Mehta Parikh and Co.

Vs

Commissioner of Income-Tax, Bombay

Civil Appeal No. 81 of 1954

(CJI S. R. Dass, N. H. Bhagwati, T. L. Venkatarama Ayyar JJ)

10.05.1956

JUDGMENT

BHAGAWATI, J. -

Two questions were referred by the Income-tax Appellate Tribunal to the High Court of Bombay under section 66 (i) of the Indian Income-tax Act :

> (1) Whether there is any material to justify the assessment of Rs. 30,000 (Rupees thirty thousand) from out of the sum of Rs. 61,000 Rupees sixty-one thousand) (for income-tax and excess profits tax and business profits tax purposes) representing the value of high denomination notes which were encashed on the eighteenth day of January one thousand nine hundred and forty-six ? and
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> (2) Whether in any event by reason of the orders of the Revenue Authorities not having found that the alleged item was from alleged item was from alleged undisclosed business profits the assessment of Rs. 30,000 (Rupees thirty thousand) is in law justified for excess profits tax and business profits tax purposes ?

The High Court answered the first question in the affirmative but refused to answer the second question, being of the opinion that even though it had asked the Tribunal to refer that question under section 66 (2) of the Act, it had no jurisdiction to do so inasmuch as the appellants had not asked the Tribunal to refer the second question and, therefore, no question arose of the Tribunal refusing to raise that question or to submit it for the decision of the High Court.

The appellants are a partnership firm doing business in mill stores at Ahmedabad. Their head office is in Ahmedabad and their branch office is in Bombay. The Governor-General on 12th January, 1946, and high denomination Bank Notes (Demonetisation) Ordinance, 1946, and high denomination bank notes ceased to be legal tender on the expiry of 12th day of January, 1946. Pursuant to clause 6 of the Ordinance the appellants on 18th January, 1946 encashed high denomination notes of Rs. 1,000 each of the face value of Rs. 61,000. This was done in the calendar year 1946, being the account year corresponding with assessment year 1947-48.

During the assessment proceedings for the year 1947-48 the Income-tax Office called upon the appellants to prove from who and when the said high denomination notes of Rs. 61,000 were received by the appellants and also the bona fides of the previous owners thereof. After examining the entries in the books of account of the appellants and the position of the case balances on various dates from 20th December, 1945, to 18th January, 1946 and the nature and extent of the receipts and

payments during the relevant period, the Income-tax Officer came to the conclusion that in order to sustain the contention of the appellants he would have to presume that there were 18th high denomination notes of Rs. 1,000 each in the cash balance on 1st January, 1946, and before 13th January, 1946, were received in currency notes of Rs. 1,000 each, a presumption which he found impossible to make in the absence of any evidence. He, therefore, added the sum of Rs. 61,000 to the assessable income of the appellants from undisclosed sources.

On appeal to the Appellate Assistant Commissioner the appellants produced before him affidavits of three persons to show that the appellants had received Rs. 20,000, in 1,000 rupees currency notes on 28 December, 1945 Rs. 15,000 in 1,000 rupees currency notes on 6th January, 1946, and Rs. 8,500 in 1,000 rupees currency notes (making Rs. 8,000) on 8th January, 1946, thus aggregating to Rs. 43,500 during the relevant period. The Appellate Assistant Commissioner did not accept the statements contained in the said affidavits and dismissed the appeal and confirmed the order of the Income-tax Officer.

An appeal was taken by the appellants before the Income-tax Appellate Tribunal. The Tribunal after taking into consideration all the materials which had been placed before the Appellate Assistant Commissioner including the said affidavits was of the opinion that if it was to accept the appellants contention it would mean that practically every payment above Rs. 1000 was received by the appellants in the high denomination notes which was almost impossible. The tribunal could not say that the appellants had no high denomination notes with them. It accepted the books of accounts of the appellants but thought that the cash balance on 18th January 1946 could not have sixty-on high denomination notes. It came to the conclusion that the high denomination notes in the cash balance and taken the other notes away. It accepted the appellants explanation only in regards to 31 notes and directed that the appellants assessment for the year under reference be reduced by that amount and dismissed the rest of the appeal.

The appellants applied to the Tribunal for stating a case and referencing the first question of law to the High Court for it's opinion under section 66 (1) of the Act. The Tribunal rejected the said application holding that no question of law arose from it's order. The appellants thereupon applied to the High Court under section 66 (2) of the Act for an order of direction the Tribunal to state a case and refer the questions set out in the application. The High Court directed the Tribunal to state a case and refer the two questions of law set out hereinbefore to it for its decision under section 66 (2) of the Act. In stating the case and referring the said questions of law to the High Court the Tribunal pointed out that the second question was not dealt with by it was not dealt with by it in its original order.

The reference was heard by the High Court and the High Court answered the first referred question in the affirmative, but did not answer the second referred question. The High Court held that there were materials before the tribunal to hold that the sum of Rs. 30,000 represented the income of the appellants from undisclosed sources and that the finding of the Tribunal was the finding of the fact based on materials before it and even if it was inference drawn by the Tribunal, the inference was based on facts and materials before the Tribunal. The High Court observed that it was impossible to say that the inference drawn by the Tribunal form the circumstances was an unreasonable inference or an arbitrary and capricious inference or an inference, which no judicial tribunal could ever draw. It, therefore, answered the referred question in the affirmative.

As regards the second referred question, the High Court held that the question was not raised by the appellants in there application for the reference under the section 66 (1) of the Act and therefore, it

had no jurisdiction to ask the Tribunal to state a case on a particular question of law, were appellants themselves had never asked the tribunal to refer to such a question to the High Court and that even though it had directed the Tribunal under Section 66 (2) to refer the said question, as it had not jurisdiction to ask the Tribunal to refer the said question, it was not open to it to answer the second question which has been raised by the Tribunal at its instance and refused to answer it.

On a petition made by the appellants for leave to appeal to this court, the High Court granted a certificate that this was a fit case for appeal to this court and hence this appeal.

It may be mentioned at the outset that the assessment of the appellants by the Income-tax officer was under the section 23 (3) and section 26A of the Act. The books of account of the appellants by the Income-tax Officer and the only scrutiny made by the Income-tax Officer was whether at the relevant date, i.e., on 12th January, 1946, the appellants had in there cash 61 notes of high denominations of Rs. 1000 each. The cash book entries from 20th December, 1945, up to 18th January, 1946, were put before the Income-tax Officer and they showed that on 28th December, 1945, Rs. 20,000 were received from the Anand Textiles and there was an opening balance of Rs. 18,395 on the 2nd of January, 1946. Rs. 15,000 were received by the appellants on 7th January, 1946 from the Sushico Textiles and Rs 8,500, were received by them on the 8th January, 1946 from Menaben, widow of Shah Maneklal Nihalchand. Various other sums were also received by the appellates from 2nd January, 1946, up to and inclusive of 11th January, 1946, which were either multiples of Rs. 1,000 or were over Rs. 1,000 and were thus capable of having been paid to the appellates in high denomination notes of Rs. 1,000. There was a cash balance of Rs. 69,891-2-6 with the appellates on 12th January, 1946, when the High Denomination Bank Notes (Demonetisation) Ordinance, 1946, was promulgated and it was the case of the appellants that they had then in their custody and possession 61 high denomination notes of Rs. 1,000, which they enchased through the Eastern Bank on 18th January, 1946. The appellates further sought to support their contention by procuring before the Appellate Assistant Commissioner the affidavits of Kuthpady Shyama Shetty, General Manager of Messrs. Shree Anand Textiles, in regard to payment to the appellants of a sum of Rs. 20,000 in Rs. 1,000 currency notes on 28th December, 1945, Govindprasad Ramjivan Nivetia, Proprietor of Messrs. Shusico Textlies, in regard to payment to the appellates of a sum of Rs. 15,000 in Rs. 1,000 currency notes on 16th January, 1946, and Bai Maniben, widow of Shah Maneklal Nihalchand, in regard to payment to the appellates of a sum Rs. 8,500 (Rs. 8,000 thereout being in Rs. 1,000 currency notes) on 8th January, 1946. The appellates were not in a position to give further particulars of Rs. 1,000 currency notes received by them during the relevant period, as they were not in the habit of noting these particulars in their cash book and therefore relied upon the position as it could be spelt out of the entries in their cash book coupled with these affidavits in order to show that on 12th January, 1946, they had in their cash balance of Rs. 69,891-2-6, the high denomination currency notes of Rs. 1,000 each, which they encashed on 18th January, 1946, through the Eastern Bank.

Both the Income-tax Officer and the Appellate Assistant Commissioner discounted this suggestion of the appellates by holding that it was impossible that the appellates had on hand on 12th January, 1946, the 61 high denomination currency notes of Rs. 1,000 each, included in their cash balance of Rs. 69,891-2-6. The calculations, which they made involved taking into account all payments received by the appellates from and after 2nd January, 1946, which were either multiples of Rs. 1,000 or were over Rs. 1,000. There was a cash balance of Rs. 18,395-6-6 on hand on 2nd January, 1946, which could have accounted for such notes. The appellates received thereafter as shown in their cash book several sums of monies of monies aggregating over Rs. 45,000 in multiples of Rs. 1,000 or sums over Rs. 1,000, which could account for 45 other notes of that high denomination,

thus making up 63 currency notes of the high denomination of Rs. 1,000 and these 61 currency notes of Rs. 1,000 each, which the appellates encashed on 18th January, 1946, could as well have been in their custody on 12th January, 1946. This was, however, considered impossible by both Income-tax officer and the Appellate Assistant commissioner as they could not consider it within the Bounds of possibility that each and every payment received by the appellates after 2nd January, 1946, in multiples of Rs. 1,000 or over Rs. 1,000 was received by the appellates in high denomination notes of Rs. 1,000 each. It was by reason of their visualisation of such an impossibility that they negatived the appellants' contention.

It has to be noted, however, that beyond these calculations of figures, no further scrutiny was made by the made by the Income-tax Officer or the appellate Assistant Commissioner of the entries in the cash book of the appellants. The cash book of the appellants was accepted and the entries therein were not challenged. No further documents or vouchers in relation to those enties were called for, nor was the presence of the deponents of the three affidavits considered necessary by either party. The appellants took it that the affidavits of these parties were enough and neither the Appellate Assistant Commissioner, nor the Income-tax Officer, who was present at the hearing of the appeal before the Appellate Assistant Commissioner, considered it necessary to call for them in order to cross-examine them with reference to the statements made by them in their affidavits. Under these circumstances it was not open to the Revenue to challenge the correctness of the cash entries or the statements made by those deponents in their affidavits.

This being the position, the state of affairs, as it obtained on 12th January, 1946, had got to be appreciated, having regard to those entries in the cash books and the affidavits filed before the Appellate Assistant Commissioner, taking them at their face value. The entire in the cash books disclosed that, taking the number of high denomination notes at 18 on 2nd January, 1946, there came in the custody or possession of the appellates after 2nd January, 1946, and up to 12th January, 1946, 49 further notes of that high denomination, making 67 such notes in the aggregate, out of which 61 such notes could be encashed by the appellates on 18th January, 1946 through the eastern Bank. A mere calculation of the nature indulged in my the Income-tax Officer or the Appellants Assistant Commissioner was not enough, without any further scrutiny, to disloge the position taken up by the appellates, supported as it was, by the entries in the cash book and the affidavits put in by the appellants before the Appellate Assistant Commissioner.

The Tribunal also fell into the same error. It could not negative the possibility of the appellant being in possession of a substantial number of these high denomination currency notes. It, however, considered that it was impossible for the appellants to have had 61 such notes in the cash balance in their hands on 12th January, 1946, and then it applied a rule of the thumb treating 31 out of such 61 notes as within the bounds of possibility, excluding 30 such notes as not covered by the explanation of the appellants. This was pure surmise and had no basis in the evidence, which was on the record of the proceedings.

The High Court treated this finding of the tribunal as a mere finding of fact. The position in regard to all such findings of fact, as to whether they can be questioned in appeal, is thus laid down by the House of Lords in Cameron v. Prendergast (Inspector of taxes) :

> "Inferences from facts stated by the Commissioners are matters of law and can be questioned on appeal. The same remark is true as to the construction of documents. If the Commissioners state the evidence and hold upon that evidence that certain results follow, it is open to the Court to differ from such a holding."

To the same effect are the observations of the House of lords in Bomford v. Osborne (H. M. Inspector of Taxes) :

> "No doubt there are many cases in which Commissioners, having had proved or admitted before them a series of facts, may deduce therefrom further conclusions which are themselves conclusions of pure fact. But in such cases the determination in point of law is that the facts proved or admitted provide evidence to support the Commissioner's conclusions."

The latest pronouncement of the House of Lords on this question is to be found in Edwards (Inspector of Taxes) v. Bairstow and Another. Viscount Simonds observed at page 586 :

> "For it is universally conceded that, through it is a pure finding of fact it may be set aside on grounds which have been stated in various ways but are, I think, fairly summarised by saying that the court should take that course if it appears that the Commissioners have acted without any evidence or upon a view of the facts which could not reasonably be entertained." and Lord Radcliffe expressed himself as under at page 592 :
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> "If the case contains anything ex facie which is bad law and which bears upon the determination, it is obviously erroneous in point of law. But, without any such misconception appearing ex facie, it may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In those circumstances, too, the court must intervene."

It follows, therefore, that facts proved or admitted may provide evidence to support further conclusions to be deduced from them, which conclusions may themselves be conclusions of fact and such inferences from facts proved or admitted could be matters of law. The court would be entitled to intervene if it appears that the fact finding authority has acted without any evidence or upon a view of the facts, which could not reasonably be entertained or the facts found are such that no person acting judicially and properly instructed as to the relevant law would have come to the determination in question.

The High Court recognised this position in effect but went wrong in applying the true principles of interference with such findings of fact to the present case. The attempt which was made by the High Court to probe into the mind of the Tribunal by trying to discard the affidavit of Govindprasad Ramjivan Nivetia in regard to the payment of Rs. 15,000 to the appellants in 15 currency notes of Rs. 1,000 each on 6th January, 1946, and thus reducing the aggregate sum of Rs. 43,500 to Rs. 28,500 and justifying the figure of Rs. 31,000 arrived at by the Tribunal was really far-fetched and contrary to the terms of the tribunal's order itself, the Tribunal not having given any inkling, whatever, of what was at the back of its mind when it fixed upon the figure Rs. 31,000. Really speaking the Tribunal had not indicated upon what material it held that Rs. 30,000 should be treated as secret profit or profits from undisclosed sources and the order passed by it was bad. The appellants had furnished a reasonable explanation for the possession of the high denomination notes of the face value of Rs. 61,000 and there was no justification for having accepted it in part and discarded it in relation to a sum of Rs. 30,000. The case analogous to the one before the Patna High Court in Chunilal Ticamchand Coal Co. Ltd. v. Commissioner of Income-tax, Bihar and Orissa, and should have been similarly decided in favour of the appellants.

For the reasons indicated above, we are of the opinion that the High Court was in error in answering the first referred question in the affirmative. It ought to have answered it in the negative and held that there were no materials to justify the assessment of Rs. 30,000 from out of the sum of Rs. 61,000 for income-tax and excess profits tax and business profits tax purpose, representing the value of the high denomination notes which were encashed on 18th January, 1946.

In view of the above it is not necessary for us to go into the question whether the High Court ought to have answered the second referred question also. The answer to the first referred question being in the negative, the very basis for excess profits tax and disappears and the second referred question becomes purely academical.

The result, therefore, is that the appeal is allowed and the first referred question is answered in the negative. The appellants will have their costs here as well as in the High Court.

VENKATARAMA AYYAR, J. -

I agree to the order just proposed; but I prefer to rest my decision on the ground that the finding of the Tribunal that high denomination notes of the value of Rs. 30,000 represented the concealed profits of the appellant is not supported by any evidence, and is, in consequence, erroneous in point of law and liable to be set aside. The evidence on record has been exhaustively reviewed in the judgment just delivered, and there is no need to traverse the same ground again. To put the matter in a nut-shell, the accounts of the appellant have been accepted by the Tribunal as genuine, and it is impossible to say, having regard to the case balance shown therein, that notes in question could not have been included therein. The Tribunal observes that is unlikely that so many high denomination notes would have been held as part of the case on hand for a such a large number of days. That, no doubt, is highly suspicious; but on legal testimony. For the respondent, Mr. Joshi contended that the case balance shown in the books could not be accepted as true, because the appellant had ample time to rewrite the accounts, as the Ordinance was issued on 12th January, 1946, and the year of account of the assessee was the calendar year. Whether the accounts are genuine or not is a pure question of fact, and a finding on a question of fact is an much binding on the Revenue as on the subject.

Appeal allowed.

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