

Ram Kumar Jalan Vs. Commissioner of Income-tax (Central), Bombay

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Court : Mumbai

Decided On : Mar-02-1974

Reported in : [1976]105ITR331(Bom)

Judge : R.M. Kantawala, C.J. and ;V.D. Tulzapurkar, J.

Acts : [Income Tax Act, 1961](#) - Sections 37, 37(1), 69 and 256(2)

Appeal No. : Income-tax Reference No. 4 of 1965

Appellant : Ram Kumar Jalan

Respondent : Commissioner of Income-tax (Central), Bombay

Advocate for Def. : R.J. Joshi, Adv.

Advocate for Pet/Ap. : F.N. Kaka, Adv.

Judgement :

Kantawala, C.J.

1. Under section 256(2) of the Income-tax Act, 1961, the following question of law is referred for our determination :

'Whether the Tribunal erred or misdirected itself in law or acted without evidence in holding that the borrower (sic borrowing) of loan of Rs. 25,000 was not genuine in respect of the assessment year 1949-50 ?'.

2. The assessee is a registered firm consisting of seven partners all of whom belong to the family of Jalan. The question relates to the assessment year 1949-50, for which the relevant accounting year is Samvat year 2004. For this year, this Income-tax Officer assessed the firm by an order dated March 29, 1954, on the total income of Rs. 1,46,331 which, inter alia, included a sum of Rs. 25,000 as assessee's income from undisclosed sources. This amount was found as a deposit in the account of one Shankerlal Matadin in the books of account of the assessee. The entries in the books of account showed that it was first deposited on April 6, 1948, then withdrawn on July 3, 1948, and again redeposited on July 20, 1948. The contention of the assessee was that this amount was a genuine loan taken from Shankerlal Matadin and interest amount of Rs. 375 was duly paid thereon and also brokerage of Rs. 25 was paid to one Dalamchand. The Income-tax Officer was not satisfied with the explanation offered on behalf of the assessee as regards the genuineness of this loan and called upon the assessee to furnish the particulars of the depositor. Pursuant to this request of the Income-tax Officer, the assessee by its letter dated December 26, 1953, furnished the particulars. In this letter it is stated that Messrs. Shankerlal Matadin from whom the loan was taken were carrying on business at 177, Harrison Road, Calcutta, and the loan was taken through a finance broker, Dalamchand, who may be summoned under section 37 to prove the genuineness of the loan. In view of this information given by the assessee a summons was sent through post but it was returned unserved with a postal remark that the addressee is 'not known'. This fact was brought to the notice of the assessee by the Income-tax Officer by his letter dated February 11, 1954. After receipt of this letter, on March 2, 1954, the assessee wrote a letter informing the Income-tax Officer that the firm (meaning Shankerlal Matadin belonged to M/s. Ramchandra Biseswarlal at the address already given and they deal in old ready-made clothes and so afresh summons may be issued accordingly. The name of the broker was also reiterated but it was stated that he was away from Calcutta. As the address given of the depositor was identical with the one furnished earlier, and as the summons which was attempted to be served at the same address was returned with the postal remark that the addressee was not known, the Income-tax Officer did not consider it necessary to issue afresh summons pursuant to the second letter of the assessee. As no corroborative

evidence was produced by the assessee in support of his contention the Income-tax Officer rejected the correctness of the entry in the books of the assessee and treated it as income from undisclosed sources.

3. In an appeal by the assessee the Appellate Assistant Commissioner accepted the contention of the assessee on the ground that after the second letter of the assessee the Income-tax Officer ought to have issued a fresh summons and as he had omitted to do so, he thought that there was not sufficient enquiry for taking the view that the borrowing of Rs. 25,000 was not genuine. In an appeal by the revenue the Tribunal reversed the order of the Appellate Assistant Commissioner. The tribunal held that the assessee had failed entirely to prove the genuineness of the loan, it took notice of the fact that ordinarily entries in the books of account of an assessee are no doubt to be taken as *prima facie* correct, but circumstances in the present case enabled the Income-tax Officer to take the view that the loan was not genuine. It, *inter alia*, pointed out that the assessee knew fully well that at the address given by him the summons could not be served on Shankerlal Matadin and was returned with the postal remark 'not known', that even the broker was not called and in the absence of the corroborative evidence which was called for by the taxing authorities which the assessee failed to produce, the Tribunal restored the order passed by the Income-tax Officer and reversed the order passed by the Appellate Assistant Commissioner.

4. The argument of Mr. Kaka on behalf of the assessee is that in view of a subsequent letter written by the assessee on March 2, 1954, it was incumbent upon the Income-tax Officer to issue a fresh summons either on Shankerlal Matadin or on the firm of Messrs. Ramchandra Biseswarlal even though the address was identical with the one furnished earlier. His submission was that an omission to issue a fresh summons indicates that due and proper enquiries were not made by the Income-tax Officer and he was, therefore, not justified in coming to the conclusion that the sum of Rs. 25,000 represented income of the assessee from undisclosed sources. We find ourselves unable to accept this contention. A question of issuing a fresh summons in view of the second letter can possibly arise only if the address given earlier was erroneous. Even if it is accepted as stated in the second letter of the assessee that the firm of Shankerlal Matadin belonged to

Messrs. Ramchandra Biseswarlal and if the address given was genuine then any letter addressed to M/s. Shankerlal Matadin at the address given should normally be received by the addressee. This is not a case where the package is returned with the postal remark 'not found'. The endorsement of the postal authorities is 'not known'. That presupposes that at the specific address furnished by the assessee the addressee cannot be traced. When the second letter was written though the name of the broker was mentioned it was clearly stated that he was outside Calcutta and so no question of calling him could have arisen by the taxing authorities. On these facts, we are unable to take the view that the taxing authorities did not make requisite enquiry before coming to the conclusion that the sum Rs. 25,000 represented income of the assessee from undisclosed sources. Reliance was placed by Mr. Kaka upon two decisions, which in our opinion are not applicable to the facts of the present case. The first case relied upon by him is the decision of the Allahabad High Court in *Munnalal Murlidhar v. Commissioner of Income-tax*. The Allahabad High Court has taken the view that it is implicit in the terms of section 23(2) of the Indian Income-tax Act, 1922, that the Income-tax Officer should give the assessee reasonable time and opportunity to produce evidence, and it is the duty of the Income-tax Officer to assist the assessee by exercising his powers under section 37 of the Act to enable the assessee to produce evidence in support of his return. Where the assessee is denied such opportunity to produce evidence, the assessment would be vitiated. There can be no quarrel with the principle laid down by the Allahabad High Court, but this was the view taken by the High Court when notwithstanding particulars being furnished as regards the name of the person from whom a borrowing was made no attempt whatsoever was made to issue and serve as summons on the party. On the contrary, in the present case, on the information furnished by the assessee a summons was sent by post at the address given but that could not be served and was returned with the postal remark that the addressee is 'not known'. That was not the case before at the Allahabad High Court in the above matter.

5. The second decision relied upon is also a decision of the Allahabad High Court in *Nathu Ram Premchand v. Commissioner of Income-tax*. The Allahabad High Court in this case has taken the view that no inference can be drawn against an assessee merely because the assessee had taken a dasti summons for

production of a witness and had not produced him. It is the duty of the Income-tax Officer to enforce the attendance of the witness if his evidence is material, in exercise of his powers under section 37(1) of the Act read with Order 16, rule 10 of the Code of Civil Procedure. Notwithstanding the service of a writ of summons if the witness does not appear then upon a request of the party concerned, the authority will be bound to issue a warrant for his appearance. But such a case does not exist in the present case. Here, the man from whom a loan is alleged to have been taken could not be traced at the address furnished by the assessee. Thus, in our opinion, the Tribunal was right in taking the view that the Income-tax Officer rightly treated the sum of Rs. 25,000 as income of the assessee from undisclosed sources. In the result, the question referred to us is answered in the negative. The assessee will pay the costs of the reference.

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