(1965) 03 GAU CK 0007

Gauhati High Court

Case No: Income-tax Reference No. 3 of 1964

Tolaram Daga		APPELLANT
	Vs	
Commissioner of Income Tax, Assam		RESPONDENT

Date of Decision: March 30, 1965

Acts Referred:

- Evidence Act, 1872 - Section 106, 34

Citation: AIR 1968 Guw 1 : (1966) 59 ITR 632

Hon'ble Judges: C.S. Nayudu, J

Bench: Single Bench

Judgement

C.S. Nayudu, J.
The question referred to us in this Income Tax reference is :

Whether, on the facts and in the circumstances of the case, there was any material before the Tribunal to hold that the sum of Rs. 10,719 standing in the name of the wife of the assessee as a deposit including interest in the books of accounts of the firm, Messrs. Motilal Inderchand, of which the assessee is a partner, represented the undisclosed income of the assessee for the assessment year 1958-59 ?

2. This reference was made in obedience to the requisition of this High Court dated 15th January, 1964, in Civil Rule No. 10 (M)/63 in the matter of Tolaram Daga v. Commissioner of Income Tax, Assam, Nagaland, Manipur and Tripura.

3. The facts out of which this reference has arisen, as disclosed from the statement of the case submitted by the Tribunal, are briefly as follows :

The reference in question relates to the Income Tax assessment for 1958-59, the relevant accounting year being the year ending on April 12, 1958, corresponding to 2014 R. N. The assessee, hereinafter referred to as the petitioner in this reference, is an individual. He is a partner in two registered firms, one of which is Messrs. Motilal

Inderchand, Calcutta, with which we are concerned. During the assessment proceedings for the year in question, the Income Tax Officer noticed an item of Rs. 10,000 bearing date April 23, 1957, appearing in the personal account of Smt. Munni Devi Daga, the wife of the petitioner, in the books of the firm, Messrs. Motilal Inderchand. It was also found that at the end of the accounting year, a sum of Rs. 719 had been credited to this account of Smt. Munni Devi Daga towards interest. While making the assessment order, the Income Tax Officer noted that the petitioner was unable to explain the source of this deposit in the name of Smt. Munni Devi Daga on being called upon to do so, and thereupon the Income Tax Officer treated this amount as an item of income received by the petitioner from an undisclosed source. On appeal before the Appellate Assistant Commissioner, the petitioner stated that this amount was deposited by his wife as her savings from earlier years and also relied on the declaration to that effect made by Smt. Munni Devi Daga. The Appellate Assistant Commissioner, however, affirmed the order of the Income Tax Officer. Thereafter, the petitioner preferred a second appeal to the Income Tax Appellate Tribunal, hereinafter referred to as the Tribunal, before whom further elucidation was made by the petitioner, who indicated that his wife had received presents in cash to the extent of Rs. 9,000 from her parents and relations and friends at the time of her marriage, which had swelled to Rs. 15,000 by March, 1952, and the deposit in question was made out of this amount. But the Tribunal took the view that the evidence did not support that Smt. Munni Devi Daga had received Rs. 9,000 at the time of her marriage, which took place thirteen years before the date of the deposit, and that no evidence was available to establish how and with whom the money was invested during this period. The Tribunal also did not attach much importance to the fact that the petitioners wife had been separately assessed by another Income Tax Officer on the basis of a voluntary return made by her and as no account books had been produced by the petitioners wife, they did not attach much weight to the declaration made by her. The Tribunal further held that evidence corroborating the petitioners explanation was absent and further taking into consideration the circumstance that a similar deposit of Rs. 10,000 had been made by the wife of another partner of the same firm on the same day, the Tribunal rejected the appeal preferred to it by the petitioner. As already pointed out, this reference was made by the Tribunal in obedience to the directions given by this court.

4. It is contended by Mr. Ghose, the learned counsel for the petitioner, that the order of the Tribunal was clearly unsustainable, that the petitioner had placed all the papers in his power before the Income Tax authorities as well as the Tribunal, that as the amount in question stood in the accounts of the firm in the name of Smt. Munni Devi Daga as having been deposited by her in cash on April 23, 1957, and that as the case of the petitioner is substantiated not only by the entries in the firms accounts but also by the declaration made by the depositor, there is abundant evidence to establish that the deposit related to the monies belonging to Smt.

Munni Devi Daga, who had made the deposit and that, in the absence of any evidence on record to the contrary supplied by the department, the Tribunal was not justified in treating the said deposit as the money belonging to the petitioner and derived from undisclosed sources. Mr. Ghose further took strong exception to the Tribunal taking into consideration the circumstance that a similar deposit was made by another lady on the same day, which, he contended, was totally irrelevant in determining the true nature of the deposit made by Smt. Munni Devi Daga. He further contended that when an entry in the accounts of the firm showed that an amount was deposited by a third person, this itself affords a prima facie proof that the money belonged to the person in whose name account stood and that the deposit was made by her in the absence of any proof to the contrary. In such circumstances, he pointed out, the burden lay on the department to prove that the money which is shown in the accounts to have been deposited by a third party was, in fact, not so deposited but actually belonged to the assessee and not the depositor, and that this burden had not been discharged by the department. He, accordingly, claimed that as he had filed a declaration of Smt. Munni Devi Daga, who had made the deposit, to the effect that it was her money that was deposited and that it was she that deposited the same, the decision of the Tribunal was wrong and that the question referred to us should be answered in the negative.

5. It is contended by Mr. Pathak, the learned counsel for the department, that on the materials available before the Tribunal, the Tribunal had come to a finding of fact that the monies belonged to the assessee and not to the actual depositor, that this finding of fact is binding on this court in a reference of this kind and that it is not open to this court to sit in judgment over the decision of the Tribunal as if it were a court of appeal. He further pointed out that as the depositor is only the wife of the petitioner and that as the circumstances in which the monies came to be acquired by his wife and deposited with the firm must have been within the special knowledge of the petitioner himself, the burden is on him to establish the actual source of the monies deposited, and that, as such a proof has not been adduced to the satisfaction of the authorities and the Tribunal, the petitioner cannot claim any relief and that the Tribunals finding is perfectly in order and that the question should be answered in the affirmative.

6. The main point that falls to be determined in this reference is, in a case like the present one where a deposit is shown to have been made by a third party in the accounts of the firm and that third party claims the money as hers and that it was she that made the deposit, whether the petitioner (assessee) should go further and prove from what source or sources the money deposited was realised by the third party.

7. At the outset, we have to point out that there is no substance in the contention that the sources from which the money was realised by the third party are within the special knowledge of the petitioner as the depositor happens to be his wife.

Whether he has knowledge at all of the source of the money deposited by the third-party is a matter which has to be decided on evidence. The mere fact that the third party making the deposit happens to be the wife of the assessee does not ipso facto make the assessee come into the knowledge of the sources from which the money was realised. Under law, in the absence of specific proof of that knowledge, it cannot be assumed that the assessee has the knowledge in question within the meaning of section 106 of the Evidence Act. In order to rely on this section, which lays down that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him, it must be established first that the person has especial knowledge of that fact, having regard to the circumstances of the case. As illustration (b) to the section shows, when A is charged with travelling on a railway without a ticket, the burden of proving that he had a ticket is on him, obviously, because it is he alone that would have especial knowledge regarding the possession of the ticket. The instant case is by no means a parallel and, in our opinion, section 106 of the Evidence Act cannot, therefore, be invoked in aid.

8. It would appear that the accounts of the firm which had been produced in the case had been accepted and acted upon by the department and no serious challenge had been made to their genuineness or that they were kept regularly in the course of business. That being the case, the accounts are relevant and afford prima facie proof of the entries and the correctness thereof u/s 34 of the Evidence Act, so that where a deposit is found to have been made by a third party in the accounts of the firm, that entry is prima facie proof that that amount in question was deposited by the person in whose name the deposit stands. To require the firm or the individual partners to go further and adduce proof of the sources from which the deposits in question appearing in the accounts in the name of third parties were derived by them, would be placing a burden on the firm as well as the partners, which is not required or justified by law. For aught we know or determine the sources from which the money deposited with them had been realised by the depositors. In the instant case, we have not only the accounts of the firm showing that the deposit stood in the name of Smt. Munni Devi Daga, but we have also, in addition, the declaration made by her that the money belonged to her and the deposit was made by her. It is also significant that this lady is also assessed to Income Tax on the basis of a return made by her. The enquiry as to the source from which this amount was acquired or obtained by Smt. Munni Devi Daga may, perhaps, be relevant in an investigation into the assessment to be made regarding her income and when determining the correctness of the return submitted by her. But the mere fact that the petitioner was unable to satisfy the authorities as to the source from which Smt. Munni Devi Daga derived the monies which she deposited with the firm cannot, in our opinion, be used against the petitioner. The Tribunal, therefore, was not justified in either demanding this proof or in drawing an adverse inference against the assessee on his failure to produce the same.

9. The only other circumstance relied on by the Tribunal is that a similar sum of Rs. 10,000 was deposited on the same day be another partners wife with the firm. This circumstances might have been a coincidence or may have been done by the two ladies agreeing to invest their respective monies with the firm. Whatever may be the reason, the fact that somebody else made a similar deposit on the same day is, in our opinion, totally irrelevant in deciding upon the nature of the deposit made by Smt. Munni Devi Daga. The Tribunal, in our opinion, therefore, was not justified in relying on the circumstance as a piece of evidence against the petitioner. Undoubtedly, it is not a "material" at all on which the Tribunal could base its decision.

10. In this connection, Mr. Ghose placed reliance on a Division Bench decision of this court in Nabadwip Chandra Roy v. Commissioner of Income Tax, wherein it was held that in cases where the amount is shown to have been deposited by a third party, prima facie, it cannot be regarded as a receipt by the assessee - much less a taxable income - and in that event it is for the department, if they want to tax it as an income of the assessee, to show by some materials that the amount standing in the name of third party does not belong to that third party but belongs to the assessee. It was further held by the learned judges in that case that by merely holding that the assessee has not established the source of receipt of that amount by the third party, the department cannot claim that it has placed material which leads conclusively to the result that it was an income of the assessee from some undisclosed source. We are fully in agreement with the decision in that case as well as the reasoning adopted by the learned judges therein.

11. In S. N. Ganguly v. Commissioner of Income Tax the learned judges of the Patna High Court held that there is no presumption in law that an amount standing in the name of the wife belongs to her husband and that, in the absence of evidence to the contrary, the money standing in the name of the assessees wife must be presumed to belong to her and the assessee cannot be taxed in respect of such an amount. The learned judges further held in that case that the onus of proof in such a case will not be on the assessee but will be on the department to show by at least some material that the amount standing in the name of the assessees wife did not belong to her but belonged to the assessee. To a similar effect is the decision of the same High Court in Radhakrishna Behari Lal v. Commissioner of Income Tax.

12. As against these, Mr. Pathak, the learned counsel for the department, relied on a decision of the Supreme Court in Commissioner of Income Tax v. M. Ganapathi Mudaliar. This decision merely laid down that where the question referred to the High Court is regarding the existence of material to support a finding of fact arrived at by the Tribunal, the High Court should not act as an appellate court and consider whether the finding was justified on the evidence. In that case, their lordships were dealing with a case of a credit item of 87,500 dollars standing in the books of the assessee. As this item stood in the name of the assessee and not in third party''s

accounts, their lordships held, following their earlier decisions in Govindarajulu Mudaliar v. Commissioner of Income Tax and kale Khan Mohammad Hanif v. Commissioner of Income Tax, that where an assessee failed to prove satisfactorily the source and nature of certain amount 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 and that the burden is on the assessee of proving the source of the money so received. This case has no application to the facts of the instant case, where the money in question stood in the name of a third party and not in the name of the assessee.

13. Mr. Pathak placed reliance on the decision of the erstwhile Andhra High Court in P. V. Raghava Reddi v. Commissioner of Income Tax, which is clearly a case distinguishable on the facts of that case, in support of the proposition that the question of burden of proof cannot be made to depend exclusively upon the fact of a credit entry in the name of the assessee or in the name of a third party and that, in either case, the burden lies upon the assessee to explain the credit entry. But the learned judges constituting the Bench in that case were conscious of the fact that the onus might shift to the department under certain circumstances. This is clear from the following quotations which their Lordships extracted in their judgment, occurring at page 948, from Radhakrishna Behari Lal v. Commissioner of Income Tax :

But the position is different in regard to a sum which is shown in the assessees books in the name of a third party. In such a case, the onus of proof is not upon the assessee to show the source or nature of the amount of the cash credit; on the other hand, the onus shifts to the department to show by some material that the amount standing in the name of the third party does not belong to that third party but belongs to the assessee. That is the principle laid down by the Division Bench of this court in S. N. Gangulys case. There is a decision to a similar effect in an earlier case, Ramkinkar Banerji v. Commissioner of income tax

14. All that could be said to follow from this decision is that once the assessee explains the credit entry and brings in evidence to show that the entry related to a third party and that credit was that of that third party, the burden would shift to the Income Tax Officer to prove that this is not true. For instance it would be open to the Income Tax Officer in such a case to establish that the entry was not real but was pseudonymous.

15. On a consideration of these decisions, we are clearly of the opinion that the law as laid down by a decision of this court in Nabadwip Chandra Roy v. Commissioner of Income Tax is the correct one.

16. Another decision on which Mr. Pathak placed reliance is the one in Mehta Parikh & Co. v. Commissioner of Income Tax, apparently, in support of the proposition that a finding on a question of fact by the Tribunal is as much binding on the revenue as

on the subject. But that decision itself lays down the correct approach to the question by pointing out "that facts proved or admitted may provide evidence to support further conclusions to be deduced from them, which conclusions may themselves be conclusions of fact and such inferences from facts proved or admitted could be matters of law". Dealing with the power of the High Court to interfere in a reference, it was pointed out that "the court would be entitled to intervene if it appears that the fact-finding authority had acted without any evidence or upon a view of the facts, which could not reasonably be entertained or the facts found are such that no person acting judicially and properly instructed as to the relevant law would have come to the determination in question".

17. Another decision on which Mr. Pathak placed reliance is V. Govindarajulu Mudaliar v. Commissioner of Income Tax. The particular passage on which reliance was placed occurs at page 249 and is as follows :

There is ample authority for the position that where an assessee fails to prove satisfactorily the source and nature of certain amount 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.

18. In that case, their Lordships of the Supreme Court were satisfied with the conclusions to which the Appellate Tribunal came, as appearing to them to be amply warranted by the facts of that case and consequently called for no interference. On the facts of that case, it would appear that certain amounts appeared in the account books of the firm, of which the assessee was a partner, as credits from him. This clearly distinguishes the facts of the instant case where the credit is in the name of a third party and not in the name of the assessee.

19. The last case on which Mr. Pathak placed reliance is the one in Homi Jehangir Gheesta v. Commissioner of Income Tax, apparently, in support of the proposition that the order of the Tribunal was to be examined as a whole to determine whether every material fact, for and against the assessee, had been considered fairly and with due care, and whether the evidence pro and con had been considered in reaching the final conclusion, and whether the conclusion reached by the Tribunal had been coloured by irrelevant considerations or matters of prejudice. Their Lordships further held that the order of the Tribunal need not be examined sentence by sentence, through a microscope as it were, so as to discover a minor lapse here or an incautious opinion there, to be used as a peg on which to hang an issue of law. In that case, their Lordships further made it clear that the Tribunal should not indulge in conjectures or surmises or suspicions in considering the probabilities properly arising from the facts. On the facts and circumstances of that case, their Lordships came to the conclusion that the only proper inference was that the receipt in question must be treated as income in the hands of the assessee. That was again not a case where the disputed amount stood in the name of the third party in the accounts of the firm.

20. On a careful consideration of the facts and circumstances of the case and the law applicable thereto, we are satisfied that there is no justification for the conclusion reached by the Tribunal that the sum of Rs. 10,719, which stood in the name of Smt. Munni Devi Daga, the wife of the petitioner, was not shown to be her money but the money of the assessee himself and that therefore the decision of the Tribunal is clearly unsustainable in law. We, accordingly, answer the question referred to us in the negative. In the entire circumstances of the case, we wish to make no order as to costs.

21. Question answered in the negative.