

ALLAHABAD HIGH COURT

Bishan Dutt

Vs.

Commissioner of Income-tax, U.P

Income-tax Misc. Case No. 313 of 1951

(V. Bhargava and B. Upadhya, JJ.)

23.03.1960

JUDGMENT

V. Bhargava, J.

1. The question referred by the Income-tax Appellate Tribunal for our opinion is -

"whether from the facts and circumstances of this case the sum of Rs. 9,800 treated as assessee's income from some undisclosed source is liable to be treated as the income of the assessee for the accounting period of the assessee's cloth business in the accounts of which this amount is found credited?"

2. The assessment year to which the proceedings related was 1945-46. For that assessment year, the previous year of the assessee in respect of his income from cloth business was from 4th July, 1943 to 26th June, 1944. The sum of Rs. 9,800 referred to in the question appeared as a credit in a suspense account in the account books of the cloth business. The assessee, when called upon to disclose the source of this sum, failed to give a satisfactory explanation and, that explanation having been rejected, the Income-tax Appellate Tribunal held that this sum of Rs. 9,800 was income of the assessee from some undisclosed source. Thereafter the Tribunal proceeded to hold that, since this amount had been entered in the account books of the cloth business as a cash credit account, it could not be said that this income was from an undisclosed source for which there were no accounts and, having been accounted for in the account books of the cloth business, the amount could be included in the income, for purposes of tax, for the same previous year as the previous year for the cloth business.

The contention of the assessee was that, ordinarily, under Section 2 (11) (i) (a) of the Income-tax Act, this amount, which appeared as a receipt on the 2nd of September, 1943, should have been brought to tax in proceedings of assessment for the assessment year 1944-45 for which the previous year would be the financial year from 1st April, 1943 to 31st March, 1944, and this

method should have been adopted because there was no material at all to hold that, in respect of that undisclosed source of income also, the assessee had opted to treat the year from 4th July, 1943 to 26th June, 1944, as the previous year, nor was there any material for holding that the accounts in respect of income from this undisclosed source had been made up for that period.

3. Having heard learned counsel for the parties, we have no doubt that the contention of the assessee is fully justified and the amount has wrongly been taxed in the proceedings for the assessment year 1945-46. The finding of fact, which the Tribunal recorded in order to make this amount liable to tax, was that it was income from some undisclosed source. The use of the expression "undisclosed source" itself indicates that the source is not one of the known ones and, consequently, it would exclude the view that the source was the cloth business itself. In the books of account of the cloth business there were no entries of any transactions which might have resulted in this amount being earned as income from any undisclosed source. The entry in the books of account of the cloth business merely evidenced the fact that income from that undisclosed source was introduced into the cloth business by making the entry in the suspense account. The entry, therefore, at best, only evidences the disposal "of income from an undisclosed source by using it in the cloth business. That entry is, in no respect, an entry of accounts in respect of the income from that undisclosed source.

The view of the Tribunal that, since the income from an undisclosed source is included in the accounts of any particular business, that income ceases to be income for which there are no accounts is clearly incorrect. There may be separate accounts for that undisclosed source which may also have been kept concealed. Even if, after income had been earned from that undisclosed source and had thus become taxable, any part of it was brought into accounts of the cloth business, that would not convert that income from undisclosed source into income from cloth business or from any source which could be treated as subsidiary to the cloth business. In such a case, the previous year will have to be computed in accordance with the provisions of Section 2 (11) (i) (a) of the Income-tax Act as applicable to that undisclosed source and not as applicable to the cloth business. There being nothing to show that any accounts, in this particular case, in respect of that undisclosed source of income existed or were made up for the same period as the accounts for the cloth business, the only option, which the Department had, was to tax this income from that undisclosed source on the basis of the financial year being the previous year, and, on that basis, this amount could only be taxed for the assessment year 1944-45 and not for the assessment year 1945-46.

4. In this connection, we may also take notice of another reason why the previous year for the cloth business could not be treated as the previous year in respect of this undisclosed source, Section 2 (11) (i) (a) of the Income-tax Act in effect lays down that, ordinarily, the previous year shall be the financial year next preceding the assessment year and it is only if the two particular conditions are satisfied that a different period can form the previous year. The two conditions are that the account books should have been made up for that separate source of income for a different period and, secondly, the assessee should have exercised the option of that period being

treated as his previous year. We have already indicated above that, in the present case, there is nothing to show that the accounts in respect of this undisclosed source of income were made up for a period different from the financial year and coinciding with the previous year in respect of the income from the cloth business and that is one reason why this amount cannot be taxed on the basis that the previous year in respect of this undisclosed source was the same as the previous year in respect of the cloth business.

The second condition also about exercise of option in this case has not been fulfilled. The Income-tax Department cannot, at its option, substitute for the financial year any other period, for which accounts may have been made up, when ascertaining the previous year. A period different from the financial year can be a previous year only if the assessee himself exercises the option in that behalf. In the present case, the finding of fact recorded by the Tribunal is that the source of income was an undisclosed one and, in fact, the assessee's contention was that no other source at all existed and that this sum of money was not income at all from any source. It appears, in these circumstances, to be impossible to hold that the assessee could have exercised the option required to be exercised by him under Section 2 (11) (i) (a) of the Income-tax Act. A person, who denies the existence of the source altogether, denies the maintenance of accounts in respect of that source and denies that any income at all was earned from that source, could not possibly exercise the option that, in respect of that source, the previous year should be a period different from the financial year. We fail to see how a person can exercise option in respect of something entirely non-existent according to him. That is the additional reason why this amount could only be taxed by the Income-tax Department for the assessment year next succeeding the financial previous year ending on 31st March, 1944. The inclusion of this amount in the assessment proceedings for the year 1945-46 was, therefore, not justified. In this connection, we may refer to a decision of the Patna High Court in *Commissioner of Income-tax, B. and O. v. P. Darolia and Sons*¹, which supports our view expressed above.

5. For the reasons given by us above, we answer the question referred to us in the negative. The assessee will be entitled to the costs of this reference which we fix at Rs. 200.

Reference answered in the negative.

¹(1955) 27 ITR 515 : AIR 1955 Pat 478