

Dhirajlal Girdharilal

Vs

Commissioner of Income-Tax, Bombay

Civil Appeal No. 246 of 1953

(CJI M. C. Mahajan, T. L. Venkatarama Ayyar, Ghulam Hasan, S. R. Dass, N. H. Bhagwati JJ)

25.10.1954

JUDGMENT

MEHR CHAND MAHAJAN, C.J. -

This appeal by special leave is directed against an order of the High Court of Judicature at Bombay, whereby the High Court summarily dismissed an application made under Section 66(2) of the Indian Income-tax Act, 1922, requiring the Income-tax Appellate Tribunal to state a case and refer to it the question of law said by the appellant to arise out of the order of the Tribunal.

The appellant is a Hindu undivided family, comprised of Dhirajlal and his two brothers Hiralal and Kirtilal, Dhirajlal being the karta of the family. Girdharlal Trikamlal who was the father of Dhirajlal, Hiralal and Kirtilal, was the head of the joint Hindu family before his death on 26th July, 1945. During his lifetime he and one of his sons Dhirajlal were also carrying on business separately in their firm name Girdharlal Trikamlal & Co., as dealers in stocks and shares. This firm was dissolved on the death of Girdharlal and a new firm comprised of Dhirajlal and his younger brother Hiralal was formed with the object of taking over the business formerly carried on by Messrs. Girdharlal Trikamlal & Co. Girdharlal had an account with the firm of Girdharlal Trikamlal & Co. and on the date of his death this account had a credit balance of Rs. 25, 31,999. The firm Girdharlal Trikamlal & Co. at that moment had shares of the value of Rs. 23,60,000 approximately as part of their total assets. On the death of Girdharlal, his three sons and his widow clearly became entitled to the amount that stood to his credit in the firm Girdharlal Trikamlal & Co. and by an arrangement made after his death the Hindu undivided family got in July, 1942, shares of the value of Rs. 18,34,586 from the firm towards payment of its liability to the Hindu undivided family as part of the inheritance of Girdharlal and for the balance the Hindu undivided family was shown as creditor of the new firm. The shares that were handed over were valued at the market price. The Hindu undivided family thus in its status as such became the owner of those shares. It is common ground that the family in that status antecedent to that date was not doing any business in stocks or shares.

The Hindu undivided family having obtained the shares, it sold some of the shares in the financial year 1943-44 and made a profit of Rs. 1,42,025 in the assessment year 1944-45. The Income-tax Officer during that year included the profit made by sale of shares in the assessment of the Hindu undivided family by arriving at the following finding :-

"The undivided Hindu family continued to do the share business and purchased shares worth Rs. 3,00,460 during the account years 1942-43 and 1943-44. What the assessee got from their father Mr. Girdharlal Trikamlal was converted by them into trading capital or, in other words, they had converted their inheritance into the stock-in-trade.

The fact that they had been purchasing other shares appears to point to this conclusion only. In these circumstances I include the profit of Rs. 1,42,025 in the assessment."

The appellant combated this position before the Appellate Assistant Commissioner and contended that the family was not doing any business in stocks and shares. On the other hand, it was only unloading the shares which had come to it on the death of Girdharlal Trikamlal and was trying to convert them into cash, and whatever shares were purchased were purchased by way of investment. The Appellate Assistant Commissioner accepted this contention and gave a reduction of Rs. 1,42,025 in the income as assessed. He said as follows :-

"Thus on facts before me I hold that the transactions in shares are by way of change in investment and not business dealings. Hence the profit is capital accretion and not business profit. Thus the same is not liable to assessment."

The Commissioner of Income-tax preferred an appeal against this order and with success. The Tribunal its order dated the 1st August, 1951, allowed the appeal and restored the order of the Income-tax Officer. It held that the transfer of shares of the value of Rs. 18,34,586 by the new firm to the Hindu undivided family was a device to evade income-tax. After examining the purchases and sales of shares by the Hindu undivided family during the years 1942, 1943, 1944 and 1945, the Tribunal came to the conclusion that the moving spirit in the new firm being Dhirajlal who was also the karta of the Hindu undivided family, knowing the conditions obtaining in the market effected the said transactions of the transfer of shares to enable the Hindu undivided family to realize the profits. The Tribunal concluded its decision with the following observations:-

"Shares of the value of Rs. 18 lakhs odd were transferred, one might say, by a dealer in shares to himself in another capacity. There was absolutely no reason why the shares should have been transferred to the Hindu undivided family. It has also not been pointed out why the Hindu undivided family. It has also not been pointed out why the Hindu undivided family found it necessary to effect sales of a large number of shares in the financial years 1943-44 and 1944-45. It has also not been shown why the Hindu undivided family should have purchased shares of the value of over Rs. 2 lakhs between 1st August, 1942, and 1st March, 1943. We have examined the frequencies of the sales in the financial year 1943-44. Shares were sold in July, August, October, December, January, February and March. The irresistible inference appears to be that from the very start the intention of Dhirajlal both as a transferor and as a transferee was to deal in these shares."

The appellant made an application to the Tribunal for statement of the case and for a reference of questions of law arising out of the order of the Tribunal to the High Court, By its order dated the 23rd November, 1951, the Tribunal disallowed the application on the ground that the question whether or not the Hindu undivided family carried on business in respect of the shares transferred to it by the firm and in the shares purchased by it, is a question of fact and that no question of law arose out of the findings of the Tribunal and that from the very start the intention of Dhirajlal both as a transferor and transferee was to deal in these shares. Dissatisfied with the order of the Tribunal, the appellant made an application to the High Court under Section 66(2) for a direction to the Tribunal to state a case and to refer to it the following questions of law :-

1. Whether on the facts and circumstances of the case the assessee was doing business in shares in the account year; or,

2. Whether there is any material on record on the basis of which it could be held that the assessee was doing the business in shares in the account year.

As already pointed out, the High Court summarily dismissed the application, presumably on the ground that in its opinion no question of law arose out of the order of the Tribunal. On an application being made to this Court under the provisions of Article 136 of the Constitution, leave to appeal against this order was granted.

The question whether or not the Hindu undivided family was doing business in shares transferred to it by the firm is undoubtedly a question of fact; but if the court of fact, whose decision on a question of fact is final, arrives at this decision by considering material which is irrelevant to the enquiry, or by considering material which is partly relevant and partly irrelevant, or bases its decision partly on conjectures, surmises and suspicions, and partly on evidence, then in such a situation clearly an issue of law arises. It is apparent from the following quotation from the judgment of the Tribunal that not only was its approach to the question raised before it tainted with suspicion, but it took into consideration a number of circumstances based purely on conjectures and surmises and for which there was not a scintilla of evidence on the record. This is what was said by it :-

"It appears to us that this transfer was effected with the object of evading income-tax, if it could be done so legally. If the shares had remained with the new firm, and if sales had been effected, the profits would have been liable to tax. The very fact that shares were transferred and that also a substantial holding of the firm, indicates conclusively that the object of the transfer was to evade income-tax, if possible. The Hindu undivided family, it strikes us, did not take the shares as the return of its capital. The Hindu undivided family knew, when the shares were transferred, what the object underlying the transfer was. If these shares had remained with the Hindu undivided family for a considerable time, one might very well accept the proposition that the Hindu undivided family took the shares as the return of its capital. The Hindu undivided family, however, did not keep the shares for a very long period. We have already indicated that no shares were sold between 1st August, 1942, and 31st March, 1943. Between 22nd July, 1942, and 31st March, 1944, shares of 16 companies were sold for Rs. 3,67,420. Some of the shares sold were out of the shares purchased between 1st August, 1942, and 31st March, 1943..... It goes without saying that the moving spirit in the new firm was Dhirajlal, being the elder brother, and the moving spirit in the Hindu undivided family would also be Dhirajlal. He in his capacity as the transferor and in his capacity as the transferee was fully aware of the conditions obtaining in the share market. Prices were rising and were likely to rise on account of war."

The learned Attorney-General frankly conceded that it could not be denied that to a certain extent the Tribunal had drawn upon its own imagination and had made use of a number of surmises and conjectures in reaching its result. He, however, contended that eliminating the irrelevant material employed by the Tribunal in arriving at its conclusion, there was sufficient material on which the finding of fact could be supported. In our opinion, this contention is not well founded. It is well established that when a court of fact acts on material, partly relevant and partly irrelevant, it is impossible to say to what extent the mind of the court was affected by the irrelevant material used by it in arriving at its finding. Such a finding is vitiated because of the use of inadmissible material and thereby an issue of law arises.

For the reasons given above we are of the opinion that both the Tribunal and the High Court were in error in the view that no issue of law arose in the case and that the Tribunal could not be called upon to state a case and to refer to the High Court any issue of law. The two questions framed by the appellant and which he wanted the High Court to ask the Tribunal to refer to it are comprehensive enough to embrace the issue of law that, in our opinion, arises out of the order of the Tribunal. But we think that it would clarify the position if these two questions were re-stated in the following form :-

"Whether the finding of the Tribunal is not vitiated by reason of its having relied upon suspicions and surmises not supported by any evidence on the record or upon partly inadmissible material ?"

In the result we allow this appeal, set aside the order of the High Court dismissing the application of the appellant under Section 66(2) of the Indian Income-tax Act, and remand the case to the High Court with the direction that it should ask the Tribunal to state a case and to refer to it the following question of law :-

"Whether the finding of the Tribunal is not vitiated by reason of its having relied upon suspicions and surmises not supported by any evidence on the record or upon partly inadmissible material ?"

The costs will abide the result.

Appeal allowed.

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