
(1962) 02 CAL CK 0022

Calcutta High Court

Case No: IT Reference No. 44 of 1956

Mansfield and Sons

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision: Feb. 22, 1962

Acts Referred:

- Income Tax Act, 1922 - Section 12, 23, 66(2)

Citation: (1963) 48 ITR 254

Hon'ble Judges: G.K. Mitter, J; A.N. Ray, J

Bench: Division Bench

Advocate: R.B. Pal and Debi Pal, for the Appellant; E.R. Meyer and Balai Lal Pal, for the Respondent

Final Decision: Dismissed

Judgement

G.K. Mitter, J.

In this reference u/s 66(2) of the Indian income tax Act, the only question involved is whether the sum of Rs. 1,31,957 which was found by the Appellate Tribunal to be an income of the firm could be computed as the business income for the purpose of the Excess Profits Tax Act. The question is as follows:

"The finding of the Tribunal in the income tax appeal clearly being that the sum of Rs. 1,31,957 was income from some undisclosed source, could such income be considered for taxation under the Excess Profits Tax Act and could the relief consequential to the finding in the income tax appeal be refused?"

The assessee is an unregistered firm. The assessment year in question is 1945-46 and the corresponding accounting year is from April 1, 1944, to January 31, 1945. The account books of the assessee disclosed a credit entry in the month of September, 1944, in the name of one Iswari Prosad Gupta for the amount mentioned. Against this entry was recorded a purchase of timber of the same value and it was alleged by the assessee that it had purchased timber from the said Iswari

Prosad Gupta and payment had been made to him by instalments during a period of about two years. The income tax Officer and the Appellate Assistant Commissioner held that the assessee had failed to prove the genuineness of this account and had also failed to prove that this amount came from the partners. According to the statement of the case the amount was introduced several months after the commencement of the business and in the circumstances the Tribunal inferred that this amount was produced by some undisclosed activities of the firm.

2. Two appeals were preferred to the Appellate Tribunal, one in respect of income tax and the other in respect of the excess profits tax. No separate argument was advanced in respect of the excess profits tax appeal and the assessee prayed for relief consequential to the result of the income tax appeal.

3. The Appellate Tribunal went into the question as to how this amount of Rs. 1,31,957 should be treated. It observed that if the amount had come from the partners it was for them to explain the source of the same. It negated the assessee's contention that the item could not be one of cash credit as no money came to the firm and as there was no attempt by the firm or its partners to explain the source from which the amount was received. The finding of the Appellate Tribunal on this portion of the case is as follows:

"Initially the assessee posted the amount in a fictitious account and only when it was confronted with the actual circumstances of the case that it came out with this disclosure that there was no person in the name of Iswari Prosad Gupta who was a creditor to the firm but that the amount was introduced as capital. Having failed to prove the genuineness of the account, the assessee cannot now be allowed to raise a question that the amount came only from one of the partners. The amount was introduced several months after the commencement of the business and we can infer from the circumstances that this amount was produced by some undisclosed activities of the firm and as such it must be brought to tax as an undisclosed income of the firm... We find no reason to interfere with the decision of the department in bringing this amount to tax holding at the same time that the amount was an income from some undisclosed source."

4. The argument of the assessee is that the net result of the above finding is that although the amount has got to be treated as income, it must be treated as income from "other sources" which would fall u/s 12 of the income tax Act and as such not to be reckoned for the purpose of the Excess Profits Tax Act. In this connection it should be noted that it was never the case of the firm that it had any income other than business income. It should also be noted that the entry relating to that amount finds a place in the books of account of the firm. The income tax Officer after examining the facts of the case recorded that Iswari Prosad Gupta was a fictitious person and the transactions shown with him as recorded in the account books of the assessee were spurious. Accordingly, the assessee firm's purchase of timber represented by this entry was an undisclosed profit. He also recorded that the cash

credits represented the assessee's undisclosed business income which had to be introduced into business at the time of necessity and was withdrawn subsequently when no more required. In appeal from this order the Appellate Assistant Commissioner endorsed the above finding of the income tax Officer. The appeal relating to the income tax was heard by the Appellate Tribunal on November 9, 1955, in which the judgment appearing at pages 5 to 8 of the paper-book was delivered. No separate judgment was delivered in the excess profits tax appeal, the order recorded being "This appeal is consequential to the result of income tax Appeal No. 7227 of 1954-55. We have dismissed the said appeal and, therefore, this appeal is also dismissed."

5. We were referred to two grounds of appeal before the Tribunal, which read as follows:

"That as no cash credit was found in the books of your petitioner's firm the addition of Rs. 1,31,957 as business income of your petitioners of the year of account is unwarranted and arbitrary in the absence of definite proof that this sum was paid in the year of account from your petitioners' undisclosed business income.

For that there is no evidence that your petitioners' firm had any other business activities or transactions in the account year besides those shown."

6. It was urged by Dr. Pal appearing on behalf of the assessee that when it was stated by the learned advocate for the assessee that in the excess profits tax appeal relief could only be had consequential on the result of the income tax appeal, not only did the appellant pray for relief on the ground as to the quantification of the income but also as to the quality of the income to be found by the income tax Appellate Tribunal. If that was the attitude of the assessee then it should have deferred its argument on the excess profits tax appeal till after delivery of the judgment in the income tax appeal. It seems to me that the assessee was only concerned to get relief in the excess profits tax appeal depending on the quantification of the income in the income tax appeal. Mr. Meyer appearing for the revenue drew our attention to an observation of the Supreme Court in the case of [Lakshmidhand Baijnath Vs. The Commissioner of Income Tax, West Bengal](#), . In this case the appellant was a Hindu undivided family carrying on business as piece goods merchant. In the course of the assessment proceedings relating to its accounting year, June 12, 1944, to April 24, 1945, a petition u/s 25A of the income tax Act was filed claiming that there had been a partition in the family on April 24, 1945. In the proceedings for assessment of the income of the family u/s 23 in regard to six sums aggregating to Rs. 2,30,346 shown in the accounts as sale proceeds of ornaments, the explanation given was that at the partition the jewels of the family were sold in six lots and the amounts realised were invested in the business. This was not accepted and the Supreme Court came to the conclusion that as the credits were found in the business accounts of the appellant and the explanation as to how the amounts came to be received was rejected by the income tax authorities, they

were entitled to treat the credits as business receipts chargeable to tax. The following observation of Venkatarama Aiyar J., who delivered the judgment of the Supreme Court, relied on by Mr. Meyer, appears at page 424: "When an amount is credited in business books, it is not an unreasonable inference to draw that it is a receipt from business." It must be added that their Lordships did not think it necessary to pursue the matter further as this was not one of the questions referred u/s 66(2). However that may be, the observation is there, and no reason has been shown as to why we should not accept the above dictum. In my opinion the answer to the question should be against the assessee and the finding that the amount of Rs. 1,31,957 was business income from some undisclosed activities is not unwarranted. The assessee must pay the costs of this reference.

Ray, J.

I agree.