

The C. I. T., West Bengal-II, Calcutta

Vs

M/s. Radha Krishan Nandlal

Civil Appeal No. 1811 of 1970

(Y. V. Chandrachud, R. S. Sarkaria, A. C. Gupta JJ)

06.03.1975

JUDGMENT

CHANDRACHUD, J. –

1. The assessee-firm M/s. Radha Kishan Nandlal, which is respondent to this appeal consists of three partners, Subhkaran Jhunhunwalla having an eight anna share and two others having each a four annas share therein. In the course of the assessment for the years 1950-51 and 1951-52 the Income-tax Officer found that another firm, M/s. Radhakissen Nandlal Arhatwalla, was a branch of the assessee firm. Accordingly, he included the income of that firm in the hands of the assessee-firm for those years.
2. During the assessment proceedings for the year 1952-53, the year under reference, the Income-tax Officer on the basis of the past records intended to include the income of the branch firm in the income of the assessee-firm. The account books of the branch firm were not produced by the assessee-firm on the grounds that the business was closed and therefore the books were not easily available. But Subhkaran Jhunhunwalla had returned an income of Rs. 55,416 as his share in the profits of the branch firm on the basis that he had a one-anna share therein. The Income-tax Officer estimated the income of the branch firm at sixteen times the income which was returned by Subhkaran Jhunhunwalla. Deducting a sum of Rs. 40,000 for expenses inclusive of payments made to the working partners of the branch firm, the Income-tax Officer added back a sum of Rs. 8,60,000 to the assessee-firm's income for the relevant year. The order of assessment was confirmed in appeal by the Appellate Assistant Commissioner.
3. On further appeal, the Tribunal examined Subhkaran Jhunhunwalla in order to determine the income of the branch firm. Jhunhunwalla stated in his evidence that the sum of Rs. 55,416 which was shown by him as his share in the income of the branch firm was really the entire profit earned by that firm. Evidently the Tribunal disbelieved this but it held that Jhunhunwalla had an eight anna share in the income of the branch firm. The income of the branch firm was on that basis estimated by the Tribunal at Rs. 1,10,000 odd. Deducting therefrom a sum of Rs. 25,000 for expenses inclusive of amounts payable to the working partners, the Tribunal held that the total income of the branch firm which could be included in the assessee's income would come to a sum of Rs. 75,000 only.
4. The appellant, the Commissioner of Income-tax, West Bengal II, Calcutta, thereafter filed an application under Section 66(1) of the Income Tax Act, 1922, asking the Tribunal to refer to the High Court two questions of law said to arise out of its judgment. The Tribunal rejected that application.

5. The appellant thereafter filed an application in the High Court of Calcutta under Section 66(2) of the Act praying that the Tribunal be asked to refer the two questions to the High Court. The High Court granted a Rule on that application but discharged it without a speaking order. This Court gave to the appellant special leave to appeal from the order of the High Court.

6. The two questions on which the appellant sought reference to the High Court are these :

(1) Whether, on the facts and in the circumstances of the case, in holding that the total income of the assessee from the firm of Radhakissen Nandlal Arhatwala which was to be included in the assessee's assessment for the assessment year 1952-53 was only Rs. 75,000 the Tribunal misdirected itself in law in basing its conclusion on some evidence ignoring other essential matters on record ?

(2) Whether, on the facts and in the circumstances of the case, the said conclusion of the Tribunal was perverse in the sense, that no reasonable man could come to it (sic it) on the materials on record ?

7. The Tribunal accepted the contention of the Department that M/s. Radhakissen Nandlal Arhatwala was not an independent firm consisting of the partners of the assessee-firm and certain outsiders but that it was a branch of the assessee-firm. The Tribunal, however, found that the Income-tax Officer had estimated the income of the branch firm on a "fallacious" basis. In coming to this conclusion the Tribunal thought that Subhkaran Jhunhunwalla had an eight anna share in the branch firm and therefore the income of that firm could only be estimated at two times the income shown by him, namely at Rs. 1,10,000. We are unable to find the basis on which the Tribunal concluded that Jhunhunwalla had eight anna share in the profits of the branch firm.

8. The Tribunal also attempted to make an estimate of the income of the branch firm on the basis of the advances made to it by the assessee-firm. In the accounting years relevant to the assessment years 1950-51 and 1951-52 such advances amounted to Rs. 30 lakhs odd, and Rs. 64 lakhs odd respectively. The profits assessed for those years were respectively Rs. 33,000 odd and Rs. 1 lakh odd. The advances made by the assessee firm to the branch firm for the relevant year being Rs. 58 lakhs odd, the Tribunal thought that it did not stand to reason that even though the advances made for the relevant year were less than the advances made for the assessment year 1951-52, the profits of the relevant year could be estimated at nearly Rs. 9 lakhs, that is to say, 9 times more than the profits for the year 1951-52. This seems to us prima facie conjectural because the profit derived from a business does not depend wholly on the amount of capital employed in the business. The capital employed in the business can at best be one of the circumstances to be taken into account for estimating the profits of the business but that circumstance cannot be conclusive. The assessee did not choose to lead evidence of any of the relevant circumstances nor did it produce the books of accounts.

9. In the *C. I. T. v. Indian Woollen Textile Mills* ((1964) 5 SCR 427 : AIR 1964 SC 735 : (1964) 51 ITR 291), it was held that though the finding of fact recorded by the Tribunal is binding on the High Court, it must appear that the Tribunal had considered evidence covering all the essential matters before arriving at its conclusion and there has to be some evidence to support the finding of the Tribunal. The finding of the Tribunal that Jhunhunwalla had an eight anna share in the profits of the branch firm seems to be based on no evidence while its attempted estimate of the income of the branch firm on the basis of advances made to it by the assessee-firm seems prima facie conjectural and opposed to the evidence on record. Counsel for the respondent relies on the decision in

Meenakshi Mills, Madurai v. C. I. T. (1956 SCR 691 : AIR 1957 SC 49 : (1957) 31 ITR 28) and contends that no question of law arises out of the judgment of the Tribunal but we are unable to see anything in that judgment to support the contention. That decision, on the contrary holds that a finding based on no evidence results in an error of law.

10. The judgment of the Tribunal thus raises the questions whether it misdirected itself in law in basing its conclusion on some evidence ignoring the other essential matters on record and whether the conclusion to which it came is such as no reasonable person could have come to. It is necessary that these questions should be decided by the High Court. We might mention that the High Court was not right in discharging the Rule without giving any reason. (See C. I. T. v. Daulatram Rawatmall ((1970) 78 ITR 318 (SC))).

11. Accordingly, we direct the High Court to call for a reference from the Tribunal on the two aforesaid questions and to deal with the reference in accordance with law. Costs in this appeal will be costs in the High Court.

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