Hanutram Ramprasad Vs. Commissioner of Income-tax

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Court : Guwahati

Decided On : Dec-09-1976

Judge : M.C. Pathak, C.J. and N. Ibotombi Singh, J.

Acts : Income Tax Act, 1961 - Sections 250 and 250(4); Income Tax Rules, 1962 - Rules 46A

Appeal No. : Income-tax Reference No. 21 of 1975

Appellant : Hanutram Ramprasad

Respondent : Commissioner of Income-tax

Advocate for Def. : G.K. Talukdar and D.K. Talukdar, Advs.

Advocate for Pet/Ap. : J.P. Bhattacharjee, B.P. Saraf, S.C. Tibrewal, U. Baruah and S. Das, Advs.

Judgement :

Pathak, C.J.

1. The following question of law has been referred by the Income-tax Appellate Tribunal, Gauhati Bench, under Section 256(1) of the

Income-tax Act, 1961, hereinafter referred to as 'the Act' :

' Whether, on the facts and in the circumstances of the case, the Tribunal was justified in upholding the order of the Income-tax Officer treating the cash credit of Rs. 50,000 in the name of Paliram Pannalal on April 12, 1962, in the books of the assessee as income of the assessee from undisclosed sources '

2. The facts appearing from the statement of the case may be briefly stated as follows :

The assessee is a Hindu undivided family. The relevant assessment year is 1962-63. The Income-tax Officer in the assessment year 1962-63 found in the books of the assessee a credit of Rs. 50,000 in the name of Paliram Pannalal on April 12, 1962. The receipt was in cash. The Income-tax Officer had information that the creditor was a man of little means and this amount represented the assessce's own income. He found that the other assessees who had shown credits in the name of Paliram Pannalal had owned up that the credits were not genuine. The assessee was asked to explain and prove the genuineness of this loan. In reply, the assessee stated that no money was received and the credit was given under advice from M/s. Industrial

Supply and Agency Company. There was also a debit of Rs. 50,000 on the same date in the name of Matilal Nemchand on which interest payment of Rs. 1,500 was claimed. The Income-tax Officer held that the assessee had not proved the loan. He also held that it was not correct to say that no money was received because of the clear narration in the cash book. He treated the amount as income from other sources and added it in the assessment.

3. Against the said assessment order the assessee preferred an appeal before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner held that while disallowing interest paid to Matilal Nemchand the Income-tax Officer held that he was not a genuine party but while considering the credit of Rs. 50,000 from Paliram Pannalal he allowed the interest to Matilal Nemchand as genuine payment. An affidavit sworn by one Pannalal Basniwal was produced before the Appellate Assistant Commissioner according to which he had accepted that he had given a loan of Rs. 25,000 on April 5, 1960, and Rs. 50,000 on April 12, 1962, to the assessee. The Appellate Assistant Commissioner accepted the contents of the affidavit. He also held that the total credits in the last two years had remained constant at Rs. 1,25,000 and there was no fresh credit in that year. In the circumstances, the Appellate Assistant Commissioner deleted the addition of Rs. 50,000.

4. Against the order of the Appellate Assistant Commissioner, the department filed an appeal, which was numbered as I.T.A. No. 70 (Gau) of 1972-73, before the Tribunal. The Tribunal discussed the credit of Rs. 50,000 in its order and for the reasons stated therein held that the assessee had not discharged the onus of proving the genuineness of the cash credit of Rs. 50,000 and so the Income-tax Officer was correct in treating it as income from other sources. The Tribunal, therefore, set aside this part of the order of the Appellate Assistant Commissioner and restored the order of the Income-tax Officer relating to the cash credit of Rs. 50,000.

5. On the above facts, the above mentioned question of law has been referred.

6. The learned counsel for the assessee submits that before the Appellate Assistant Commissioner the assessee in support of his contention that Paliram Pannalal advanced a loan of Rs. 50,000, filed an affidavit sworn by Pannalal Basniwal. This affidavit was sworn on March 21, 1967, and it was clearly stated in paragraph 2 thereof as follows :

' That we advanced the sum of Rs. 25,000 (rupees twenty-five thousand only) as on 5th April, 1960, and Rs. 50,000 (rupees fifty thousand only) as on 12th April, 1962, through M/s. Industrial Supply & Agency Co., 35 Chittaranjan Avenue, Calcutta.'

7. A copy of the affidavit is found in the paper book at page 41. The learned counsel submits that this affidavit was accepted by the Appellate Assistant Commissioner and he acted upon it. There was no objection from the side of the department before the Appellate Assistant Commissioner to the effect that the contents of the affidavit did not represent true facts; that the Income-tax Officer is a party respondent to the appeal before the Appellate Assistant Commissioner who must have got notice of the hearing of the appeal and that being the position since no objection was raised on behalf of the Income-tax Officer or the department before the Appellate Assistant Commissioner, it was completely within the jurisdiction of the Appellate Assistant Commissioner to accept the contents of the affidavit and by accepting the same the Appellate Assistant Commissioner committed no error in law or on facts. It is further

submitted on behalf of the assessee that the Tribunal found fault with the Appellate Assistant Commissioner in accepting the affidavit in the following terms in its order :

' The Appellate Assistant Commissioner should have verified the affidavits or at least should have allowed the Income-tax Officer an opportunity to verify the same since this piece of evidence was coming up for the first time and it was not available for the Income-tax Officer.'

8. The Tribunal, therefore, factually excluded the affidavit from consideration in arriving at its conclusion on the point.

9. Having thus excluded the affidavit, the Tribunal considered some other points, which were considered by the Appellate Assistant Commissioner, namely, the fact that the total loan was constant at Rs. 1,25,000 for two years and that loan of Rs. 25,000 in the name of the same party on April 5, 1960, had been accepted by the Income-tax Officer. The Tribunal observed that though the loan for two years might have been constant at Rs. 1,25,000 from that fact no inference could be made regarding the authenticity of the loan of Rs. 50,000. The Tribunal also observed that because the loan of Rs. 25,000 in the name of the same party on April 5, 1960, was accepted by the Income-tax Officer that would not necessarily require the Income-tax Officer to accept the loan of Rs. 50,000 also in the name of the same party for the succeeding year.

10. In the above premises the learned counsel for the assessee submits that even though the Tribunal considered some of the materials before it, it failed to consider the most material piece of evidence, namely, the affidavit sworn by Pannalal Basniwal and by doing so the Tribunal has committed an error of law which has vitiated the conclusion of the Tribunal on the point.

11. The learned counsel for the department submits that the Tribunal considered all the materials before it and came to the finding that the assessee failed to discharge the burden of proving that the sum of Rs. 50,000 was a genuine loan from Paliram Pannalal. Thus, the conclusion arrived at by the Tribunal, it is submitted on behalf of the department, is a finding of fact and that has to be accepted by a court of reference.

12. We have considered the submissions made by the learned counsel for both the parties as well as the materials on record.

13. Relevant provisions of Section 250 of the Act are quoted below :

'250. Procedure in appeal.--(1) The Appellate Assistant Commissioner shall fix a day and place for the hearing of the appeal, and shall give notice of the same to the appellant and to the Income-tax Officer against whose order the appeal is preferred.

(2) The following shall have the right to be heard at the hearing of the appeal-

(a) the appellant, either in person or by an authorised representative ;

(b) the Income-tax Officer, either in person or by a representative.

(3) The Appellate Assistant Commissioner shall have the power to adjourn the hearing

of the appeal from time to time.

(4) The Appellate Assistant Commissioner may, before disposing of any appeal, make such further enquiry as he thinks fit, 'or may direct the Income-tax Officer to make further inquiry and report the result of the same to the Appellate Assistant Commissioner. ......'

14. The language of Sub-section (4) of Section 250 of the Income-tax Act, 1961, is substantially the same as the language of Sub-section (2) of Section 31 of the Indian Income-tax Act, 1922.

15. While considering the provision of Section 31(2) of the Indian Income-tax Act, 1922, the Supreme Court in the case of Keshav Mills Co. Ltd. v. Commissioner of Income-tax : [1965]56ITR365(SC) , at pages 380-81, has observed as follows :

' The scheme of the Act appears to be that before the Income-tax Officer all the relevant and material evidence is adduced. When the matter goes before the Appellate Assistant Commissioner, he is authorised under Section 31(2) to make such further enquiry as he thinks fit, or cause further enquiry to be made by the Income-tax Officer before 'he disposes of the appeal filed before him. Section 31(2) means that at the appellate stage additional evidence may be taken and further enquiry may be made in the discretion of the Appellate Assistant Commissioner. When the matter goes before the Appellate Tribunal under Section 33, the question about the admission of additional evidence is governed by Rule 29 of the Income-tax (Appellate Tribunal) Rules, 1963. This rule provides that the parties to the appeal shall not be entitled to produce additional evidence either oral or documentary before the Tribunal, but if the Tribunal requires any documents to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, or if the Income-tax Officer has decided the case without giving sufficient opportunity to the assessee to adduce evidence either on points specified by him or not specified by him, the Tribunal may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be adduced. '

16. The relevant assessment year is 1962-63. So, the Income-tax (Appellate Tribunal) Rules, 1963, arc applicable to the present case and Rule 29 of the said Rules reads as follows :

' 29. Production of additional evidence before the Tribunal.--The parties to the appeal shall not be entitled to produce additional evidence, either oral or documentary, before the Tribunal but if the Tribunal requires any documents to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, or if the Income-tax Officer has decided the case without giving sufficient opportunity to the assessee to adduce evidence either on points specified by him or not specified by him, the Tribunal may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be adduced. '

17. At the relevant time, no corresponding provision for production of additional evidence before the Appellate Assistant Commissioner was in existence.

18. The learned standing counsel has, however, drawn our attention to rule 46A of the

Income-tax Rules, 1962, which deals with production of additional evidence before the Appellate Assistant Commissioner and which reads as follows :

' 46A. Production of additional evidence before the Appellate Assistant Commissioner.--(1) The appellant shall not be entitled to produce before the Appellate Assistant Commissioner any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the Income-tax Officer, except in the following circumstances, namely :--

(a) where the Income-tax Officer has refused to admit evidence which ought to have been admitted ; or

(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Income-tax Officer ; or

(c) where the appellant was prevented by sufficient cause from producing before the Income-tax Officer any evidence which is relevant to any ground of appeal ; or

(d) where the Income-tax Officer has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(2) No evidence shall be admitted under Sub-rule (1) unless the Appellate Assistant Commissioner records in writing the reasons for its admission.

(3) The Appellate Assistant Commissioner shall not take into account any evidence produced under Sub-rule (,1) unless the Income-tax Officer has been allowed a reasonable opportunity-

(a) to examine the evidence or document or to cross-examine the witness produced by the appellant, or

(b) to produce any evidence, document or any witness in rebuttal of the additional evidence produced by the appellant.

(4) Nothing contained in this rule shall affect the power of the Appellate Assistant Commissioner to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal, or for any other substantial cause, including the enhancement of the assessment or penalty (whether on his own motion or on the request of the Income-tax Officer) under Clause (a) of Sub-section (1) of Section 251 or the imposition of penalty under Section 271. '

19. But Rule 46A of the Income-tax Rules, 1962, has been inserted by the Income-tax (Second Amendment) Rules, 1973, which came into effect from April 1, 1973. That being the position, in view of the interpretation of the Supreme Court of Sub-section (2) of Section 31 of the Indian Income-tax Act,

1922, as quoted hereinabove, and, in our view, the same view being applicable to Sub-section (4) of Section 250 of the Income-tax Act, 1961, the Appellate Assistant Commissioner, when the matter goes before him on appeal, is authorised under Section 250(4) of the 1961 Act to make Such further enquiry, as he thinks fit, or cause further enquiry to be made by the Income-tax Officer before he disposes of the appeal

filed before him, and that at the appellate stage additional evidence may be taken and further enquiry may be made in the discretion of the Appellate Assistant Commissioner.

20. In the instant case, Rule 46A of the Income-tax Rules, 1962, is not attracted. That being the position, the Appellate Assistant Commissioner was competent to take additional evidence and, in fact, the Appellate Assistant Commissioner received the affidavit sworn by Pannalal Basniwal as additional evidence and acted upon it, as there was no objection from the Income-tax Officer who under Section 250 of the Act was given notice of the date of hearing of the appeal and who had the right of hearing before the appeal was disposed of. That being so, we do not find any illegality committed by the Appellate Assistant Commissioner in receiving the affidavit in question in evidence and acting upon it.

21. The Tribunal, as observed hereinabove, raised an objection that the Appellate Assistant Commissioner ought to have verified the affidavit or at least should have allowed the Income-tax Officer an opportunity to verify the same. There is no statutory procedure according to which the Appellate Assistant Commissioner was required to verify the affidavit at the relevant time. The Income-tax Officer had the opportunity of raising objection to the affidavit but that was not done. That being the position, the Tribunal could not reject the affidavit from consideration on those two grounds. The affidavit in question is a valid piece of evidence and it has to be considered on merits by the Appellate Assistant Commissioner as well as by the Tribunal. Since at the relevant time Rule 46A of the Income-tax Rules, 1962, was not available but Rule 29 of the Income-tax (Appellate Tribunal) Rules, 1963, was available, the Tribunal could not have excluded the evidence received by the Appellate Assistant Commissioner but if any doubt arose in its mind it could have tested its validity in accordance with the known principles of law and in the light of Rule 29 of the Income-tax (Appellate Tribunal) Rules, 1963. In any view of the matter, the Tribunal had no jurisdiction to exclude the affidavit, which is the most material evidence so far as the assessee is concerned, in order to substantiate his plea of the loan of Rs. 50,000. Since this most material evidence was excluded from consideration by the Tribunal, its finding of fact that the assessee had failed to establish that the loan of Rs. 50,000 was a genuine loan is not sustainable in law even though the Tribunal considered the other materials on record.

22. In Udhavdas Kewalram v. Commissioner of Income-tax : [1967]66ITR462(SC) , the Supreme Court has observed as follows at page 464 :

' The Income-tax Appellate Tribunal performs a judicial function under the Indian Income-tax Act, and it is invested with authority to determine finally all questions of fact. The Tribunal must, in deciding an appeal, consider with due care all the material facts and record its findings on all the contentions raised by the assessee and the Commissioner in the light of the evidence and the relevant law..... An order recorded on a review of only

a part of the evidence and ignoring the remaining evidence cannot be regarded as conclusively determining the questions of fact raised before the Tribunal.'

23. In the circumstances, we hold that, in the instant case, the Tribunal is found to have excluded the affidavit in question from its consideration in arriving at its conclusion that the sum of Rs. 50,000 was the income of the assessee from

undisclosed sources. That being so, we find that, on the facts and in the circumstances of the case, the Tribunal was not justified in upholding the order of the Income-tax Officer treating the cash credit of Rs. 50,000 in the name of Faliram Pannalal on April 12, 1962, in the books of the assessee as income of the assessee from undisclosed sources. It is the duty of the Tribunal to consider all the material evidence on record and a conclusion arrived at after considering all the material evidence on record only may be said to be conclusive and binding on a court of reference. Since one of the most material evidence in the instant case adduced by the assessee before the Appellate Assistant Commissioner was not considered in accordance with law, the Tribunal's finding is not legally binding.

24. In the result, we answer the question of law in the negative and against the department.

25. The reference is accordingly disposed of. There will be no order as to costs.

Ibotombi Singh, J.

26. I agree.