applying a rate for determination of the profit. It was not argued before the Tribunal that if the case of the assessee that the amount of Rs. 20,000 was deposited by Messrs. Banshidhar Rawatmal with him (sic) it would be treated as income which was part of the business of the assessee in handloom clothe and silk fabrics.

An application filed by the assessee under section 66(1) of the Income-tax Act to submit a statement of case to the High Court of Allahabad was rejected. But the High Court directed the Tribunal to submit a statement of case on the question whether there was "any material to hold that the sum of Rs. 20,000 was income of the assessee from some other source, and was not income included in the assessed income on the rejection of the books of account". Pursuant to this direction, the Tribunal submitted a statement of the case raising the following question:

"Whether on the facts and in the circumstances of the case, there was any material to hold that the sum of Rs. 20,000 was income of the assessee from some other source and was not income included in the assessed income of the rejection of the books of account ?"

The Tribunal in making the reference observed that "at no stage of the proceeding did the assessee

urge that the sum of Rs. 20,000 got merged with the estimate of profit made in the business at the head office"; the only objection raised by the assessee was that the sum should not have been added as income from some undisclosed source.

The High Court considered the matter in great detail and recorded an answer in favour of the assessee. The commissioner has appealed against that order with a certificate granted by the High Court.

There is nothing in law which prevents the Income-tax Officer in an appropriate case in taxing both the cash credit, the source and nature of which is not satisfactorily explained, and the business income estimated by him under section 13 of the Income-tax Act, after rejecting the books of account of the assessee as unreliable. This was so decided in *Kale Khan Mohammad Hanif v. Commissioner of Income-tax*. Whether in a given case the Income-tax Officer may tax the cash credit entered in the books of account of the business, and at the same time estimate the profit must, however, depend upon the facts of each case.

It is unnecessary to elaborate this question in this case, because in our view the question on which the High Court directed the Tribunal to state a case in which the High Court answered did not arise out of the order of the Tribunal. As we have already stated, before the Tribunal at the hearing of the appeal under section 33 of the Income-tax Act, only two questions were argued: (1) that the explanation of the assessee about the genuineness of the entry in the name of Banshidhar should be accepted and (2) that the Income-tax Officer erred in discarding the books of account in determining the profits from the estimated turnover of the business. No other contention was raised before the Tribunal hearing the appeal.

The application filed before the Tribunal under section 66(1) for starting a case is not before the court but in the petition under section 66(2) before the High Court it was claimed that the following three questions arose out of the order of the Tribunal:

- (a) Whether in view of the statement of Banshidhar and other witnesses proving the deposit, it was still open to the department to treat the amount of Rs. 20,000 belonging to Banshidhar as being income from undisclosed source.
- (b) Whether there was any further burden of proof to have been discharged by the assessee in respect of the item of Rs. 20,000 in order to be income from being taxed for Rs. 20,000 for a sum not belonging to the applicant.
- (c) Whether, it was competent to the department, both to add to the quantity of sales and the rate in the circumstances of the case."

The High Court, in disposing of the application under section 66(2), expressed the view that because the amount of Rs. 20,000 was entered in the books of account of the business, there was some material to hold that the amount was income of the assessee from the business and not from some other source. But it was not open to the High Court to direct the Tribunal to state a case on a question which was never raised before or decided by the Tribunal at the hearing of the appeal. The question again assumes that it was for the Income-tax Officer to indicate the source of the income before the income could be held taxable and unless he did so, the assessee was entitled to succeed. That is not, in our judgment, the correct legal position. Where there is an explained cash credit, it is open to the Income-tax Officer to hold that it is income of the assessee and no further burden lies on

the Income-tax Officer to show that that income is from any particular source. It is for the assessee to prove that even if the ca

We discharge the order recorded by the High Court and allow the appeal. We decline to answer the question did not arise out of the order of the Tribunal. The assessee will pay the costs of the Commissioner in this court and in the High Court.

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