(1961) 12 AP CK 0001

Andhra Pradesh High Court

Case No: Case Referred No. 26 of 1959

HAZARILAL		APPELLANT
	Vs	
COMMISSIONER OF Income Tax, ANDHRA PRADESH.		RESPONDENT

Date of Decision: Dec. 4, 1961

Acts Referred:

- Income Tax Act, 1961 - Section 6(5), 66(2)

Citation: (1963) 47 ITR 516

Hon'ble Judges: Kumarayya, J

Bench: Division Bench

Judgement

KUMARAYYA J. - The Income Tax Appellate Tribunal, Hyderabad Bench, has u/s 66(2) of the Indian Income Tax Act referred the following question for determination :

"Whether the finding that the consideration of Rs. 30,000 was found by the assessee could be sustained on the material on record ?"

The reference relates to the assessment year 1953-54, the relevant accounting period being the year ending October 18, 1952. The assessee is an individual. According to the Income Tax Officer, he had purchased a house for Rs. 30,000 from the Abdul Wahab on August 16, 1952, though in the name of his wife, Sarlabai. He does not admit the truth of this contention. His case is that his wife, Sarlabai, is the purchaser who having sold 200 tolas of her gold ornaments and made the said purchase with the help of the sale proceeds of the ornaments plus Rs. 3,000 which she had already in cash. When called upon to substantiate the sale, the assessee produced patties for sale of bullion, called his eldest brother, Mahadev Prasad, as a witness and filed the affidavit of his wife. The elder brother deposed that, at the time of marriage, the assessees wife got jewels of about 200 tolas in weight as dowry some 25 years ago, though he himself got only six tolas of gold as dowry land the eldest son of the assessee who was recently married received only 30 tolas of gold.

The wife in her affidavit stated that she got 72 tolas from her mother-in-law and 207 tolas from her parents in her marriage which took place 25 years ago and that all these jewels of the total weigh of 279 tolas were sold away. Her husband, the assessee, however, stated that, after the sale of the jewellery, his wife still possessed 50 tolas of gold jewels. This discrepancy with regard to the total extent of jewels that the wife possessed, in the circumstances of the case, seems to have weighed with the Income Tax authorities. If what she possessed was only 279 tolas and all of them were sold away, it was not possible for her to be still in possession of 50 tolas. One other circumstance which was noticed by the Tribunal was that what appeared from the patties produced was the sale of certain bullion and that no jewels were sold and further the patties were not in the name of the wife. The Tribunal, therefore, came to the conclusion that the story that she got 279 tolas of gold could not be believed and that, what were sold were jewels of the wife is difficult to accept; and, having regard to the discrepancy between the statement of the assessee and his wife contained in the affidavit, the conclusion of the Income Tax Officer that the purchase money cannot be traced to the sale of the jewellery of the wife and it must be the income from undisclosed sources is correct. On that basis, the Appellate Assistant Commissioners order was confirmed by the Tribunal.

It is contended on behalf of the assessee that the order of the Appellate Tribunal is vitiated by gross misappreciation of evidence and also by an error of law in that, even though the burden lay on the department and no evidence was adduced on their behalf, the story of the department was accepted an against the story of the assessee which was supported by the a affidavit and the oral testimony. It is argued on the strength of the decisions in S. N. Ganguly v. Commissioner of Income Tax and Omar Salay Mohamed Sait v. Commissioner of Income Tax that the order of the Appellate Tribunal in the above circumstances cannot stand and ought to be set aside by the court. It is indisputable that the Income Tax Appellate Tribunal is essentially a fact-finding Tribunal. Its finding on questions of fact, after consideration of the evidence, is final and binding unless the finding is open to attack on the ground that there is no evidence to support it or that it is perverse. This position has been lucidly dealt with and authoritatively laid down by their Lordships of the Supreme Court in Omar Salay Mohamed Sait v. Commissioner of Income Tax. The position was summed up thus :

"(1) When the point for determination is a pure question of law such as construction of a statute or document of title, the decision of the Tribunal is open to reference to the court u/s 66 (1).

(2) When the point for determination is a mixed question of law and fact, while the finding of the Tribunal on the fact found is final its decision as to the legal effect of those findings is a question of law which can be reviewed by the court.

(3) A finding on a question of fact is open to attack u/s 66(1) as erroneous in law when there is no evidence to support it or if it is perverse.

(4) When the finding is one of fact, the fact that it is itself an inference from other basic fact will not alter its character as one of fact."

It follows therefore, in cases which involve only a question of fact, the finding of the Tribunal cannot be a assailed unless there is no evidence to support it or the finding is perverse. Further, the finding essentially of fact will not change its character as such only because it is itself an inference from other basic facts. Here in this case if it is held that the Tribunal did not go wrong on the question of onus, what remains thereafter to be considered is purely a question of fact which would entirely rest upon the appreciation of evidence. If therefore the Tribunal had considered all the evidence, as it had done in this case, there can be no occasion for interference by this court.

But the position will be different if there is no evidence on record in support of the finding of the Tribunal or the finding is such that no reasonable man would come to, on the basis of the material on record. It is contended that the present case bears close analogy to the facts in the supreme Court case in the above decision and therefore. But it would appear that those facts have in fact no parallel in the present case. In that case, the Tribunal had misread the affidavits, improperly rejected the evidence, failed to take into consideration some of the evidence already on record, pointed out certain things as loopholes in the case, even though there were no loopholes at all and their finding was rested on mere conjectures, surmises and suspicions. Such is not the case here. As already pointed out, on the evidence on record, the Tribunal came to the conclusion that the source of consideration for the purchase sale proceeds of bullion, the patties of which stood in his name, could not be traced to this wife who had failed to establish that she had the jewels which in fact were sold in the shape of bullion and he sale proceeds thereof constituted the consideration of the purchase of the property.

Then it is argued that when the property had admittedly in the name of the wife, the onus lay on the department to prove that the apparent state of things is not the real state and that the wife was not the owner thereof. In this behalf, reliance has been placed on S. N. Ganguly v. Commissioner of Income Tax. As observed in Sree Meenakshi Mills Ltd. v. Commissioner of Income Tax, the word "benami" is popularly used to denote two classes of transaction even though each differs from the other in the legal character and incidents. In one sense, it means a transaction which is sham or unreal. In the other sense it is used for the transaction which is genuine but the real purchaser is not one who is shown to be as such. The ostensible purchaser is a mere name-lender and the beneficial interest in fact rests with the real owner. When a dispute arises as to whether a person named in the deed is the real transferee, one has to enquire into the question as to who paid the consideration for the transfer. This practice of putting property into a false name, that is, in the name of a person other than the real owner as stated by Mulla in his Principles of Hindu Law (12th edition at page 748), is not uncommon. This practice has arisen

partly from superstition - some persons and some names being considered as lucky and others as unlucky. Partly also, the practice is due to a desire to conceal family affairs from public observation. But many transactions originate in fraudulent purpose; more especially for the purpose of keeping out creditors who are told, when they come to execute the decree, that the property belongs to fictitious owner and cannot be seized. It is no doubt true that there cannot be any presumption that the property purchased in the name of a wife belongs to the husband, but when once the source of consideration is traced to the husband, the burden would shift to the other side. It is obvious from the record that the patties evidencing the sale of bullion the sale proceeds of which formed the consideration for the purchase of the property in question, stood in the name of the assessee. Thus, when the source of consideration is traced to the assessee, there is every reason to presume that the transaction is for the benefit of the person who paid the money and the burden would naturally shift to the wife claiming title to show, by satisfactory evidence, that it was a gift to her or the property otherwise belonged to her. Judged thus, it is obvious that the finding of the Tribunal is not vitiated by any error of law on the question off onus or otherwise. The authority relied on, viz., S. N. Ganguly v. Commissioner of Income Tax, does not advance the petitioners case. There it was observed that the onus of proof will be not on the assessee but on the Income Tax department to show by at least some material that the amount standing in the name of the if does not belong to the wife but belongs to the assessee and that there must be some material, apart from the existence of the close relationship of husband and wife, to suggest that the amount did not really belong to the wife. In the present case, in fact, there was such material as the patties stood in the name of the husband, i.e., the assessee, and the same amount was utilised for the purchase of the property. In M. M. A. K. Mohideen Thamby & Co. v. Commissioner of Income Tax a Division Bench of this court had to deal with the question with regard to credit entries standing in the names of partners as well as the third parties wherein it was argued that, in relation to such entries, the department ought to have proved that the amounts standing in their names do not belong to them but belonged to the assessee. That argument was advance in the decision of Radhakrishna Behari Lal v. Commissioner of Income Tax. The learned judges expressed their inability to subscribe to the proposition enunciated in that decision and observed that it was difficult for the department to establish positively that these credit were not genuine ones and that the amounts represented thereby really belonged to the assessee and the entries were fictitious. They observed that the burden both with regard to credits in the names of the partners as also in the names of third parties is on the assessee to explain the credit entries irrespective of in whose names they stand. Observations to like effect were made by Subba Rao C.J. (as he then was), who delivered the opinion of the Bench in P. V. Raghava Reddi v. Commissioner of Income Tax. This view is well supported by the observation of the Supreme Court in Govindarajulu Mudaliar v. Commissioner of Income Tax, where it was observed that where an assessee fails to prove satisfactorily the source and nature of certain

amounts of cash received during the accounting year, the Income Tax Officer is entitled to draw the inference that the receipts are of assessable nature. When it is once clear that the sale consideration was the sale proceeds of the patti which stood in his name, in the absence of proof as to the source from which this bullion came, it is open to the Income Tax Officer to draw an inference that it is from an undisclosed source within the meaning of sub-section (5) of section 6 of the Income Tax Act and is assessable to tax. The reference is answered accordingly in the affirmative. The assessee shall pay the costs. Advocates fee Rs. 250

Reference answered in the affirmative.