
(1978) 07 AHC CK 0029

Allahabad High Court

Case No: Income-tax Reference No. 113 of 1975

Capt. Sant Kumar

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision: July 12, 1978

Acts Referred:

- Income Tax Act, 1961 - Section 147

Citation: (1979) 8 CTR 192 : (1981) 127 ITR 474

Hon'ble Judges: Satish Chandra, C.J; K.C. Agarwal, J

Bench: Division Bench

Advocate: R.R. Agarwal and R.K. Gulati, for the Appellant; Ashok Gupta, for the Respondent

Final Decision: Dismissed

Judgement

K.C. Agarwal, J.

Hargovind Lal was assessed to tax in respect of the assessment years 1958-59 and 1959-60, on 20th March, 1960. He was employed as secretary in the H. R. Sugar Factory Private Ltd., Bareilly. After his assessment was made the proceedings for the assessment of H. R. Sugar Factory Private Ltd. were taken up by the ITO. During the course of the assessment, the ITO found that three amounts, i.e., Rs. 20,000, Rs. 20,000 and Rs. 10,000, were deposited on October 9, 1957, August 9, 1958, and August 10, 1958, respectively. These amounts stood in the name of Hargovind Lal. He appeared as a witness in the said assessment proceedings of H. R. Sugar Mills and stated that the amounts were not deposited by him and that the same actually belonged to the directors. The ITO held (vide his order dated December 31, 1962), that the amount did not belong to Hargovind Lal and, in fact, represented the mills' income from undisclosed sources. The matter ultimately went up to the Tribunal. It took a contrary view from that which was taken by the ITO. It held that the deposits in dispute were not the income of the mills.

2. As the assessments of Hargovind Lal with respect to the years 1958-59 and 1959-60 were completed, the ITO re-opened the assessment proceedings u/s 147(a) on the assumption that as the amounts deposited in the account of the mills represented his income from undisclosed sources, the same were liable to tax. As Hargovind Lal died in November, 1967. Capt. Sant Kumar, the legal representative of the deceased, Hargovind Lal, claimed that the deposits entered in the books of the mills were not that of the deceased, Hargovind Lal. The ITO did not accept the case of Hargovind Lal and made fresh assessment order against which an appeal was filed before the AAC. Capt. Sant Kumar filed a further appeal before the Tribunal. The Tribunal held, in agreement with the ITO and the AAC, that the deposits belonged to Hargovind Lal and as the same had escaped assessment due to the non-disclosure of the material facts by the deceased assessee, the ITO was right in passing a fresh order of assessment after taking into account the three deposits. It was thereafter, at the instance of Capt. Sant Kumar, that the Tribunal has referred the following question of law for the opinion of this court :

" Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the provisions of Section 147(a) of the Income Tax Act were rightly applied by the Income Tax Officer ? "

3. Two contentions were raised by the learned counsel for the assessee. He urged that the ITO who assessed Hargovind Lal on 20th March, 1960, had knowledge about these three deposits which stood in the name of Hargovind Lal in the mill's account and as the ITO did not treat them to be the deposits of Hargovind Lal in those assessment years, it was not open to him to reopen the assessment u/s 147(a). The submission made cannot be accepted. It has been found as a fact by all the authorities that Hargovind Lal had not disclosed these items at the time of assessment. In view of the above, it is not possible to accept the first submission. The finding recorded by the Tribunal that Hargovind Lal was guilty of non-disclosure is one of fact.

4. The second submission made by the learned counsel for the assessee was that at least the ITO acquired knowledge about these deposits on 31st December, 1962, when the deceased, Hargovind, was examined before him in the assessment proceedings of H. R. Sugar Factory, the reassessment proceedings against the deceased, Hargovind Lal, was not justified. As mentioned above, it would be seen that the deceased, Hargovind Lal, was examined as a witness in the assessment case of the factory on 19th April, 1962. He stated before the ITO that the deposits which stood in the accounts of the company in his name did not belong to him. His statement was accepted by the ITO. He held that these deposits did not belong to Hargovind Lal and, in fact, represented the mills' income from undisclosed sources in the order dated December 31, 1962. It was only on April 18, 1964, that the Tribunal held that there was no justification for treating the deposits in the accounts of Hargovind Lal as the mills' income from undisclosed sources. Subsequent to the

order passed by the Tribunal dated April 18, 1964, the notice u/s 148 was issued to Hargovind Lal. We do not find any reason to hold that the reassessment proceedings were vitiated simply because a statement had been made by Hargovind Lal disowning the deposits on April 19, 1962. For applying Clause (a) of Section 147, what was required to be established was that the income escaped assessment due to the non-disclosure of the material facts fully and truly by the assessee. As observed above, this has been found as a fact by all the authorities.

5. For the reasons stated above, the question is answered in the affirmative, in favour of the department and against the assessee. The Commissioner is entitled to costs, which we assess at Rs. 200.