PANDIT PYARE LAL SHUKLA Vs COMMISSIONER OF Income Tax, U.P. [NO. 2].

Court: Allahabad High Court

Date of Decision: Feb. 17, 1942

Citation: (1942) 10 ITR 416

Final Decision: Dismissed

Judgement

This is an application by Pandit Pyare Lal Shukla, an assessee of Cawnpore, u/s 66(3) of the Indian Income Tax Act, 1922, by which it is prayed

that we should require the Commissioner of Income Tax to state a case and to refer four questions of law for our decision. After having heard Mr.

Malik for the assessee and the Advocate-General for the Department we have come to the conclusion that the findings arrived at by the Income

Tax authorities in their various assessment or appellate orders are findings of fact and no question of law really arises.

The facts are that for the assessment year 1936-37 the Income Tax Officer assessed Pandit Pyare Lal Shukla on a total income of Rs. 62,889.

The assessee has income from property, business and interest. We are not concerned with property and interest but we are concerned with

business only. The assessee has an extensive tobacco and oil business and in the past years it had not been possible for the Department to find out

the profits made by the assessee on the head of business by a reference to his account books. The Income Tax Officer year after year acting under

the provision to Section 13 adopted a method of his own and on the turnover fixed a certain flat rate of profits. This rate varied from time to time

and in the year 1935-36 the Income Tax Officer had worked out a flat rate at 16 per cent., but the Assistant Commissioner of Income Tax

worked it out at 26.7 per cent. He took a number of years into consideration and arrived at the profits of those years on the basis of the sales and

purchases made by the assessee and then ultimately for the year in dispute he got at the average profit and in the year 1935-36 the average profit

worked out at 26.7 per cent.

There was an appeal to the Commissioner because the Assistant Commissioner had enhanced the assessment, and the Commissioner was of the

opinion that the proper method to apply in a case of this kind was to make enquiries from the neighbouring districts and to find out what profit

other persons dealing in similar business derived. He thought that, under the circumstances of the case, after obtaining the profits of other

merchants in other cities, a rate of 18 per cent. would be quite a appropriate in the case of Pandit Pyare Lal Shukla. The assessment for the year

1935-36 came to a close in the manner described above. We might mention that after the appellate order of the Commissioner there was an

application for reference to this Court u/s 66(2) which was rejected, but an application u/s 60(3) was accepted and the Commissioner was

directed to state a case and to refer a certain question which a Bench of this Court thought arose under the circumstances of the case to this Court.

We have today in Miscellaneous Case No. 465 of 1938 [Since reported as PEAREY LAL SHUKLA OF CAWNPORE IN RE., .] answered

the question of law in favour of the Department. In the case before us which, as we said before, arises out of the assessment year 1936-37 the

Income Tax Officer once again did not accept the return of the assessee because according to that return a net rate of 12 1/2 per cent. on the total

turnover was discovered, but ""there was, however, no data in the accounts to warrant this rate because raw materials were utilised to manufacture

the stuffs and so in such cases the only guarantee about the accuracy of profits was the correct stock taking at the close of the year. As this was

not done the profits shown by the assessee could in no case be accepted."" He then took the total sales of the assessee and from that he deducted

the total purchases and thus got the surplus and it was this surplus which was considered to be the profit of the assessee for the year in question. In

this opinion of his he was fortified by the fact that the rate of profit worked out to 35.7 per cent. which, according to the Income Tax Officer, was

not excessive. In this connection we might mention that from the printed statement of the case in the other reference (Miscellaneous Case No. 465

of 1938 [Since reported as PEAREY LAL SHUKLA OF CAWNPORE IN RE., .]) the profits, according to the Assistant Commissioner,

worked out in 1934-35 to 40.5 per cent. and in 1935-36 to 39.7 per cent.

There was an appeal to the Assistant Commissioner and he confirmed the assessment made by the Income Tax Officer. Then there was a

combined application u/s 33 read with Section 66(2) of the Income Tax Act before the Commissioner. He gave no relief u/s 33 and refused to

state a case u/s 66(2) because no question of law arose out of the facts of the case.

Before us it is contended that four questions of law do arise out of the appellate order of the Assistant Commissioner. The facts that we have given

above, however, make it clear that the Income Tax authorities after having looked into the total sales and the total purchases made by the assessee

as entered in the account books have found out the profits made by the assessee in the year in dispute and they have not necessarily worked out

the rate of profit at a flat rate. It is true that the Commissioner of Income Tax has stated in his order u/s 33 that the principle which was enunciated

by him as Assistant Commissioner in Miscellaneous Case No. 465 of 1938 [Since reported as PEAREY LAL SHUKLA OF CAWNPORE IN

RE., .] was not correctly followed by the Income Tax Officer in the year in dispute but that did not make the position in the year in dispute any

different. He observes :-

The position with regard to the present assessment is, however, so in plain that it does not call for any detailed discussion or argument.

He then himself worked out the profit and came to the same conclusion as the Income Tax Officer. It is impossible to say that as a question of law

the Income Tax Officer should have adopted the flat rate which was adopted by the Commissioner in Miscellaneous Case No. 465 of 1938 [Since

reported as PEAREY LAL SHUKLA OF CAWNPORE IN RE., .] nor is it possible to say that any question of law arises out of the fact that the

books of the assessee were produced by him and the Income Tax Officer was bound to accept the profits as shown from the books. It is said that

the method in which the profits were calculated is absolutely erroneous, but it has not been pointed out before us how the method is erroneous

except by saying that the method formerly set out by the Commissioner was the proper method to have been adopted, namely an enquiry into the

profits made by similar dealers and assuming that the present assessee also makes similar profits.

On the whole we agree with the view of the learned Commissioner that no question of law arises out of the facts of the present case and we cannot

say that the Commissioner is in any way wrong. We accordingly reject this application with costs. We fix the fee of the learned Advocate at Rs.

75.

Application dismissed.