P.V. Raghava Reddi and Another Vs Commissioner of Income Tax

Court: Andhra Pradesh High Court

Date of Decision: Feb. 22, 1956

Acts Referred: Evidence Act, 1872 â€" Section 106
Income Tax Act, 1922 â€" Section 66(2)

Citation: AIR 1957 AP 926 : (1956) 29 ITR 942

Hon'ble Judges: Subba Rao, C.J; Viswanatha Sastri, J

Bench: Division Bench

Judgement

Subba Rao, C.J.
This is a reference made by the Income Tax Appellate Tribunal, Madras Bench "A", raising the following question

Whether, on the facts and in the circumstances of the case, there was evidence before the Appellate Tribunal to justify the addition of Rs. 6, 500

to the income ?

2. The assessee is a Hindu undivided family carrying on business in mica under the name and style of P. V. Raghava Reddy and Kota Reddi and

was assessed to Income Tax for the assessment year 1946-47 on the basis of the income for the accounting year ending with 31st March, 1946.

The assessee opened a ledger account in the name of P. Rajeswaramma, the wife of one of the members of the family, P. V. Raghava Reddi. On

23rd April, 1945, a credit entry of Rs. 6, 500 was made in her favour. The accounts also disclose that subsequently the said amount was repaid to

the lady in instalments. The entry indicates that the amount of Rs. 6, 500 represented the sale proceeds of a diamond necklace. When the Income

Tax Officer asked the assessee to explain this entry, it was represented to him that the necklace was that of Rajeswaramma and that it was sold to

one Damavarapu Sridevamma and, in support of that explanation, the account books of Sridevamma were produced, which contained an entry

that the said jewel was sold to her. The Income Tax Officer found a similar entry in the previous year in the name of another member of the family,

Lilavathamma, for exactly the same amount representing the sale proceeds of a diamond necklace. He also rejected the account book of

Sridevamma on the ground that she was a close relative of the assessee and that the entry in her accounts must have been collusively made at the

instance of the assessee. Rejecting the assessee''s explanation, he came to the conclusion that the cash credit represented the secret profit of the

family the source of which the assessee was not prepared to divulge. In that view, he added the sum of Rs. 6, 500 to the income disclosed by the

assessee. On appeal, the Appellate Assistant Commissioner accepted the explanation given by the assessee and deleted the addition of the said

sum from the assessable income. The Department preferred an appeal to the Income Tax Appellate Tribunal, Madras Bench, against the order of

the Appellate Assistant Commissioner. The Tribunal, taking into consideration the fact that the assessee was carrying on a prosperous business

and, therefore, Rajeswaramma had no necessity to sell her jewels, the fact that there was no proof of how Rajeswaramma came to own the jewels

and the circumstance that there was a similar entry for an identical sum in the account of the wife of another member of the family in the previous

year, came to the conclusion that the sum of Rs. 6, 500 represented the profits of the assessee, the source of which had not been properly

explained by him. The effect of the decision, therefore, is that the said amount was treated as revenue income from an undisclosed source. When

the matter came up before the Madras High Court u/s 66(2) of the Income Tax Act, the Tribunal was directed to state a case after giving an

opportunity to the assessee to adduce such evidence as he might choose to place before the Tribunal to prove that the jewel belonged to

RajeswarammaBefore the Tribunal, Rajeswaramma was not examined but two affidavits were filed, one by Rajeswaramma and the other by her

mother Dodla Rukminiamma, wherein it was stated that, at the time of the marriage of Rajeswaramma in 1931, the mother presented the same to

her, that Rajeswaramma was not satisfied with the design of the necklace and so she sold it to Sridevamma when she made a suitable offer to her.

The brother of Rajeswaramma was examined and he says that the diamond necklace was among the jewels given to Rajeswaramma at the time of

her marriage. But he admits in cross-examination that he was not in management of the family affairs during the time Rajeswaramma was married,

that even after the death of his father, his uncle was in management of the family affairs, that he does not know the extent of the jewels given to the

other sisters and that he has not produced his accounts. He cannot even say when the diamond necklace was purchased and for what price. This

evidence, therefore, is vague and cannot be accepted. Nor can we act upon the affidavits of Rajeswaramma and Rukminiamma for, if really

Rajeswaramma intended to sell the jewel to make a new one for her with a better design, it is not explained why the amount was credited in the

firm''s accounts at all and why it was left with the family firm for two years. The fresh material, therefore, does not in any way affect the finding

given by the Tribunal on the material already placed before it. The Tribunal was certainly justified on the material placed before it in holding that the

sum of Rs. 6, 500 represented the profits, the source of which had not been properly explained by the assesses.

3. Even so, learned counsel for the assessee contends that the Income Tax Officer cannot add that amount to the disclosed income unless he has

come to a definite conclusion on relevant material that the said income is derived from a particular source. To put it differently, the argument runs

that, though an assessee attributes a credit entry to a specific capital asset and fails to establish it, the Income Tax Officer cannot treat the said item

as revenue income from a undisclosed source unless he further finds on other material the specific source from which it is derived. The decisions

cited by the learned counsel, in our view, do not bear out the said contentionIn Ramcharitar Ram Harihar Prasad v. Commissioner of Income Tax,

Bihar and Orissa, the assessee''s firm carried on business in sugar and other articles. The Income Tax authorities held that the trading account

maintained by the assessee did not show his true profits and estimated that a sum of Rs. 15, 644 should be added as profits to the amount shown

in the books of account. They also held that a sum of about Rs. 85, 000 shown as cash credits in the personal accounts of the partners should be

added to the income from business. The question raised in that case was whether the assessee was liable to be taxed on the estimated profit of the

business and also on the sum of Rs. 85, 000 shown as cash credits as part of the income from the same source. The learned Judge held that it was

not open to the Income Tax authorities to add up both the cash credits and the estimated excess of the profits over the amount shown in the books

of account. At page 307, Ramaswami, J., made the following observations.

In a case of this description it is not open to the Tribunal to add up both the cash credit and the estimated excess of the profits over the amount

shown in the books of accounts and to hold the amount so added up is taxable in the hands of the assessee. Such a course is open to the Income

Tax authorities only when there is material to show that the assessee carries on an independent business apart from the business for which

assessment is made.

4. This decision is, therefore, only authority for the position that, where the income from a particular business was estimated by the Income Tax

Officer, he cannot add further sums as income from the same source, for he would be taxing the same income twice over.

5. The same High Court in Radhakrishna Behari Lal v. Commissioner of Income Tax, Bihar and Orissa, had to consider the question of burden of

proof when a cash credit stands in the assessee''s name in his books. There, the assessee, a Hindu undivided family, was carrying on business in

rice and grain. In the books of the assessee, there was a cash credit in the name of one Kedarnath Agarwalla. Kedarnath claimed that he

deposited the amount in two lots on different dates and that the amount belonged to him. The Tribunal held that the amount was the secreted profit

of the assessee. The learned Judges held that there was no material on which it could be held that it was secret profit. The learned Judges, in

dealing with that question, observed at page 349""In the approach to this question it is necessary to bear in mind the distinction between a case

where there is cash credit in the name of the assessee and a case where the cash credit is found not in the name of the assessee but in the name of

a third party. If the cash credit stands in the assessee''s name, the burden of proof is upon the assessee to show that the item of receipt is not of an

income nature. It is for the assessee in such a case to prove positively the source and nature of amount shown in the item and if the assessee fails to

furnish satisfactory explanation, the Income Tax authorities are entitled to draw the inference that the receipt is of an income nature. That is the

principle laid down by two authorities of this Court : Jadunandan Sahu Deokisanram v. Commissioner of Income Tax, Bihar and Orissa and S. N.

Ganguly v. Commissioner of Income Tax, Bihar and Orissa. But the position is different in regard to a sum which is shown in the assessee''s 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 a Division Bench of this Court in S.N. Ganguly''s case.

There is a decision to a similar effect in an earlier case, Ramkinkar Banerji v. Commissioner of Income Tax.

6. We do not think that the question of burden of proof can 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. In either case, the burden lies upon the assessee to explain the credit entry, though the onus might shift to

the Income Tax Officer under certain circumstances. Otherwise a clever assessee can always throw the burden of proof on the Income Tax

authorities by making a credit entry in the name of a third party either real or pseudonymous. Anyhow, this case does not support the proposition

that the Income Tax Officer cannot infer, though the assessee failed to establish a specific case that a particular credit item represents capital

income, that it is taxable income derived from an undisclosed sourceA Division Bench of the same High Court had again to consider the question

of burden of proof in Tewary v. Commissioner of Income Tax, Bihar and Orissa. There, the assessee had been taxed as an individual for the

assessment year 1946-47. It was found that during the accounting period, the assessee encashed 78 high denomination notes of the value of Rs. 1,

000 each and, when asked for an explanation, he stated that the amount was the personal saving kept in the safe custody of the Ruler of Sakti

State when there was panic in the year 1942. The Income Tax Officer did not accept the explanation of the assessee on the ground that high

denomination notes were not put in circulation in the year 1942 but were put in circulation for the first time in 1943. The Appellate Assistant

Commissioner set aside the order. But on further appeal, the Tribunal examined the Ruler of Sakti on commission and disbelieved his evidence.

They found that the sum of Rs. 78, 000 was the concealed income of the assessee, which was liable to be taxed. The learned Judges, in the

context of the aforesaid facts, made the following observations.

In the approach to this question it should be remembered that the onus is upon the assessee to prove positively the source and nature of the

money which was received during the accounting year. In the absence of any explanation of the assessee the revenue authorities are entitled to

draw the inference that the receipt is of an income nature.

7. The learned Judges accepted the finding of the Tribunal on the ground that there was material to support their finding. We respectfully agree with

the observations of the learned Judges.

8. The Punjab High Court in Indo-European Machinery Company v. Commissioner of Income Tax, had to deal with a case where a credit entry of

Rs. 30, 500 was found in the name of a partner and the partner explained that it was a mere deposit by a friend. The Tribunal did not accept the

explanation but the learned Judges held that the finding was not based on any material but only on mere suspicion. The learned Judges observed at

page 497""The learned counsel for the assessee firm did not seriously dispute the question that the assessee firm or the partner concerned was liable

to be asked to furnish an explanation of the large sum found placed to his credit in a bank though he has contended that the onus is not very heavy

and that in this particular case a full explanation has been given and satisfactorily proved. His main argument was that in this particular case there

was no material on which the Tribunal could come to a finding that this sum represented concealed income or profits.

9. This judgment, therefore, does not lay down the proposition sought to be supported by the learned counsel for the assessee. In that case,

acceptable evidence had been adduced in support of the explanation given by the assessee and the learned Judges held that the Tribunal had no

justification for rejecting that evidence and basing their conclusion on mere suspicion.

9. Nor can we say that the observations of Chagla, C. J., and Tendolkar, J., in Narayan Das Kedarnath v. Commissioner of Income Tax, Central,

support the argument of the learned counsel. There, Chagla, C.J., observed.

It is true that we are as anxious as the Department to see that there is no dishonest evasion of payment of Income Tax but I take it that there are at

least some honest assessees in this State, and we have got also to think of those honest assessees. There may be a genuine case where a partner or

a stranger may bring in moneys to the credit of the firm and the partner or the stranger may have come into those moneys by thoroughly dishonest

means, but it is not for the firm which is being assessed to satisfy the Department that the moneys which it received from the partner or the stranger

were moneys which the partner or the stranger obtained by honest means. In my opinion that would be throwing too heavy a burden upon the

assessee.""These observations do not lay down that the burden of proof is not upon the assessee to explain the credit entry but the learned Judges

were pointing out that, having regard to the facts of the case before them, when once it was established that the person in whose name the credit

entry was made really owned that amount, he had discharged his burden and it was not incumbent on him to show further that the said amount was

realised by the said person by honest means. These observations do not throw any light on the present question.

10. Now, we shall proceed to consider the cases relied upon by the learned counsel for the Commissioner. Where an assessee has failed to prove

positively the source and the nature of certain amounts of cash received during the accounting year, a Division Bench of the Madras High Court in

Madappa v. Commissioner of Income Tax, Madras, held that the Income Tax Officer was entitled to draw the inference that the receipts were of

an income nature. Yahya Ali, J., in delivering the judgment on behalf of the Bench, observed at page 390.

The first question postulates that the assessee has failed to prove positively the source and nature of the amounts of cash received during the year,

and upon that foundation of fact the question raised is whether the Income Tax Officer is in such a position entitled to draw the inference that the

receipts are of an income nature. There cannot be the slightest conceivable doubt that when both the source and the nature of the cash receipts

shown in the accounting year have not been proved, the Income Tax Officer cannot draw any other inference except that those two amounts are

income receipts. He cannot come to the conclusion that they are, capital receipts. If it were held that he should, the result would be that every

assessee will be entitled to enter cash credits in his account and refuse to furnish the requisite particulars about its source and nature and insist that

those entries should be automatically treated as capital receipts and not as income receipts.""We respectfully agree with the observations of the

learned Judge.

An interesting discussion on the question now raised is found in the decision of a Division Bench of the Calcutta High Court in Auddy & Brothers

v. Commissioner of Income Tax, West Bengal. The facts in that case were : the books of the assessee firm for the relevant accounting year

disclosed a gross profit of only 4 per cent. The Income Tax Officer considered the percentage of profit too low and, as he suspected that a

considerable volume of sales had been suppressed, added a sum of Rs. 50, 000 as concealed profit of the business which raised the gross profit to

12 1/2%. He then took up some cash credits amounting to Rs. 32, 563 which were shown in the suspense account of the firm as put in by the

partners, and, disbelieving the explanation of the assessee with regard to the source of these deposits, added this amount also as profits from

undisclosed sources. The Income Tax Appellate Tribunal held that, as the Income Tax Officer had included the Rs. 23, 563 as income from other

sources, i.e., sources other than business and no explanation of the source was forthcoming, the addition of this amount as income from

undisclosed source was not illegal. The learned Judges held that, on the facts and circumstances of the case, the addition of the sum of Rs. 23, 563

as income from undisclosed sources was legally justified. Chakravartti, C.J., defined income from undisclosed source at page 722 as follows.

Indeed, it appears to me that in the terminology of the Income Tax Act, income from an undisclosed source or undisclosed income from other

sources must necessarily mean income from some source which is altogether unknown, taking the word "source" in the larger sense and not

income from some undisclosed item or transaction in a known source of income which is exploited by the assessee.""The learned Judge then

proceeds to state at page 723.

But so far as the deposits themselves are concerned, the case made by the partners themselves obviously was that they came from an outside

source. If their explanation as to the particular source fails, they can hardly complain that their contention that the amounts came from outside is

accepted and the sums concerned are brought under assessment as undisclosed profits from other sources.

When certain amounts appear in the books of an assessee as cash credit or capital deposits, the taxing authorities, if they feel suspicious, naturally

ask for an explanation. If the explanation offered is satisfactory, there is an end of the matter and no other question arises. If the explanation be not

found to be satisfactory, it is now well-settled that the taxing authorities are entitled to bring such sums under assessment on a basis which involves

several presumptions. Once the explanation fails, the taxing authorities are entitled not only to treat the amounts as income amounts, but also as

amounts forming part of the income of the year in which the entries were made.

11. The learned Judge at a later stage developed the point thus.

If he (the Income Tax Officer) finds good reason to take the view that the cash credits really represent a part of the whole of the suppressed

profits of the known source of income, he will assess it as a part of the income from that source, taking into account the extent of the capacity of

that source to yield profit, but as I have already explained, if he does so the amounts of the cash credits, while remaining concealed profits, will no

longer remain concealed profits from undisclosed sources. If, on the other hand, the Income Tax Officer thinks that the deposits cannot be

properly related to the known source to which the accounts relate, he will be quite entitled to treat them as they are, namely, merely as undisclosed

profits from some source which is not known to him, or, in other words, as concealed profits from undisclosed other sources. There is no error of

law in so regarding amounts of cash credits as undisclosed profits derived from some independent and unknown source.""At page 725, the learned

Judge shows the anomaly that would otherwise arise if the argument to the contrary was accepted. He says.

Indeed, if the assessee''s contention be correct, there cannot possibly be any addition under the head, undisclosed income from other sources, if

the assessee has some known sources of income and no other source is known, because in that event, even according to the assessee''s contention

before us, suspected amounts, even if they are added as concealed profits, must be added as concealed profits derived from one or other of the

known sources, and if such sources be found to have no room for the amounts they must be left out of the assessment altogether.

12. We have quoted the learned Judge''s observations in extenso for the question was considered by him from different perspectives with clarity.

We respectfully agree with the observations of the learned Judge.

13. The relevant provisions of the Income Tax Act may now be considered. Section 6 reads.

Save as otherwise provided by this Act, the following heads of income, profits and gains, shall be chargeable to Income Tax, in the manner

hereinafter appearing, namely : (i) Salaries ; (ii) Interest on securities ; (iii) Income from property ; (iv) Profits and gains of business, profession or

vocation ; (v) Income from other resources ; (vi) Capital gains.

14. Section 6 sets out the different sources of income liable to tax, if the condition laid down u/s 4 are satisfied. If the income is derived from one

or other of the sources, it is liable to be taxed unless it is exempted u/s 4 of the Act. It exhausts the sources which yield taxable income. After

specifying the incomes from definite sources, the section introduces a residuary head "income from other sources". A taxable income, and indeed

any income, must have a source, for the source is the tree which yields the fruit. The assessee is certainly in a better position than the Income Tax

Officer to know the particular source from which he derives the income. Section 106 of the Indian Evidence Act lays down that, when any fact is

especially within the knowledge of any person, the burden of proving that fact is upon him. It has therefore been held by all Courts, without any

dissenting note, that the burden of proving that a particular income has its origin in capital source lies upon the assessee, for it is within his particular

knowledge to know that fact. If he accepts that the income is from a revenue source but seeks to claim exemption u/s 4, the burden is again on him

to bring it within the four corners of the exemption. If he claims that the income is from a specified capital source and fails to prove it, we do not

see any justification for the contention that the Income Tax Officer should prove that the income is from other revenue sources. This is asking the

Income Tax Officer to prove a case which is within the exclusive knowledge of the assessee, who is not willing to disclose it. This is also an

unnecessary burden, for the alternative placed before the Officer is between a specified capital income and a revenue income. It is not the case of

the assessee, that if he fails to establish the specific case set up by him, the income should be treated as one from some other capital source. In the

circumstances, therefore, if the explanation that a particular item is capital income is rejected by the Income Tax Officer, it is a reasonable inference

to draw from such failure that the income, which is not shown to have been derived from one or other of the specified heads u/s 6, falls under the

head ""income from other sources."" Otherwise, every assessee, who enters cash credits in his accounts and refuses to furnish particulars about its

source and nature will invariably escape payment of tax in respect of taxable incomeWhat we have said above is based upon the assumption that

the Income Tax Officer rightly disbelieved the evidence adduced on behalf of the assessee to prove his case that a particular item was a capital

income. If the finding was wrong, the Appellate Assistant Commissioner and the Tribunal were there to rectify it and the High Court also would

interfere if the finding of the Tribunal falls within the scope of the permissible grounds recognised in Messrs. Mohsin Brothers v. Commissioner of

Income Tax, Hyderabad.

15. The said inference also will not be permissible if the Income Tax Officer holds that a particular credit entry represents income from a source,

the income wherefrom has been estimated and assessed, for in that event the same source would have been completely tapped and cannot yield

additional undisclosed income. But, if the said authority considers the credit entry as part of the income from a disclosed source, he can take this

into consideration in estimating the income from that source.

16. Having regard to the aforesaid principles, we have no hesitation in accepting the finding of the Tribunal in this case. The Tribunal disbelieved

the specific case set up by the assessee to the effect that the income was the sale proceeds of Rajeswaramma''s diamond necklace. The Income

Tax Officer did not estimate the income from the mica business. But he accepted the accounts produced by the assessee with some modifications.

The Tribunal did not also add this income to the mica business income but treated it as taxable income from an undisclosed source, which they

were rightly entitled to do in the circumstances of the case. There was, therefore, sufficient material on which the Tribunal could have come to the

conclusion it did.

17. We answer the question in the affirmative. The applicant will pay the costs of the respondentAdvocate''s fee Rs. 250.

18. Reference answered in the affirmative.