
R. Thiagarajan Vs Commissioner of Income Tax

Tax Case No. 867 of 1988 (Reference No. 654 of 1988)

Court: Madras High Court

Date of Decision: June 11, 1998

Acts Referred:

Income Tax Act, 1961 "Section 69A

Citation: (1999) 151 CTR 156 : (1999) 239 ITR 557

Hon'ble Judges: R. Jayasimha Babu, J; N.V. Balasubramanian, J

Bench: Division Bench

Advocate: P.P.S. Janarthana Raja, instructed by B. Bharath Bhushan, for the Appellant; C.V. Rajan, for the Respondent

Judgement

N.V. Balasubramanian, J.

At the instance of the assessee, the following three questions of law have been referred to us, for our

consideration, by the Income Tax Appellate Tribunal u/s 256(1) of the Income Tax Act, 1961 (hereinafter to be referred to as "the Act") :

1. Whether, on the facts and in the circumstances of the case and on the evidence on record, the Tribunal was right in law in upholding the

addition of Rs. 5,61,000 to the income of the applicant for the assessment year 1981-82 under the head "Income from undisclosed sources" ?

2. Whether, on the facts and circumstances of the case, the Tribunal was right in law in holding that the identity of Shri Narinder Kumar Naval

Kishore had not been established when the applicant had produced copies of extracts from the room register maintained by Shri Lakshmi Lodge,

Coimbatore ,in the normal course of business providing that the said Shri Narinder Kumar Naval Kishore had in fact stayed in the said lodge on

the material dates ?

3. Whether, on the facts and in the circumstances of the case and having regard to the fact that the applicant had established the existence of Shri

Narinder Kumar Naval Kishore by documentary evidence, the Tribunal was right in law in holding that the initial burden of proving the alleged

unexplained investment or cash credit were genuine had not been discharged by the applicant ?

2. The assessee is employed in Lakshmi Jewellery, Coimbatore. The assessee filed a return of income for the assessment year 1981-82 admitting

a total income of Rs. 4,730. The Income Tax Officer during the course of assessment of the income of the assessee, on examination of the draft

applications pertaining to the Syndicate Bank, Oppenakara Street, Coimbatore, found that the assessee had applied for remittance of a sum of Rs.

5,61,000 consisting of two payments, one Rs. 3,40,000, dated November 28, 1980, and another Rs. 2,21,000, dated December 2, 1980, to

R.B. Traders, Amritsar, through telegraphic transfer. The Income Tax Officer summoned the assessee on October 5, 1981, and recorded his

sworn statement. According to the assessee, he did not actually remit the amounts through telegraphic transfer and obliged some unknown person

who was staying in a lodge situated behind his jewellery shop by going along with him to the bank and signing the necessary applications. The

assessee also stated that he did not know the person who remitted the amounts and he signed the applications only to oblige the said person. The

Income Tax Officer disbelieved the statement given by the assessee. The Income Tax Officer drew an inference from the application forms that the

assessee had paid necessary cash for obtaining the demand drafts in favour of R.B. Traders, and, according to him, the assessee had not

discharged the burden cast upon him that the money did not belong to him but to R.B. Traders or to one Narinder Kumar Naval Kishore or to

somebody else. He, therefore, added the sum of Rs. 5,61,000 as undisclosed income of the assessee and completed the assessment.

3. The assessee filed an appeal before the Commissioner of Income Tax (Appeals) challenging the order of the Income Tax Officer. The

Commissioner (Appeals) held that the assessee has not discharged the primary onus to prove the source of the amount and unless the assessee

discharged that primary onus, there is no obligation on the part of the Income Tax Officer to accept the statement of the assessee. The

Commissioner (Appeals) further held that there is no evidence to show that the money belonged to some other person. Therefore, he confirmed

the assessment of Rs. 5,61,000 as income from undisclosed sources in the hands of the assessee.

4. The assessee carried the matter further by filing an appeal to the Appellate Tribunal and the Appellate Tribunal also confirmed the view of the

authorities. The Tribunal held that it was unable to agree with the explanation of the assessee that the money belonged to one Narinder Kumar

Naval Kishore as the identity of that person was not established. The Tribunal also held that since the assessee remitted the amount, the assessee is

deemed to be the owner of the amount remitted. The assessee has challenged the order of the Appellate Tribunal and the questions of law set out

above have been referred to us.

5. Learned counsel for the assessee submitted that there is nothing to show that the assessee had remitted the amount. According to him, the

Income Tax Officer has not conducted any investigation as to whom the money really belonged to and the provisions of Section 69A of the Act

are not applicable to the facts of the case.

6. Learned counsel for the Revenue, on the other hand, submitted that the Tribunal has recorded a finding of fact and the assessee has not

established that the money really belonged to one Narinder Kumar Naval Kishore or to whom the money really belonged. He also submitted that

the Department has conducted the investigation and found that there is no such concern in the name and style, R. B. Traders at Amritsar and,

therefore, the Tribunal has come to the correct conclusion that the amount belonged to the assessee.

7. We have carefully considered the rival submissions of learned counsel for the parties. The assessee has clearly stated in his sworn statement that

he did not remit the money and only to oblige one Narinder Kumar Naval Kishore, he merely signed the application forms. It is no doubt true that

the assessee has not established the identity of the said Narinder Kumar Naval Kishore. The Income Tax Officer should have conducted a further

enquiry "as to who remitted the sums in question into the bank when the assessee had stated that he did not remit the money. It is not clear from

the records whether the Income Tax Officer had examined the staff of the bank who received the money or conducted any investigation as to

whether there is any concern in the name and style, R. B. Traders and who has encashed the drafts for the sum of Rs. 5,61,000. The case of the

asses-see was that he was not the owner of the money in question. The provisions of Section 69A of the Act would apply only where the assessee

is found to be the owner of the money in question. Merely on the basis of his signature found in the draft application forms, no inference can be

drawn that the assessee remitted the money and he was the owner of the money remitted. It is, for the Income Tax Officer to establish by evidence

that the assessee was the owner of the money. We are of the opinion that the Income Tax Officer should have conducted a further investigation to

find out to whom the money really belonged and who had remitted the sums in question. The Income Tax Officer, as we have seen already, has

drawn an inference that the assessee was the owner of the sums in question merely because he had signed the application forms for drafts. But, that

would not be sufficient to establish that the assessee was the owner of the sums in question. The Income Tax Officer should have conducted a

further enquiry to find out as to who had remitted the amount and whether the money reached the person in whose name the drafts were drawn.

Therefore, we hold that "there was no proper investigation of the entire matter. We are of the opinion that the matter should be further investigated

by the Income Tax Officer. We are of the opinion that the Tribunal should hear the matter once again and determine who is the owner of the

money in question. It is open to the Tribunal to remit the matter to the Income Tax Officer with a direction to investigate the matter further

particularly on the question who had remitted the money in the bank and whether the drafts have been encashed by the said R. B. Traders. In this

view of the matter, we are not in a position to answer the questions of law referred to us. Accordingly, we return the reference without answering

the questions of law, but with a direction to the Appellate Tribunal to consider the question afresh. As already stated, it is open to the Tribunal to

remit the matter to the Income Tax Officer to conduct further investigation, into the matter and determine who is the owner of the money in

question. There will be no order as to costs.