

The Commissioner of Income-Tax, Kerala, Ernakulam

Vs

K. S. Kannan Kunhi, Killara House, Kattoor

Civil Appeal No. 1331 of 1969

(K. S. Hegde, P. Jagmohan Reddy, H. R. Khanna JJ)

19.09.1972

JUDGMENT

HEGDE, J. -

1. This is an appeal by special leave against the judgment of the High Court of Kerala in a Reference under Section 66(2) of the Indian Income-tax Act, 1922 (to be hereinafter referred to as the Act).
2. The material facts of the case as could be gathered from the statement of the case may now be stated : One Sankunni belonging to the Ezhava community of South Malabar had five sons by name Kannan Kunhi, Chathunni, Velayudhan, Pappu and Ramakrishan. Kannan Kunhi is the eldest son. He was a permanent resident of Ceylon. He had a business in toddy in Ceylon in partnership with others. On August 17, 1950, a business in toddy was started in Kerala. The licence for this business was in the name of Kannan Kunhi. On the same day there was a credit entry in the books of account for the toddy business for a sum of Rs. 46,563/-. This business was managed by Chathunni. The assessee was a H.U.F. The assessee purchased an item of property on May 19, 1950, for a sum of Rupees 14,250/- and another item of property for Rs. 3,000/- on February 16, 1951. The Income-tax Officer brought these amounts namely Rs. 46,563/-, Rupees 11,250/- and Rs. 3,000/- to tax as income from undisclosed sources during the assessment year 1951-52, the relevant accounting year ending on March 31, 1951. The assessee's case was that the initial capital of Rs. 46,563/- for the toddy business was supplied partly by the remittances made by Kannan Kunhi from Ceylon and partly from the income of the agricultural property owned by H.U.F. The case for the assessee was that it owned immovable property which was yielding a yearly income of about Rs. 6,000/-. The I.T.O. rejected the explanation offered by the assessee by saying that the explanation furnished is not at all satisfactory. The Appellate Assistant Commissioner affirmed the decision of the I.T.O. excepting as regards the price paid for the acquisition of the property on February 16, 1951. The further appeal taken to the Income-tax Appellate Tribunal was unsuccessful. Thereafter the assessee moved the Tribunal under Section 66(1) of the Act to submit certain questions of law arising from the order of the Tribunal to the High Court for ascertaining its opinion. That application was rejected by the Tribunal. Subsequently the assessee moved the High Court under Section 66(2) of the Act and the High Court was pleased to direct the Tribunal to state a case and submit the question "whether on the facts and in the circumstances of the case, the addition of Rupees 60,813/- or any portion thereof as the income of the assessee family from undisclosed sources during the previous year ended March 31, 1951, relevant for the assessment year 1951-52 is valid and justified in law". The Tribunal accordingly stated the case and submitted the aforementioned question to the High Court. The High Court has answered that question in the negative and in favour of the assessee. Aggrieved by that decision, the Commissioner of Income-tax, Kerala has brought this

appeal.

3. Mr. B. Sen, learned Counsel for the Department formulated before us three questions of law for decision. They are -

- (1) The question of law ordered to be referred by the High Court did not arise from the order of the Tribunal;
- (2) The question as framed did not give jurisdiction to the High Court to go into the findings of fact; and
- (3) The High Court has not correctly applied the principles of law in arriving at its conclusion.

4. Dealing with the facts of the case, the High Court observed :

"Let us now examine the facts of the instant case in the light of the above principles (principles enunciated in the decided cases referred to by the High Court). Sankunny, the kartha of the assessee family carried on business in Ceylon for about 20 years until he returned to India and settled down in his village in 1940. Kannan Kunhi, the eldest son of Sankunny and the present kartha of the family has been carrying on business in Ceylon from 1942 onwards in partnership with others. The licence of the toddy business started in Kerala on August 17, 1950, was taken in the name of Kannan Kunhi. Out of the sum of Rs. 60,813/- assessed as income from undisclosed sources, Rs. 46,563/- is the amount credited in the books of account of this business on August 17, 1950. The assessee's explanation, as we have already stated was that this amount, as well as the amounts invested for paying immovable properties came from past remittances from Ceylon and savings from agricultural property. This explanation did not receive any consideration by the Appellate Tribunal. All that it stated about the matter is contained in one sentence appearing in Paragraph 37 of its order and it reads :

"The assessee had no proper and satisfactory explanation for the source of these amounts."

The Income-tax Officer dealt with this matter as follows :

"Other sources : Income from undisclosed sources. An amount of Rupees 46,563 has been brought into the books for the new toddy business. The assessee was asked to explain the nature and source of these funds. The explanation furnished is not at all satisfactory, and so I will treat this amount as income from undisclosed sources."

5. Before going into the questions formulated by Mr. B. Sen, it is necessary to examine whether the justice of the case requires our interference with the judgment of the High Court in exercise of discretionary jurisdiction under Article 136 of the Constitution. It may be noted that the assessee had explained that Rupees 46,563/- invested for the purposes of toddy business in Kerala was partly made up from the income from the immovable property possessed by the assessee and partly from the remittances made by Kannan Kunhi from Ceylon. The I.T.O. did not examine the merits of those explanations. He rejected them by merely observing that they were not satisfactory. The explanations offered by the assessee are not prima facie absurd. They were capable of being

examined by the I.T.O. It was possible for the I.T.O. to go into the extent of the immovable property owned by the H.U.F. and its income. He did not care to do so. It was also possible for the I.T.O. to go into the question of remittances made by Kannan Kunhi from Ceylon. Here again the I.T.O. did not choose to do so. It was not even suggested by the I.T.O. that the assessee was having any business activity in India prior to August 17, 1950, or any other source of income taxable under the Act. If the explanation given by the assessee that part of the initial business capital was supplied by Kannan Kunhi is correct then the same is a good explanation. That explanation has not been examined at all. Similarly the assessee's explanation that he was having income from the agricultural property has not been examined. The Appellate Assistant Commissioner also did not choose to examine the explanation given nor did the Tribunal care to go into that explanation. It just brushed aside that explanation with the observation : "that the assessee had no proper or satisfactory explanation for the source of these amounts". In our opinion the departmental authorities as well as the Tribunal has arbitrarily rejected the explanation given by the assessee. Under these circumstances we do not think that we will be justified in going into the niceties of the law whether the High Court was justified in going into the merits of the findings reached by the Tribunal. All that we need say is that this is not a fit and proper case where we should exercise our discretionary jurisdiction.

6. In the result this appeal fails and the same is dismissed with costs.

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