

(1990) 03 BOM CK 0009

Bombay High Court

Case No: Writ Petition No. 1004 of 1987

Navin R. Kamani

APPELLANT

Vs

S.S. Shahane, Income Tax Officer
and others

RESPONDENT

Date of Decision: March 30, 1990

Acts Referred:

- Income Tax Act, 1961 - Section 264, 5

Citation: (1990) 2 BomCR 665 : (1990) 85 CTR 73 : (1990) 185 ITR 408

Hon'ble Judges: T.D. Sugla, J

Bench: Single Bench

Advocate: Ms. Vasanti B. Patel and Mrs. Rupal A. Vora, for the Appellant; Dr. V. Balasubramanian and Mrs. Manjula Singh, for the Respondent

Judgement

T.D. Sugla, J.

By this petition under article 226 of the Constitution of India, the petitioner has challenged the validity and legality of the order dated February 4, 1986, passes u/s 264 of the Income Tax Act, 1961. The petitioner is a Hindu undivided family. The proceedings relate to its assessment year 1976-77. The petitioner had a credit balance with Messrs. Kamani Estate on which a sum of Rs. 78,568 was receivable as interest for the previous year. However, when return was filed on November 21, 1977, its chartered accountants stated in the forwarding letter of the same date that they were instructed not to include the said or some other amount in the income of the petitioner as the debt itself had become bad. There was no hope of recovery of the principal amount, not to speak of any interest that might accrue thereon. The claim thus was that interest receivable on the credit balance did not and could not be said to have accrued as real income. The Income Tax Officer rejected the claim. The Commissioner of Income Tax (Appeals) set aside the assessment with a direction to make a fresh assessment according to law after making proper investigation as to whether income by way of interest had accrued to the petitioner.

Assessment made in pursuance of the order of the Commissioner (Appeals) included the aforesaid interest income.

2. The petitioner filed a revision application before the Commissioner against the inclusion of the interest income u/s 264. The grounds in support of the claim were - (i) that having regard to the circumstances which persuaded the petitioner to believe that there was no chance of recovery of the principal amount or the interest amount thereon, the petitioner had changed its method of accountancy from mercantile method to cash method, and (ii) that, having regard to the disputes in the Kamani family, the debt had become bad. There was no chance of recovery of the principal amount nor any interest thereon. Nothing out of the principal or interest was received till then and, therefore, applying the concept of real income, the interest was not includible as the petitioner's income. For elaborate reasons given in the impugned order, the Commissioner rejected both the grounds. As regards the ground for change in the method of accountancy, he referred to the letter dated November 21, 1977, of the chartered accountants of the petitioner as also the ground stated in the appeal memo before the Commissioner (Appeals) and found that, until the revision application was made before him, there was no claim made about the change in the method of accounting. As regards the second ground, he referred to the Supreme Court in the case of [State Bank of Travancore Vs. Commissioner of Income Tax, Kerala](#), . Being of the view that the principles laid down in the said judgment were applicable, he held that income by way of interest from Kamani Estate had accrued to the assessee during the previous year relevant to the assessment year 1976-77.

3. Ms. Patel, learned counsel for the petitioner, has supported the petition. Taking the court through the petition and various orders attached to the petition, she reiterated that the petitioner had bona fide changed its method of accounting and, therefore, income by way of interest could not have been taxed in the hands of the petitioner on accrual on basis. As regards the Supreme Court decision in [State Bank of Travancore Vs. Commissioner of Income Tax, Kerala](#), , fairly admitting that apparently the judgment was not in favour of the petitioner, she contended that if the propositions laid down in that case were applied to the facts of the case, there would be no escape from the conclusion that income by way of interest had not accrued as real income to petitioner. In particular, she relied on two of the eight propositions laid down by the Supreme Court in that case, viz., (i) whether the income has really accrued or arisen to the assessee must be judged in the light of the reality of the situation, and (ii) the concept of real income is certainly applicable in judging whether there has been income or not. For this purpose, she reiterated the facts in paragraph 3 of the petition, viz., there were disputes in the Kamani family in the year 1975. The disputes were referred to arbitration in the year 1974. When that failed, there were other agreements entered into in the year 1978 and so far nothing out of the debt or the interest is received by the petitioner as a matter of fact.

4. Needless to mention that, in writ jurisdiction, this court would interfere only if the authority passing the order has passed the order without jurisdiction or has failed to exercise jurisdiction vested in it or where the order suffers from an apparent error of law. In writ jurisdiction, the court does not sit as an appellate court. Admittedly, the Commissioner had jurisdiction to pass order u/s 264 which he did. The only other aspect that requires consideration is whether the impugned order suffers from an apparent error of law.

5. As regards the ground of change of method of accounting, it is evident from the order that the ground has been very correctly and properly rejected by the Commissioner. Records clearly show that no claim as regards change of accounting method was made before the Income Tax Officer during the assessment proceedings; no ground about it was taken in the appeal memo and the Commissioner (Appeals) had no occasion to consider that ground. The question of interference on this ground cannot, therefore, arise.

6. Regarding the question whether income by way of interest on this debt had or can be said to have accrued during the previous year relevant to the assessment year in view of the concept of real income propounded by the Supreme Court in the case of [Commissioner of Income Tax, Bombay City I Vs. Shoorji Vallabhdas and Co.](#), and in [State Bank of Travancore Vs. Commissioner of Income Tax, Kerala](#), it is seen that in [State Bank of Travancore Vs. Commissioner of Income Tax, Kerala](#), the Supreme Court itself observed at page 154 as under :

"An acceptable formula of co-relating the notion of real income in conjunction with the method of accounting for the purpose of the computation of income for the purpose of taxation is difficult to evolve. Besides, any strait-jacket formula is bound to create problems in its application to every situation. It must depend upon the facts and circumstances of each case. When and how does an income accrue and what are the consequences that follow from accrual of income are well-settled. The accrual must be real taking into account the actuality of the situation. Whether an accrual has taken place or not must, in appropriate cases, be judged on the principles of real income theory."

7. The question whether, in a given case, income has accrued or not applying the concept of real income is difficult. The Supreme Court has itself laid down eight aspects at page 155 which are to be kept in mind for coming to a conclusion. Two of the aspects requiring consideration are that the concept of real income should not be so read as to defeat the provisions of the Act and that the concept of real income, though certainly applicable, must be applied with care and within well-recognised limits. Having regard to the fact, viz., that the previous year involved in this case is from April 1, 1975, to March 31, 1976, the only evidence indicated in the petition until January 2, 1977, is the petitioner's submission in paragraph 3 of the petition that there were disputes in the Kamani family in the year 1975 and that the matter was referred to arbitration in the year 1979. The chartered accountants' letter dated

November 21, 1977, is also based on no other material except instructions from the petitioner. On these two facts alone, the claim of the petitioner that income had not accrued could have been rejected, though it could have been accepted. Accordingly, it is difficult to accept that the order of the Commissioner is palpably wrong even on the ground of concept of real income.

8. In the result, the petition fails and is hereby dismissed. Rule stands discharged. No order as to costs.