

Gundathur Thimmappa and Sons Vs. Commissioner of Income-tax, Mysore

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Court : Karnataka

Decided On : Feb-09-1967

Reported in : [1968]70ITR70(KAR); [1968]70ITR70(Karn)

Judge : A. Narayana Pai and ;B. Venkataswami, JJ.

Acts : Income-tax Act, 1922 - Sections 31 and 34(3)

Appeal No. : Income-tax Referred Case No. 16 of 1966

Appellant : Gundathur Thimmappa and Sons

Respondent : Commissioner of Income-tax, Mysore

Advocate for Def. : S.R. Rajasekhara Murthy, Adv.

Advocate for Pet/Ap. : V. Krishna Murthy, Adv.

Judgement :

A. Narayana Pai, J.

1. The assessee is a Hindu undivided family trading in cotton and other goods. Their accounting year is Deepavali to Deepavali. Their income for the accounting year May 20, 1946, to November 12, 1947, was assessed to tax under the Income-tax Act for the assessment year 1948-49. During the scrutiny of accounts, the officer discovered the following entries purporting to be loans received from one Raja Sathyamma :

Rs.28-11-1946 10,00023-12-1946 10,00025-12-1946 10,00006-01-1947 2,000-----
Total : 32,000-----

2. The officer refused to believe these entries as representing genuine loans. The explanations offered by the assessee were found by him to be unsatisfactory, with the result, he added the said sum to the income returned by the assessee.

3. Upon appeal by the assessee, the Appellate Assistant Commissioner agreed with the finding of the Income-tax Officer. He, however, pointed out that the proper categorisation of this sum should have been under the heading 'income from undisclosed sources'. He also thought that the display of this figure by the officer in his order of assessment in such a way as to suggest that the officer was dealing with it as part of the business income must have been a matter of inadvertence. However, the definite opinion of the appellate authority was that the said sum of Rs. 32,000 was only an income of the assessee from undisclosed.

4. The assessee went on second appeal to the Appellant Tribunal. The Tribunal also accepted all the findings of the first two authorities. One further point was raised before the Tribunal, namely, that as an item of undisclosed income, the said Rs. 32,000 could have been brought under assessment for the assessment year 1948-49 only if the receipts going to make up the figure were all receipt falling within the financial year immediately preceding the assessment year, but that because the above four entries fall completely outside the said financial year, the same could not have been taxed. The Tribunal refused to go into that question, because the said point had not been raised either before the Appellate Assistant Commissioner or in the grounds of appeal presented to the Income-tax Appellate Tribunal either.

5. The Tribunal having refused to state a case on assessee's application under sub-section (1) of section 66 of the Income-tax Act, he petitioned to this court under sub-section (2) thereof in Civil Petition No. 215 of 1950. By an order made therein on April 11, 1962, this court called upon the Tribunal to refer the following questions :

(i) Whether the Income-tax Tribunal, the Appellate Assistant Commissioner and the Income-tax Officer were wrong in taking into consideration the fact that in the past the assessee's accounts were not found to be correct and that during the previous years Smt. Raja Sathyamma's name had been falsely used as a creditor of the assessee-firm

(ii) Whether, in law, the Appellate Tribunal can refuse to consider the question of law urged before it if the same could have been decided on the material before it

6. Accordingly the Tribunal has now made this reference together with a statement of the case.

7. So far as the second question is concerned, there can be no doubt that the answer to it will have to be in favour of the assessee.

8. It is well-established that the option given to an assessee to choose an accounting year other than the one ending on March 31 as a previous year for purposes of Income-tax is limited to known sources. So far as what are called undisclosed sources are concerned, there is neither any possibility of the assessee exercising such option nor any possibility of applying anything but the principal definition of the previous year, namely, that it is a period of 12 months ending on March 31, next preceding the year for which the assessment has to be made.

9. On that basis, the receipts, with which we are concerned in this case, should fall within the previous year corresponding not to the assessment year 1948-49 with which we are concerned, but with the immediately preceding year 1947-48.

10. It is also now well-established that the power of an Appellate Assistant Commissioner to give directions under section 31 of the Income-tax Act, 1922, is limited to the assessment year to which the appeal before him relates, and that the words 'finding' and 'direction' contained in sub-section (3) of section 34 mean a finding necessary for giving relief to the appellant in respect of the assessment year concerned and a direction which is within the power of the appellate or recessional authority to give for the disposal of the appeal. Hence, the Appellate Assistant Commissioner in this case could not have given a direction that the income from undisclosed sources, which should for the reasons set forth be deleted in the income

assessable for the year 1948-49, should be assessed in the immediately preceding year or that the said assessment be reopened to achieve that result.

11. It will be seen, therefore, the point raised by the assessee was a point which went to the root of the matter and affected not merely his liability to pay tax but also the jurisdiction of the tribunals and authorities themselves to subject the amount concerned to tax within the assessment year 1948-49 relevant to these proceedings.

12. Upon facts there was no doubt, nor was there any necessity to direct further investigation. Rs. 32,000 is made up of four receipts, three of Rs. 10,000 each, and one of Rs. 2,000 and the dates of these receipts have also been ascertained and actually recorded by the Income-tax Officer in his assessment order.

13. Such being the position, the Appellate Tribunal, like any other Appellate authority, had the discretion to permit the point of law to be raised for the first time in appeal and because the question went to the root of the case, their refusal to entertain the point must be regarded as an improper exercise of discretion by them and, therefore, erroneous in law.

14. The above opinion stated by us finds support in the following decisions, namely, those reported in *Gangadas Sarda v. Commissioner of Income and Commissioner of Income-tax v. Hazarimul Nagji & Co.*

15. As an answer in favour of the assessee on the second question for the reasons discussed above is sufficient to dispose of the entire matter, he does not press for an answer on the first question.

16. We, therefore, decline to answer the first question and make the following answer to the second question :

'On the facts of this case, the Tribunal were not right in refusing to entertain the point relating to Rs. 32,000 and the assessability thereof for the assessment year 1948-49.'

17. No costs.