

PATNA HIGH COURT

Commissioner of Income-tax

Vs

P. Darolia

Misc. Judicial Case No. 195 of 1953

(Ramaswami and Misra, JJ.)

08.12.1954

JUDGMENT

Ramaswami, J.

1. In this case the assessee is a Hindu undivided family which carries on the business of the sale and manufacture of vermilion. The assessment year is 1947-48 and the corresponding accounting year is Diwali year commencing on 4-11-1945 and ending on 24-10-1946. In his return the assessee showed a gross profit of Rs.8,814 and a net profit of Rs.402 from the business of vermilion and sindoor. The Income-tax Officer rejected the account book of the assessee on the ground that there was no manufacturing account or any stock account maintained by the assessee and verification was impossible. The Income-tax Officer therefore estimated the net profit of the assessee to be Rs.10,877 at a flat rate of 25 per cent. on the amount of the sale. The Income-tax Officer also noticed unexplained cash credits in the account books of the assessee as follows:

"A/C Godabari Devi, wife.	27-11-45	Rs. 1,000
A/C Ramawatar, son	22-11-45	7000
A/C Surajmal, son	22-11-45	7000
	Total	Rs.15,000"

The assessee gave an explanation with regard to the cash credits but his explanation, was rejected by the Income-tax Officer who treated the amount of Rs.15,000 as secret profits from an undisclosed source. The assessee preferred an appeal to the Appellate Assistant Commissioner but the appeal was dismissed and the order of the Income-tax Officer was confirmed. When the matter came before the Appellate Tribunal it was argued on behalf of the assessee that the amount of Rs.15,000 could not be taxed in the assessment year 1947-48 as there could be no previous year for the undisclosed income except the financial year 1945-46. The argument was accepted by the Tribunal who expressed the view that the cash credits to the extent of Rs.15,000

could not be included in the total income of the assessee for the assessment year 1947-48.

2. At the instance of the Income-tax Department the Tribunal has stated a case on the following question of law:

"Whether in the facts and circumstances of the case, the previous year of the assessee in respect of its undisclosed sources of income was the 12 months ending on 31st day of March?"

3. On behalf of the Income-tax Department Mr. Bahadur put forward the submission that the Tribunal was not right in holding that the amount of Rs.15,000 was income derived by the assessee from a source of business different from that of Sindoor and vermilion. The argument of the learned counsel was that the amount of Rs.15,000 should be treated as an undisclosed profit for the accounting year corresponding to the period from 4-11-45 to 24-10-46 and not the financial year 1945-46. It was contended by the learned counsel that the onus was upon the assessee to give an explanation as to the source and nature of the cash credit and in the absence of a satisfactory explanation the Income-tax authorities were entitled to presume that the cash credit was a secret income from the same source of business, viz., the business of Sindoor and vermilion. I am unable to accept this argument as wholly correct. It is of course a well-established principle that in respect of an amount of cash received during the accounting year the burden of proof is upon the assessee to show positively the source and nature of the receipt, and in the absence of an adequate explanation the Revenue authorities are entitled to draw the inference that the receipts are of an income nature and liable to be taxed. But there is no presumption in such a case that the cash receipt is income of the same business for which the assessee has kept regular business of account. The question is really a question of fact, to be decided upon the material furnished in each particular case. The cash receipt may be income either from the same business carried on by the assessee or from a different business. As I have said the question will turn upon the special facts of each particular case and there is no presumption of law involved in a matter of this description. In the present case there is a definite finding of the Appellate Assistant Commissioner that the receipt of Rs.15,000 was not derived from the business of Sindoor and vermilion but was income derived from a different source. In the course of his order the Appellate Assistant Commissioner has stated as follows:

"The first argument of the appellant is that the estimated profit in the vermilion account, and the cash credits, if unexplained, cannot be mutually exclusive of the other, since both of them relate to the same business, and there is no other source. But to accept this argument will really be begging the question itself for the I.T.O. cannot claim a knowledge of the real nature of the cash credits, which is best in the know of the appellant himself.

These cash credits appear at the very start of the accounting year, and it is also extremely unlikely that they had their origin in the business, as disclosed in the accounts of the appellant. Therefore, the I.T.O.'s treatment of the two amounts separately must be upheld". The argument of the assessee before the Appellate Assistant Commissioner was that the cash credit should not be added to the estimated profit of the vermilion account for the purpose of being taxed. The contention was based upon the principle that, in respect of the same business the Income-tax

Officer cannot, in the first instance, make an estimate of the profit and after making such an estimate make an addition of the cash credit for the purpose of taxation. The Income-tax authorities could adopt such a course only when there is material to show that the assessee carries on an independent business apart from the business for which assessment is made. That is the principle expressed by Bench of this Court in - '*Ram Charitar Ram v. Commr. of I.T.*'¹; The contention of the assessee before the Appellate Assistant Commissioner was based on a similar principle. But the argument was rejected by the Appellate Assistant Commissioner on the ground that the undisclosed profit of Rs.15,000 was income derived from a different business other than the vermilion business. In reaching this conclusion the Appellate Assistant Commissioner referred to the circumstance that the cash credit appeared at the very start of the accounting year and so it was extremely unlikely that the cash credits had their origin in the vermilion business. The view of the Appellate Assistant Commissioner appears to have been accepted by the Tribunal. The point has been expressly mentioned by the Accountant Member, Mr. Narayana Row, in para 2 of his order. Mr. Narayana Row states that

"the disclosed source, which is the vermilion and Sindur business carried on by the assessee, is obviously different from the undisclosed sources from which the profit of Rs.15,000 has been held to have accrued to the assessee". It has therefore been found in this case that the amount of Rs.15,000 was the income of the assessee not from the business of Sindur and vermilion but from some other source. On this basis of fact the Tribunal was correct in holding that the previous year for the income of Rs.15,000 was financial year according to Section 2(11)(a) of the Income-tax Act.

For it is admitted that in respect of this amount of Rs.15,000 there is no account maintained by the assessee and there is no option exercised on his part. In the absence of any system of accounting adopted by the assessee and in the absence of any option on his part the only course open to the Income-tax authorities was to take the financial year ending on 31-3-46 as the previous year for the amount of Rs.15,000. It is clear that the view taken by the Tribunal is legally correct.

4. Mr. Bahadur in support of his argument referred to two recent decisions of this Court - *Commissioner of Income Tax B. and O. v. Meghu Sao*², (C). But the principle laid down by these authorities does not afford assistance to the Department in this case. In M.J.C. No.6 of 1953, the question was whether a sum of Rs.19,000 which represented the value of high denomination notes was liable to be included in the total income of the assessee for the assessment year 1947-48. The assessee in that case was a Hindu undivided family dealing in the business of Mica, cloth and grain. The accounting period of the Mica business was kept according to the calendar year 1946 and the accounting period for cloth and grain was the Diwali year 2002-03 which corresponded to the period 19th November 1945 to 26th October 1946. Under Section 2(11)(a) the assessee exercised his option in the course of assessment and chose as accounting year the calendar year 1946 and the Diwali year 2002-03 for the respective businesses of Mica and of cloth and grain. It was definitely found in that

¹ AIR 1954 Pat 143

² AIR 1955 Pat 400, and M.J.C. No.46 of 1953, D/-11-11-1954

case that the additional income of Rs.19,000 was derived from the Mica business and the cloth

and grain business of the assessee and there was no separate source of income. That was the reason why the Division Bench held that the amount of Rs.19,000 was liable to inclusion in the assessee's total income for the assessment year 1947-48. In M.J.C. No.46 of 1953 the material facts are of similar character and the Division Bench proceeded upon the same view as they took in the previous case.

It was found as a fact in - M.J.C No.46 of 1953, also that the income represented by the high denomination notes was income derived from the business of cloth and spices for which the assessee had already exercised his option under Section 2(11)(a). In my opinion, therefore, the ratio of these two authorities has no application to the present case where the material facts are different.

5. For the reasons I have already assigned I hold that in the facts and circumstances of the case, the previous year of the assessee in respect of its undisclosed sources of income was the financial year ending on 31-3-1946 and the question referred to the High Court must be answered in favour of the assessee and against the Income-tax Department. The assessee is entitled to the cost of this reference; hearing fee Rs.250.

Misra, J.

6. I agree.

Reference answered.