

NAGPUR HIGH COURT

Ghanshyamdas Permanand

Vs

Comr. of Income Tax

Misc. Civil Cases Nos. 87 and 88 of 1949

(B.P. Sinha, C.J. and Hidayatullah, J.)

31.08.1951

JUDGMENT

B.P. Sinha, C.J.

1. This order will govern miscellaneous civil cases Nos. 87 and 88 of 1949.
2. These are two applications under section 66 (1) of the Indian Income-tax Act praying that the Income Tax Appellate Tribunal should be required to state a case and to refer it to this Court under section 66 (2) of the Income-tax Act.
3. The question of law which is said to arise in these cases is :

"Whether there was any material or evidence to discard the book version of profit in the circumstances of this case and to justify the application of the proviso to section 13 of the Income-tax Act?"
4. The question as framed shows that the applicant's contention is that there is no 'evidence' or 'material' to justify the application of the proviso to section 13 of the Act. In other words, his contention is that the assessee is entitled to follow his own system of accounting and the proviso would apply (a) if no method of accounting is regularly employed or (b) if the method employed is such that profits and gains cannot properly be deduced therefrom.
5. The contention of the assessee is that he has followed a regular system and that profits and gains can be deduced from his books. He urges that the application of the proviso to his case, was thus arbitrary or, as he puts it, without 'any material evidence'.
6. It is not to be expected that the income-tax authorities would have evidence as such to prove

the futility of the accounts for deduction of profit and loss. What enables the officer concerned to resort to the proviso is his own inability to do so on the material placed before him. The system of accounting may be good or bad, but if profits and loss cannot be deduced properly therefrom the proviso can be invoked.

7. The enactment itself gives a certain latitude to the Income-tax Officer by employing the words 'in the opinion of the Income-tax Officer'. The opinion of the Officer concerned is thus entitled to great weight, unless he acts arbitrarily. In every case there must be an exercise of judgment by the Officer. Once the judgment has been exercised against the assessee, it cannot be assailed unless it can be demonstrated that the action was not 'judicial' but 'capricious'.

8. Thus, though the officer is not expected to lead evidence in refutation of the books his action should have some foundation. It is impossible to say as a matter of law what should be the 'material' on which the Officer would be entitled to apply the proviso to an assessee, regard being had to the infinite variety of cases likely to come up for decision. Ordinarily, if there is any 'material', that is to say, good ground for such action, the application of the proviso cannot be questioned.

9. Further, the superior officers and the Appellate Tribunal at the end would be the venue for the correction of any capricious action. Once that stage has passed, this Court, which is not an appellate Court, cannot correct the error unless some question of law is therein involved.

10. In the present case the Income-tax Officer in dealing with the matter observed as follows :

"The account is stated to be maintained quantitatively and regarding stocks, a register is maintained. But it is not a regular register recording everyday stocks after deduction of the day's sales. It contains fortnightly figures of 'thans'. Assessee has not made any attempt to maintain accounts number by number so as to arrive at correct analysis of each number."

The Income-tax Officer then points out certain inaccuracies in the books and says :

'After control orders on sales of Rs. 3,48,964/- assessee shows a profit of Rs. 892/- which is per cent. Certain items are marked and the assessee has filed a comparative statement. The profits work out to 4= per cent. Taking into consideration all the facts, I adopt 6 per cent on the sales and reject the book profits.'

11. The Appellate Assistant Commissioner agreed with the reasons given, though he reduced the percentage to 4= per cent, on post-war sales which resulted in a reduction of Rs. 7,000/-.

12. When the matter went before the Appellate Tribunal it was again considered and the Tribunal

held :

'A quantitative stock account has been prepared, but it is not qualitative. In other words a "than" is taken as a piece and so also a handkerchief. A quantitative stock account without proper details is, therefore, of no use.'

13. It would thus appear that the question of the sufficiency of the books for the purpose of deducing the profits was gone into, and the department as well as the Tribunal are agreed that the method is such that the profit or loss cannot be properly deduced. There is foundation for this, and the question is whether this Court, not sitting as an appellate Court, can substitute its own judgment for that of the Appellate Tribunal.

14. In our judgment no question of law arises at all. The sufficiency of the accounts for this purpose is left by the proviso to the judgment of the Officer, subject to appeals such as lie. The assessee has failed to satisfy the appellate authorities, and this Court must, therefore, accept the decision rendered. As we have pointed out, there is foundation for the application of the proviso. Whether or not profits or loss could, in the books as they stand, have been calculated is not for this Court to decide. The officer concerned has expressed his inability, and the appellate authorities have concurred with him. This concludes the matter, and no question of law arises. Indeed, the question as framed shows that the assessee's contention is that there is no foundation for the action taken. The appropriate authorities have found the stock books to be defective, and we cannot say that that matter was not within their special and exclusive powers, in view of the provisions of the Act.

15. The applications accordingly fail and are dismissed with costs. Counsel's fee Rs. 50/- in each case, if certified.

Applications dismissed.