M/S. LAKSHMICHAND BAIJNATH

v.

THE COMMISSIONER OF INCOME-TAX, WEST BENGAL

1958

November 13.

(T. L. VENKATARAMA AIYAR, P. B. GAJENDRAGADKAR and A. K. SARKAR, JJ.)

Income Tax—Partition in Hindu undivided family—Proceedings under s. 25A of the Indian Income-tax Act—Scope—Receipt of amount in accounting year—Assessee's plea of capital receipt rejected—Liability to tax as business receipt—Indian Income-tax Act, 1922 (XI of 1922), s. 25A.

For the assessment year 1946-47 the appellant, a Hindu undivided family carrying on business, filed a petition before the Income-tax Officer, under s. 25A of the Indian Income-tax Act, 1922, claiming that there had been a partition in the family on April 24, 1945. As regards the income assessable under s. 23 of the Act, the appellant's case regarding six sums aggregating to Rs. 2,30,346 shown in the accounts as the sale proceeds of ornaments, was that at the partition the jewels of the family were sold and that the price realised therefrom was invested in the business. The Income-tax Officer held that the partition was true and that the family had become divided into five groups, but as regards the amount of Rs. 2,30,346 aforesaid he rejected the explanation given by the appellant as to how the amount came to be received and held that the amount was not the proceeds of the family jewels sold but represented concealed profits of the business. He accordingly included the said amount in the taxable income. The appellant's contentions, inter alia, before the Appellate Tribunal were (1) that the order passed under s. 25A of the Act by the Income-tax Officer must be held to have decided the factum of a partition in the family as well as the possession and division of the jewels, as set up by the appellant, and that it was not open to the Department to contend that the amount in question did not represent the value of the family jewels; and (2) that, in any case, there was no evidence to show that the amount represented undisclosed profits.

Held, that when a claim is made under s. 25A of the Indian Income-tax Act, 1922, the points to be decided by the Income-tax Officer are whether there has been a partition in the family, and, if so, what the definite portions are in which the division had been made among the members or groups of members. The question as to what the income of the family assessable to tax under s. 23(3) was, would be foreign to the scope of an enquiry under s. 25A, and any finding thereon would not be conclusive in assessment proceedings under s. 23.

1958

Lakshmichand Baijnath v. Commissioner of Income-tax

Held, further, that the assessee in the present case having failed to explain satisfactorily the truth of what is a credit in business accounts, the Income-tax Officer was entitled to draw the inference that the amount credited represents in reality a receipt of an assessable nature.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 271-272 of 1955.

Appeal by special leave from the judgment and order dated June 19, 1953, of the Calcutta High Court in Income-tax Reference Nos. 6 & 7 of 1950.

A. V. Viswanatha Sastri, A. K. Dutt, S. K. Kapur and *Sukumar Ghose*, for the appellant.

C. K. Daphtary, Solicitor-General of India, R. Ganapathy Iyer, R. H. Dhebar and *D. Gupta*, for the respondent.

1958. November 13. The Judgment of the Court was delivered by

Venkatarama Aiyar J.

VENKATARAMA AIYAR, J.—The appellant was a Hindu undivided family carrying on business as piecegoods merchants in the city of Calcutta. The present proceedings relate to the assessment of its income for the year 1946-47, the previous year thereto being June 12, 1944, to April 24, 1945. In the course of the assessment, the appellant filed a petition under s. 25-A of the Income-tax Act, 1922, claiming that there had been a partition in the family on April 24, 1945. On May 27, 1945, the Income-tax Officer enquired into both these matters, the factum of partition and the quantum of income chargeable to tax, and pronounced orders thereon on June 30, 1945. On the petition under s. 25-A, he held that the partition was true, and that the family had become divided into five groups. As regards the income assessable under s. 23, the dispute related to six sums aggregating to Rs. 2,30,346 shown in the accounts as the sale proceeds of ornaments. The case of the appellant with reference to these sums was that at the partition the jewels of the family were sold in six lots, that the price realised therefrom was invested in the business, and that the credits in question related thereto. The Income-tax Officer declined to accept this explanation. He observed that while the books of the appellant

showed that what was sold was ornaments, the accounts of Chunilal Damani to whom they were stated to have been sold, showed sale of gold. He also pointed out that while the weight of the ornaments according to the partition agreement, Ex. A, was 3422 tolas, the weight of gold which was actually sold to the purchaser was 3133 tolas. The explanation given by the appellant for this discrepancy was that the jewels in question had come down to the family through several generations, and were not pure. The Income-tax Officer rejected this explanation, because he held that the weight which was actually deducted for impurities in the accounts of the purchaser was almost negligible, and that what was sold was thus pure gold and not gold in old family jewels. He also remarked that the sales were in round figures of 500 tolas, and that "if the assessee had been taking old ornaments broken or unbroken for sale it is inconceivable that on three occasions out of six he took gold weighing 500 tolas in round figure." He also referred to the fact that there was no list of the family jewels, and that there was nothing in the family accounts to show what jewels were held by the family. He accordingly held that the story of sale of family jewels was not true, and that the sum of Rs. 2,30,346 represented concealed profits of the business, and he included the said amount in the taxable income. He also followed it up by an order imposing tax on the appellant under the Excess Profits Tax Act.

The appellant took both these orders in appeal to the Appellate Assistant Commissioner who again went into the matter fully, and observed that the appellant had been changing his version as to the true character of the sales from time to time. Dealing with the discrepancy of 289 tolas between the weight shown in the partition agreement, Ex. A, and that appearing in the accounts books of Chunilal Damani, he remarked that while the explanation of the appellant before the Income-tax Officer was that it was due to alloy and brass in the jewels, before him the position taken up was that it was due to pearls and stones which

1958

Lakshmichand Baijnath
v.
Commissioner of Income-tax

Venkatarama Aiyar J.

had been removed from the jewels, and that the gold contained in the jewels was pure gold. He did not accept this explanation as, in his opinion, the jewels which were stated to have been in existence for three or four generations should have contained much more of alloy than was shown in the accounts of the purchaser. He also considered that the sale of gold in round figures of 250 or 500 tolas was a circumstance which threw considerable doubt as to the truth of the appellant's version. In the result, he confirmed the findings of the Income-tax Officer, and dismissed the appeals.

Against these orders, the appellant appealed to the Appellate Tribunal. There, he sought to rely on a certain proceedings book as showing that the family jewels were really broken up, and that what was sold to Chunilal Damani was the gold thus separated. As this proceedings book forms the real sheet-anchor of the appellant's contention before us, it is necessary to refer to the facts relating thereto in some detail. On February 20, 1945, the members of the family entered into an agreement, Ex. A, to divide their joint properties among the five branches, of which it was constituted. In sch. B to this document are set out the jewels to be divided, and their total weight is, in round figure, 3422 tolas. Then we have the proceedings book, and that purports to be a record of the decisions taken by the members of the family from time to time for implementing Ex. A. The minutes of the meeting held on February 23, 1945, show that the pearls and stones imbedded in the jewels were to be removed and divided among the members, and that a goldsmith called Inderban was engaged for the purpose of breaking up the jewels. Then we have the minutes of a meeting held on February 28, 1945, and therein, it is recited that the weight of the pearls, stones and copper removed was, again in round figure, 289 tolas, and deducting this out of 3422 tolas being the weight of the jewels set out in Ex. A, the gold which was available for partition was 3133 tolas. It is recorded that this quantity should be sold in the market and the sale proceeds credited in the capital accounts of the business. And then we have the last of the proceedings dated April 21,

1945, which record that gold weighing 3133 tolas was sold and the price credited in the accounts. Now, if these minutes are genuine and give a correct picture as to what really took place, they would go a long way to support the version given by the appellant as to how he came by the sums making up a total Rs. 2,30,346. Quite naturally, therefore, the appellant applied to the Tribunal to receive the proceedings book in evidence, and the ground given in support of the application was that it had been filed before the Income-tax Officer but had not been considered by him.

Then the question was raised as to whether the proceedings book was, in fact, produced before the Income-tax Officer. The argument of the appellant was that the decision taken at the meeting dated April 21, 1945, which forms the concluding portion of the book had been translated into English at the instance of the Income-tax Officer, the original being in Hindi, that the said translation was marked Ex. B and contained the endorsement of the Officer "Original produced", and that accordingly the book must have been produced before the Officer. But the Tribunal was not impressed by this argument. It observed that the book iselft had not been initialled by the Officer, and that though the minutes of the meeting dated April 21, 1945, were genuine, there was no certainty that when it was shown to the Income-tax Officer it was contained in the book now produced, that such minutes could have found a place in another book as well, and that, therefore, the book which was sought to be admitted before it in evidence was not proved to be the book which was produced before the Officer. It was also of the opinion that the minutes of the previous meetings could not have been shown to the Officer. It accordingly refused to receive the book in evidence, and relying on the other circumstances mentioned in the order of the Income-tax Officer and the Appellate Assistant Commissioner, it held that the sum of Rs. 2,30,346 was not the proceeds of the family jewels sold but secret profits made by the appellant in business.

Another contention raised by the appellant before

1958

Lakshmichand Baijnath v. Commissioner of Income-tax

Venkatarama Aiyar J.

the Tribunal was that in the proceedings under s. 25A, the Income-tax Officer had held, after making enquiry, that the partition set up by it was true, and that as according to the appellant, the partition consisted in the division, *inter alia*, of family jewels weighing 3422 tolas, the Income-tax Officer must be held to have decided that the family was in possession of the jewels mentioned in Ex. A and had divided them in the manner set out in Ex. B, and that as that order had become final, it must conclude the present question in favour of the appellant. The Tribunal repelled this contention on the ground that the order under s. 25A only decided that there was partition in the family, and that it had no bearing on the issues which arose for decision in the assessment proceedings. In the result, both the appeals were dismissed.

Pursuant to an order of the High Court of Calcutta dated December 7, 1950, passed under s. 66(2) of the Act, the Tribunal referred the following questions for its opinion:

(1) "Whether the Income-tax Appellate Tribunal was bound by the findings of fact of the Income-tax Officer relating to the nature and division of the assets of the joint family in question which he arrived at in his enquiry under Section 25A(1) of the Indian Income-tax Act?

(2) Whether there was any material or evidence upon which the taxing authorities could legally hold that the amount of Rs. 2,30,346 (Rupees two lakhs thirty thousand three hundred and forty-six) represented undisclosed profits of the accounting year in question?"

The reference was heard by Chakravarti, C. J., and Lahiri, J., who by their judgment dated June 19, 1953, answered the first question in the negative and the second in the affirmative. The appellant then filed an application under s. 66A(2) for leave to appeal to this Court, and that having been dismissed, has preferred the present appeals on leave granted by this Court under Art. 136.

Mr. Viswanatha Sastri, learned counsel for the appellant, raised the following contentions:

(1) In view of the order of the Income-tax Officer under s. 25A, it was not open to the Department to contend that the sum of Rs. 2,30,346 does not represent the value of family jewels.

(2) The finding of the Income-tax authorities that the said amount represents concealed profits of business is not supported by legal evidence and is, in any event, perverse.

(3) There is no evidence that the amount in question represents profits of business, and it was therefore not chargeable to tax under the provisions of the Excess Profits Tax Act.

(1) On the first question, the appellant relied on certain observations in the order of the Income-tax Officer passed under s. 25A as amounting to a decision that the family had the jewels mentioned in Ex. A, and that what was actually divided was only the price received therefor. Now, when a claim is made under s. 25A, the points to be decided by the Income-tax Officer are whether there has been a partition in the family, and if so, what the definite portions are in which the division had been made among the members or groups of members. The question as to what the income of the family assessable to tax under s. 23(3) was, would be foreign to the scope of an enquiry under s. 25A. That section was, it should be noted, introduced by the Indian Income-tax (Amendment) Act, 1928 (3 of 1928), for removing a defect which the working of the Act as enacted in 1922 had disclosed. Under the provisions of the Act as they stood prior to the amendment, when the assessee was an undivided family, no assessment could be made thereon if at the time of the assessment it had become divided, because at that point of time, there was no undivided family in existence which could be taxed, though when the income was received in the year of account the family was joint. Nor could the individual members of the family be taxed in respect of such income as the same is exempt from tax under s. 14(1) of the Act. The result of these provisions was that a joint family which had become divided at the time of the assessment escaped tax altogether. To

1958

Lakshmichand Baijnath v. Commissioner of Income-tax

Venkatarama Aiyar J.

remove this defect, s. 25A enacted that until an order is made under that section, the family should be deemed to continue as an undivided family. When an order is made under that section, its effect is that while the tax payable on the total income is apportioned among the divided members or groups, all of them are liable for the tax payable on the total income of the family. What that tax is would depend on the assessment of income in proceedings taken under s. 23, and an order under s. 25A would have no effect on that assessment. It is in this context that we must read the observations in the order under s. 25A relied on for the appellant. In fact, that order does not expressly decide that the family had the jewels mentioned in Ex. A, and that they were converted into cash as claimed by the appellant. Nor could such a finding be implied therein, when regard is had to the scope of the proceedings under s. 25A and to the fact that the order under s. 23(3) holding that the sum of Rs. 2,30,346 did not represent the value of the family jewels sold was passed on the same date as the order under s. 25A and by the very same officer.

(2) The next question is and that is what was really pressed before us—whether the sum of Rs. 2,30,346 represents the price of family jewels sold or whether it is concealed business profits. That clearly is a question of fact the finding on which is open to attack in a reference under s. 66 only if it could be shown that there is no evidence to support it or that it is perverse. Now, the contention of Mr. Viswanatha Sastri for the appellant is that the finding that it is concealed profits was reached by the Income-tax Officer and by the Appellate Assistant Commissioner by ignoring the very material evidence furnished by the proceedings book, and that the Appellate Tribunal had erroneously refused to receive the book in evidence. This contention raises two controversies: (i) Was the proceedings book which was produced before the Tribunal the book which was produced before the Income-tax Officer? (ii) If it was, were the minutes of the meeting prior to April 21, 1945, relied on by the appellant before the Income-tax Officer? Whatever

view one might be inclined to take on the former question, so far as the latter is concerned, it is perfectly plain that they were not. On May 27, 1947, the enquiry was held on both the petitions under s. 25A and on the quantum of income assessable to tax under s. 23(3). Exhibit D is an extract from the order sheet of the Income-tax Officer, and it runs as follows:

"Regarding credits amounting to Rs. 2,30,346-6-3 in the a/c. Udoyaram Bhaniram the representatives state that besides the evidence produced, which are noted below, they are not in a position to produce any further evidence.

(i) Account books of the assessee containing the details of the amounts aggregating the aforesaid sum.

(ii) Sale statements rendered by Chunilal Damani, copies of which have been filed.

(iii) Roker of Chunilal Damani containing entries for purchase of gold, sold by the assessee family along with Surajrattan Bagri the accountant of Chunilal Damani.

(iv) Statement of Lakhmichand Bhiwaniwalla and Pannalal Bhiwaniwalla, member of the assessee family."

This statement is signed by the counsel for the appellant. It is clear from the above that the proceedings book was not relied on as evidence on the character of the receipts making up the sum of Rs. 2,30,346. The fact appears to be that the appellant produced the proceedings book in support of his petition under s. 25A for the purpose of establishing that there was a completed partition, and relied only on the minutes of the meeting held on April 21, 1945, in proof thereof, and that is why that alone was translated in English and marked as Ex. B. It is also to be noted that there is no reference in the order of assessment by the Income-tax Officer under s. 23(3) to the minutes of the meetings prior to April 21, 1945, and that they were not even translated, as was the record of the meeting dated April 21, 1945. The obvious inference is that they were not relied on by the appellant, and were therefore not considered by the Officer. It is also

1958

Lakshmichand Baijnath v. Commissioner of Income-tax

Venkatarama Aiyar J.

significant that the order of the Income-tax Officer refers to sale of ornaments broken or unbroken. The story that the gold which was separated from the jewels after removing the pearls and stones was melted and sold in quantities of 250 or 500 tolas, which was the argument pressed before us, was not put forward before him.

It is argued that in the appeal against the order of the Income-tax Officer the ground was definitely taken that the proceedings book had been produced before him, and that it was also prominently mentioned in a petition supported by affidavit filed by the appellant. But the order of the Appellate Assistant Commissioner does not deal with this matter either, and it is inconceivable that he would have failed to consider it if it had been pressed before him. It is also to be noted that the appellant who had obtained a return of the proceedings book from the Income-tax Officer did not file it before the Appellate Assistant Commissioner, nor did he move for its admission in evidence. Apart from taking the grounds to which we were referred, the appellant appears to have presented his case before the Appellate Assistant Commissioner precisely on the same lines on which he pressed it before the Income-tax Officer. In view of these facts, we are unable to hold that in refusing to admit the proceedings book as evidence in the appeal, the Appellate Tribunal acted perversely or unreasonably. Indeed, counsel for the appellant did not contend in the High Court that the Tribunal had acted illegally or unreasonably in refusing to admit the proceedings book in evidence. That being so, it cannot be said that the finding given by the Tribunal on an appreciation of the facts and circumstances already set out is unsupported by evidence or is perverse.

The position may thus be summed up: In the business accounts of the appellant we find certain sums credited. The explanation given by the appellant as to how the amounts came to be received is rejected by all the Income-tax authorities as untenable. The credits are accordingly treated as business receipts which are chargeable to tax. In *V. Govindarajulu*

Mudaliar v. *The Commissioner of Income-tax, Hyderabad* (1), this Court observed:

"There is ample authority for the position that where an assessee fails to prove satisfactorily the source and nature of certain amounts of cash received during the accounting year, the Income-tax Officer is entitled to draw the inference that the receipts are of an assessable nature."

That is precisely what the Income-tax authorities have done in the present case, and we do not find any grounds for holding that their finding is open to attack as erroneous in law.

(3) Lastly, the question was sought to be raised that even if the credits aggregating to Rs. 2,30,346 are held to be concealed income, no levy of excess profits tax can be made on them without a further finding that they represented business income, and that there is no such finding. When an amount is credited in business books, it is not an unreasonable inference to draw that it is a receipt from business. It is unnecessary to pursue this matter further, as this is not one of the questions referred under s. 66(2).

In the result, the appeals fail and are dismissed with costs.

Appeals dismissed.

(1) [1958] 34 I.T.R. 807, 810.