CALCUTTA HIGH COURT

Damodar Hansraj

Vs

Commissioner of Income-Tax

(Sabyasachi Mukharji and S M Guha , JJ.)

10.03.1978

JUDGMENT

Sabyasachi Mukharji, J.

1. The assessment year involved in this reference is assessment year 1959-60. The previous year relevant to the assessment 1959-60 ended on the 11th November, 1958, while that, for the assessment year 1960-61 had ended on the 1st November, 1959. In making the assessment for the assessment year 1960-61, the ITO had noticed credits in the names of several parties aggregating to Rs. 65,000 between the period 11th November, 1958, and 5th March, 1959. The assessee failed to explain the genuineness of the credits to the satisfaction of the ITO. As the credits fell, according to the ITO, within the previous year relevant to the assessment year 1960-61, the ITO treated the credits of Rs. 65,000 as the income of the assessee from undisclosed sources in the assessment year 1960-61. In appeal, the AAC did not accept the assessee's contention that the credits were genuine loans from the creditors. He took the peak of the credits at Rs. 55,000. He held that those credits could be taken into consideration only in the assessment year 1959-60 as the sum fell within the financial year 1958-59. The AAC came to this conclusion on the ground that Section 68 of the I.T. Act, 1961, was not applicable and the income from undisclosed sources could be considered with reference to the financial year. The AAC deleted the addition of Rs. 65,000 in the assessment year 1960-61.

2. In view of the decision of the AAC, the ITO reopened the assessment for the assessment year 1959-60. He did not make any fresh enquiry, but relying on the findings of the previous ITO and the AAC for the assessment year 1960-61, treated the credits as the income of the assessee from undisclosed sources and made an addition of Rs. 55,000 being the peak of the credits.

3. The assessee again appealed to the AAC. The assessee raised two contentions, firstly, that the reopening of the assessment was bad as under Section 68 read with Section 297(2)(d)(ii) of the I.T. Act, 1961, cash credits could be considered only in the accounting year relevant to the assessment year 1960-61 and no income had escaped assessment for the assessment year 1959-

60. Secondly, it was urged that credits were genuine loans. The first contention did not find favour with the AAC. He, however, accepted the second contention on the ground that the ITO proceeded on the basis of non-satisfaction of the genuineness of the credits for different years, that the credits were taken by cheques in six out of eight cases, that the interest to all of them was paid by cheques, all the creditors supported the assessee and that they were income-tax assessees. The AAC, therefore, deleted the addition of Rs. 55,000.

4. The revenue preferred an appeal against the order of the AAC by which he deleted the addition. The assessee also filed cross-objection challenging the affirmation of the reopening of the assessment. It was submitted before the Tribunal on behalf of the assessee that no income for the assessment year 1959-60 could be said to have escaped assessment. According to the assessee, under Section 297(2)(d)(ii) of the I.T. Act, 1961, the assessment could be reopened under Section 147 and the provisions of Section 68 would be applicable. It was argued that the credits appeared in the account books of the assessee in the accounting year ending on the 1st November, 1959, and could be considered only in the assessment of 1960-61 under Section 68 and not in the assessment year 1959-60 and as such there could not be any escapement of income in the assessment year 1959-60. It was, then, urged that there was no failure on the part of the assessee to make a true and full disclosure for the assessment year 1959-60 as the assessee's accounting period ended on 11th November, 1958, while the credits appeared after the 11th November, 1958, and the assessee was required to make the disclosure only for the period ending on the 11th November, 1958, and not for the subsequent period ending, on the 31st March, 1959. On behalf of the revenue, however, it was urged that the ITO did not apply Section 68 in making tbe addition and that the provisions of Clauses (h) and (k) of Section 297(2) would be attracted as to the election of the previous year. It was pointed out that the assessee itself disclosed the credits in Part IV of the return submitted after the reopening of the assessment. According to the revenue, the ITO was justified in reopening the assessment for the assessment year 1959-60.

5. The Tribunal observed that in spite of the repeal of the Indian I.T. Act, 1922, Section 297(2)(d)(ii) preserved the jurisdiction of the ITO to reopen the assessment if any income chargeable to tax had escaped assessment within, the meaning of Section 147 and escapement of income would arise if an assessee had failed to make a return, for the assessment year or failed to make a full and true disclosure of all material facts necessary for the assessment of that assessment year. The Tribunal then observed that admittedly the assessee did not disclose the credits as its income in the return for the assessment year 1959-60, and according to the law that prevailed during the assessment year 1959-60 the credits could be considered only in the assessment year 1959-60 and not in the subsequent year. The Tribunal observed that neither Section 297(2)(d)(ii) nor Section 147 of the I.T. Act, 1961, had made any change with respect to the previous year for any assessment year for which the income had escaped assessment. According to the Tribunal Section 297(2)(d)(ii) had provided for making the assessment in accordance with the provisions of the Act and Section 68 would not at all come into play so far as the reopening of the assessment was concerned. The Tribunal further observed that Clause (h)

and (k) of Section 297(2) were not attracted as there was no question of any election or agreement to be preserved in spite of the repeal of the Act of 1922. The Tribunal held that in the assessment year 1959-60, the assessee was bound to make a true and full disclosure of all material facts necessary for making the assessment for that year and as the income from undisclosed sources in that year was, to be considered for the period ending on 31st March, 1959, the assessee had failed to make such disclosure. The Tribunal held that the ITO was justified in reopening the assessment. The Tribunal then considered the question of deletion of the addition made of Rs. 55,000 as challenged by the revenue and after considering the respective contentions the Tribunal was of the view that the matter needed further investigation and a fresh decision. The Tribunal, accordingly, set aside the orders of the ITO and of the AAC and sent the matter back to the ITO for further investigation and fresh decision.

6. In the premises, the following question of law under Section 256(1) of the I.T. Act, 1961, has been referred to this court :

> "Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the reassessment proceedings initiated by the Income-tax Officer under Section 147(1) of the Income-tax Act, 1961, were valid ? "

7. In order to consider this question, it is necessary to bear in mind that the Tribunal found that the assessee was bound to make a true and full disclosure of all material facts for making the assessment of that year, and the income in question was income from undisclosed sources in that year. In that background, we have to examine the ratio of the decision of the Supreme Court in the case of Baladin Ram v. CIT [1969] 71 ITR 427. There the Supreme Court observed that it is now well settled that the only possible way in which income from an undisclosed source could be assessed or reassessed or to make the assessment on the basis that the previous year for such income would be the ordinary financial year. Even under the provisions embodied, according to the Supreme Court, in Section 68 of the I.T. Act, 1961, it is only when any amount was found credited in the books of the assessee for any previous year that the section would apply and the amounts so credited might be charged to tax as the income of that previous year, if the assessee offered no explanation or the explanation offered by him was not satisfactory. On the other hand, if the undisclosed income was found to be from some unknown source or the amount represented some concealed income which was not credited in his books, the position would, in the view of the Supreme Court, probably not be different from what was laid down when the 1922 Act was in force. It was held further by the Supreme Court that the fact that the assessee failed to show that he had disclosed fully and truly all facts material for making the assessment for the assessment year 1944-45 that the revised assessments under Section 34 of the Indian I.T. Act, 1922, dated 16th October, 1952, and 18th March, 1954, were valid. In view of the ratio of the aforesaid decision of the Supreme Court and in view of the fact that the sums in question had been held by the Tribunal to be the amounts prima facie from his income from undisclosed sources and the credits in respect of the same appeared between 11th November and 5th March,

1959, it is apparent that they fell within the financial year ending on 31st March, 1959. If that is so, then they would come within the assessment year 1959-60. This will be so irrespective of whether Section 68 applied in respect of making the assessment for the year in question. Section 68 of the I.T. Act, 1961, is in the following terms :

> "68. Cash credits.--Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Income-tax Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year."

8. Under Section 297(2)(d)(ii), after the repeal of the Indian I.T. Act, 1922, any income chargeable to tax which had escaped assessment within the meaning of that expression in Section 147 and where no proceedings under Section 34 of the repealed Act in respect of any such income were pending at the commencement of the 1961 Act, a notice under Section 148 might, subject to the provisions contained in Section 149 or Section 150 of the I.T. Act, 1961, be issued with respect to that assessment year and "all the provisions of this Act shall apply accordingly". It was contended, therefore, that Section 68 was clearly attracted. In the case of *Govinddas v. ITO*[1] the Supreme Court observed that the words "all the provisions of this Act shall apply accordingly" in Clause (d) of Section 297(2) of the I.T. Act, 1961, merely referred to the machinery provided in the new Act for the assessment of escaped income. They did not import any substantive provisions of the new Act which created rights or liabilities. The word "accordingly" in the context meant nothing more than "for the purpose of assessment" and it clearly suggested that the provisions of the new Act which were made applicable were thus relating to the machinery of assessment. The substantive law to be applied for determining the liability to tax must necessarily be the law under the old Act, for, that is the law which applied during the relevant assessment years and it is that law which must govern the liability of the parties. Section 4 of the I.T. Act, 1961, created the liability to pay tax for the previous year. What will be the previous year in a particular situation in respect of a particular income has been sought to be controlled by Section 68 of the I.T. Act, 1961, In view of the ratio of the Supreme Court decision referred to hereinbefore, it is not necessary for us to decide for the purpose of this case whether Section 68 is a substantial provision pr merely procedural. We are, however, inclined to think that it affects in certain cases substantial rights but we need not rest our decision on this aspect of the matter. We agree with the Tribunal that Clause (h) and (k) have no application to the controversy. As we have indicated above, there is no challenge to the finding of the Tribunal that this was income from undisclosed sources. This is a finding which is unchallenged. Such a finding, therefore, cannot he gone into in this reference : See CIT v. Kamal Singh Rampuria .

9. In that view of the matter and in view of the fact that the financial year must be considered to be the previous year for assessability of this income, the Tribunal was right in its view that the

ITO could validly initiate proceedings under Clause (a) of Section 147 of the I.T. Act, 1961.

10. In the premises the question referred to us must be answered in the affirmative and in favour of the revenue. The assessee will pay the costs of this reference.

Sudhindra Mohan Guha, J.

11. I agree.

Cases Referred.
1[1976] 103 ITR 123