

(1967) 08 KL CK 0023

High Court Of Kerala

Case No: Income Tax R. No. 55 of 1966

Commissioner of Income Tax,
Kerala

APPELLANT

Vs

P.R. Krishna Iyer

RESPONDENT

Date of Decision: Aug. 24, 1967

Acts Referred:

- Income Tax Act, 1961 - Section 69

Citation: (1967) KLJ 825

Hon'ble Judges: M.S. Menon, C.J; S. Velu Pillai, J

Bench: Division Bench

Advocate: C.T. Peter, for the Appellant; K.V. Surianarayana Iyer and C.M. Devan, for the Respondent

Judgement

M.S. Menon, C.J.

This is a reference by the income tax Appellate Tribunal, Madras Bench, u/s 66 (1) of the Indian income tax Act, 1922. The reference has been made at the instance of the Commissioner of income tax. The original statement of the case was found to be inadequate. A fresh statement has since been submitted in pursuance of the direction of this court on the 27th July 1965.

2. The assessment year concerned is 1957-58; and the accounting period, the 12 months ended on 31.3.1957. The question referred is:

Whether on the facts and in the circumstances of the case, the assessment of Rs. 18,000/- as assessee's income was not justified.

3. The assessee has not been assessed under the Indian income tax Act, 1922, before 1957-58, the assessment year with which we are concerned. The incident which forms the basis for the assessment of Rs. 18,000/- as the income of the assessee during the 12 months ended on 31.3.1957 took place at the Olavakode

Railway Station on 6-2-1957. On that day the excise authorities found on his person 260 tolas of gold and subsequently confiscated the same. It is the value of that gold that has been fixed at Rs. 18,000/-.

4. The assessee's contention was that the gold did not belong to him but to one Mohamod Koya of Kozhikode. That story was not accepted and we think for adequate reasons. Koya disclaimed any connection with the gold, and the assessee's statement that he had borrowed a sum of Rs. 3,500/- from one Subramania Iyer for payment to Koya as an advance was disbelieved.

5. The assessee filed a petition before the High Court of Madras against the confiscation of the gold. That petition was dismissed by an order dated 4.9.1959. The reason for the dismissal was that as the assessee had disclaimed the ownership of the gold he had no locus standi to question the confiscation. The High Court, quite naturally, did not decide the question whether the assessee was in fact the owner of the gold or not.

6. There is nothing on record to show how the assessee obtained the gold or how its price was made good by him. These are matters peculiarly within his knowledge and the burden of proof should, therefore, be considered to be on him and not on anybody else. That burden has not been discharged by him.

7. In [A. Govindarajulu Mudaliar Vs. Commissioner of Income Tax, Hyderabad](#), the Supreme Court had occasion to deal with a similar situation. That Court said:

Now the contention of the appellant is that assuming that he had failed to establish the case put forward by him, it does not follow as a matter of law that the amounts in question were income received or accrued during the previous year, that it was the duty of the Department to adduce evidence to show from what source the income was derived and why it should be treated as concealed income. In the absence of such evidence, it is argued, the finding is erroneous. We are unable to agree."

It then dealt with the rejection of the two explanations offered by the assessee and continued:

When both these explanations were rejected, as they have been, it was clearly open to the income tax Officer to hold that the Income must be concealed income. 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."

8. This case was followed by the Supreme Court in *Kale Khan Mohammad Hanif v Commissioner of income tax*, (1963) 50 I.T. R.I. The Court said:

It is well established that the onus of proving the source of a sum of money found to have been received by the assessee is on him. If he disputes liability for tax, it is for him to show either that the receipt was not income or that if it was, it was exempt from taxation under the provisions of the Act."

By parity of reasoning the onus of proving the source of the money expended for obtaining the 260 tolas of gold found on the assessee should be on him, and it should be his duty if he disputes the liability for tax to show either that the amount expended for obtaining the gold was not income or that it was exempt from taxation under the provisions of the Act.

9. Section 69 of the income tax Act, 1961 - which has replaced the Indian income tax Act, 1922, under which the assessment was made - reads as follows:-

Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the income tax Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year."

Sundaram's Comment on this section - and section 68 which deals with cash credits - is instructive:

Sections 68 and 69 which find their places for the first time in the new Act codify a large number of rulings to that effect. They merely restate the rule of evidence that, because the assessee alone can explain certain facts and he either offers no explanation or his explanation is unsatisfactory, an inference may be drawn against him, viz. that the items represent his concealed profits which are taxable. It is for the assessee to prove the source and nature of a receipt and if he fails to do so, it is open to the department to assume that the item is income." (Ninth Edition, Page 652)

10. The established facts of the case are: (1) that the assessee was caught with 260 tolas of gold at the Olavakode Railway Station on 6.2.1957 and (2) that the assessee's story that the gold belonged to a Mohamed Koya of Kozhikode and that he had borrowed a sum of Rs. 3,500/- from a Subramania Iyer for payment to him as an advance has been disbelieved. In these circumstances we cannot but hold that the burden of proving the source of the amount expended for obtaining the 260 tolas of gold has not been discharged by the assessee and that the income tax Officer was justified in treating the value of the gold as income from undisclosed sources. It follows that we should answer the question referred against the assessee and in favor of the Department. We do so; but in the circumstances of the case without any order as to costs. A copy of this judgment under the seal of the High Court and the signature of the Registrar will be sent to the Appellate Tribunal as

required by sub-section (5) of Section 66 of the Indian income tax Act, 1922.