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Court : Chennai

Decided On : Dec-06-1934

Reported in : [1935]3ITR89(Mad)

Appellant : A.

Respondent : K. R. M. Kasinathan Chettiar V. Commissioner of Income Tax, Madras.

Judgement :

BEASLEY, C. J. - The question referred to us is : 'Whether the entries in the account books were not evidence for rebutting the presumption that the remittances of Rs. 16,000 to the petitioner in British India between 9th September and 4th June, 1922, were made from profits of gale business whether the aforesaid sum of Rs. 16,000 was assessable to income-tax.' It appears to us that the question referred is not very happily worded because, of course, entries in account books must be some evidence for rebutting the presumption which is raised against an assessee. What is really sought by this question to be decided is whether the Income Tax Officer here was bound to accept as conclusive of the case the entries made in this particular case. The facts of the case are that the assessee who is the manager of a Nattukottai Hindu undivided family carrying on money lending business at Galle and Colombo in Ceylon with headquarters at Devakottah, between 9th September, 1931, and 4th January, 1932, remitted sums of money aggregating to Rs. 16,000 from the business at Galle to himself at his headquarters at Devakottah and the remittances were debited to a folio styled

'Headquarters current account' in the books of the Galle business. This folio had a credit balance of Rs. 62,162 on the 27th November, 1919. On the 16th March, 1920, a sum of Rs. 40,000 was transferred from this folio to the assessee's capital account leaving a balance of Rs. 21,162 in the headquarters current account. To this account there was credited a sum of Rs. 1,730 as interest up to the 15th April, 1920; a further credit of interest of Rs. 1,860 was made on the 15th March, 1931. On the 16th March, 1921, there was in this account a balance amounting to Rs. 24,752. It was out of this account that the remittances in question which the income tax authorities have assessed to income-tax were made. The Commissioner of Income Tax deals with the matter as follows :-

'This so-called current account was not operated upon till September 1931 (for a period of more than ten years) and no interest was credited for any year after 15th March, 1921. The remittances in question were debited to this account. The remittances in question were debited to this account. The profits of the Galle business for the year 1928-29 to 1931-32, viz., Rs. 62,081 were found credited to the total account. On these facts the petitioner contended before the Income Tax Officer that the amount that stood to the credit of the headquarters current account, viz., Rs. 24,752 represented the balance of the money sent from headquarters to the Galle business several years ago, since the remittances in question had been debited to this folio (and not to the capital account to which the profits of the Galle business from 1928-29 to 1931-32 had been credited) they should be taken to have been made out of this specific sum of Rs. 24,752.'

The contention the Commissioner did not accept and we think for good reason. There are two peculiar features to which attention must be drawn with regard to this assessee's business. Usually we think we should say invariably - in banking businesses in addition a capital account being kept there is also a profit account kept. In this case, however, it is peculiar that no such profit account was kept at all and that the profits year after year were carried into the capital account swelling that account year after year and being mixed up with the capital account. That is one peculiar feature. The other peculiar feature is this account, from which the remittances in question are alleged to have been made. This account was in existence in 1919 and at that time represented amounts which had been remitted

from headquarters to the Galle business. It is headed the 'Headquarters current account' which in view of the later history of it is an entirely misleading description. It was not a current account at all and apparently ceased to be so after the last credit of interest which was on 15th March, 1921. There after, no further interest was credited and the account was not operated upon. It is on account of such a peculiar nature and with such a strange history that in our view it required that an explanation should be given by the assessee who of course was the person who alone could speak with regard to it. No such explanation was given and in our view, in the absence of such explanation, the account and the entries in it are not acceptable at their face value. This base is somewhat similar though not exactly similar, to Allens case (4 T. C. 590 and 1903 A. C. 129). The difference is that the remittances were made out of a current account but in both cases it was denied that the remittances came out of profits. In our view, having regard to the entire absence of any explanation with regard to this account, it certainly cannot be said that the entries relating to that account must be taken as conclusive of the matter. The facts of this case differ very considerably from the Quilon case (53 Mad. 510). The question here was under the circumstances entirely a question must be that in the circumstances of this case the Income Tax Officer was not bound to accept as conclusive the assessee's entries in his account books. Costs to the Income Tax Commissioner Rs. 250.

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