

Sovachand Baid

Vs

Commissioner of Income-Tax

Civil Appeal No. 203 of 1955

(T. L. Venkatarama Ayyar, P. B. Gajendragadkar, A. K. Sarkar JJ)

24.04.1958

JUDGMENT

SARKAR J. -

This is an appeal from a judgment of the Income-tax Appellate Tribunal dated August 7, 1953, filed with have granted under article 136 of the Constitution. The Tribunal held that of the high denomination notes of the value of Rs. 2,68,000 encashed by the appellate in the relevant accounting year, notes worth Rs. 1,28,000 represented his concealed profits and were liable to be taxed. In this appeal the appellant challenges the correctness of this finding.

The appellant was assessed to income-tax for the year 1946-47 as a non-resident British subject, and out of the proceedings of this assessment the present appeal arises. The relevant accounting year was the period from November 6, 1945, to April 9, 1946. The appellant was a resident of Ratangarh in the Princely State of Bikanere outside what was British India. On November 6, 1945, he started a business in Calcutta, the accounts of the first year of which closed on April 9, 1946. On January 19, 1946, the appellant came to Calcutta with 11 ten thousand rupees and 158 one thousand rupees currency notes which he encashed a few days later through the Punjab National Bank under the provisions of the High Denomination Notes Order Promulgated earlier in the same month. In his books of account of the Calcutta business for the relevant accounting year, the appellant credited the value of the notes namely, Rs. 2,68,000 capital received from him. Upon the Income- tax Officer asking him to explain how he came across these notes, the appellant said that the money had come to him from his father who had died in 1942. The Income-tax Officer took the view that the explanation of the appellant was not supported by his books of account and other documents produced by him. He thereupon held that the amount represented by the notes was income from undisclosed business activities and was, therefore taxable.

The appellant then took an appeal to the Appellate Assistant Commissioner, who came to the conclusion that the books of account and other documents produced by the appellant showed that the notes formed part of the assets that devolved on the appellants upon his father's death. He, therefore, allowed the appeal and deleted the sum of Rs. 2,68,000 from the assessment.

The Commissioner of Income-tax then appealed from his decision to the Appellate Tribunal. The Tribunal, for reasons to which we shall presently refer, allowed the appeal in part but held that in the circumstances disclosed a sum of Rs. 1,28,000 had to be taken as income and the balance of Rs. 1,40,000 was properly regarded as capital. The Tribunal, therefore, modified the assessment order by including in it a sum of Rs. 1,28,000 as undisclosed income.

The appellant challenged the correctness the Tribunal's decision before us. The learned counsel for the appellant that he could not ask us in this appeal to reassess the evidence and to come to a conclusion of our own on it. It is not the practice of this court to do so. The learned counsel relied on *Mehta Parikh & Co. v. Commissioner of Income-tax* where it was said :

"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 learned counsel contended that judged by the test laid down in the case just cited, the Tribunal's finding could not be sustained.

The Tribunal had to decide a question which was entirely one of the fact. It had to decide whether on the evidence adduced by the appellant it could be said that the notes were part of the assets received by him from his father. The appellant's case was this :

Mohanlal, the appellant's adoptive father, was a partner in the firm of Manekchand Tarachand which carried on business in Calcutta. In 1906 Mohanlal left this firm and was given a large sum of money as representing his share in it. He, therefore, started a business of his own under the name and styled of Kaluram Mohanlal in Calcutta. This business was carried on till 1925-26 when it was closed. Mohanlal then retired from business and went to live in his home at Ratangarh, Bikanere, where he died on April 22, 1942. Upon his death, the appellant succeeded to the estate left by him which included the notes with which this case concerned.

In order to prove that the notes had been left by his father the appellant relied on the books of account kept by the father at Ratangarh and continued by the appellant after his death. These book contained entries stating the numbers of the ten thousand rupees notes. They also contained entries showing the existence of a large number of one thousand rupees notes but without any numbers. The appellant's case was that it was not the practice to note in the account books the numbers of the one thousand rupees notes. The appellant contended that he had proved by these books of account that the notes had been received by him from his father. The Income-tax Officer did not accept the books as genuine. He also held that it had not been proved that the father had carried on any business in Calcutta to be able to amass a large fortune as stated by the appellant. The Appellate Assistant Commissioner set aside the findings of the Income-tax Officer and held that there was no reason to doubt the genuineness of the books and that it had been proved that the father carried on business in Calcutta as stated by the appellant and had amassed a large fortune.

The Tribunal found that the evidence had proved that the father, Mohanlal, was a wealthy person : that he retired from the firm of Manekchand Tarachand in 1906 with Rs. 6 or 7 lacs; that he started a business of his own in Calcutta and that between 1926 and 1942 while in Ratangarh he had substantial moneys in the Bikanere State Savings Bank's branch there. The Tribunal, however, was unable to accept the books of account kept at Ratangarh as genuine, and, therefore, did not rely on the entries in those books as proving the existence of the notes during the father's lifetime. The Tribunal gave several reasons for it. It said that the appellant had not produced the books of account kept by the father in his own business in Calcutta which was carried on from 1906 to 1926. It held that these books would have shown what monies the father had with him when he retired from business and went to live in Ratangarh. Then the Tribunal observed that the Ratangarh books

contained no entries showing any amount having been received from the Calcutta business when it was closed, as would have appeared if the Ratangrah books were genuine. The Tribunal also noticed that the Ratangrah books only contained a record of moneys sent to the bank and withdrawn therefrom and of the transactions of certain accommodation loans granted to the son-in-law and other near relations. It observed that the numbers of the ten thousand rupees notes appeared in the entries relating to the accommodation loans granted to the near relations. In these circumstances the Tribunal felt that the books were of such a nature that they could be written up any time that the appellant wanted to. The Tribunal lastly held that the books did not contain a complete record of all the dealings of Mohanlal during the long period from 1926 to 1942.

The learned counsel for the appellant has not been able to show that the Tribunal's remarks on the Ratangrah book of account were wrong on the facts. He directed his attention largely in establishing that the reasons given by the Appellant, Assistant Commissioner or the accepting the Ratangrah books as genuine, were correct and preferable. That clearly is a matter into which we cannot go for we cannot appraise the evidence fresh. We are unable to say that the reasons given by the Tribunal for the view that the books are not genuine are unfounded or that there was no evidence to support the view that the Tribunal took. In our view, it is possible to find that the Ratangrah books were not genuine for the reasons mentioned by the Tribunal. We do not propose to consider what view we would have arrived at on the material available as the genuineness of the books, for that would be entirely irrelevant. It is enough to say that the view taken by the Tribunal is a reasonably possible view on the evidence adduced and that it cannot be said that that view is not supported by the evidence or was unreasonable.

This would be enough to dispose of the appeal, but there are two other matters to which we should refer.

Having come to the conclusion that the books of account of Ratangrah could not be accepted, the Tribunal went on to observe that from 1926 to 1945 the only source of income of the appellant and his father was interest earned on moneys deposited in bank. It came to that conclusion apparently because the books of account produced did not disclose any source of income. The Tribunal also found that about 1945 the appellant had in his bank a sum of about Rs. 8 lakhs to 10 lakhs and that being so, in view of the only source of income mentioned earlier, it was impossible to believe that he had another seven lakhs of rupees in notice in December, 1945, as alleged by him. The Tribunal then held that in these circumstances, the appellant's uninvested cash was likely to be between Rs. 1,50,000 and Rs. 2,00,000 out of which a sum of Rs. 1,40,000 at the most could be in high denomination notes. In this view of the matter the Tribunal held that out of the High denomination notes of the total value of Rs. 2,68,000 encashed by the appellant in January 1946, notes worth Rs. 1,40,000 could not be his capital assets and the balance of Rs. 1,28,000 must have been his undisclosed income. The Tribunal therefore directed that the appellant must pay tax on the sum of Rs. 1,28,000. The learned counsel for the appellant criticised this part of the Tribunal's judgment as based on mere speculation. We cannot help feeling that this criticism may be partly justified but we do not appreciate how it assents the appellant. It does not, in our view, in any way affect the Tribunal's finding on the question as to whether the appellant proved that the notes had devolved on him on his father's death. The Tribunal in this part of the judgment was really making a concession to the appellant and gave a benefit to him to which he was strictly not entitled in view of the Tribunal's finding on the evidence led by the appellants. We are unable to hold that the Tribunal's judgment is liable to be set aside because it held that the whole of Rs. 2,68,000 was not taxable.

Lastly, the learned counsel argued that even assuming that the notes formed part of his income. the

appellant could not be taxed in respect of them without a finding that they represented income which had arisen or accrued in British India as he had been assessed as a person not resting in British India and that finding had not been made. We are unable to allow this contention to be raised, for it had never been mentioned at any earlier stage of the proceedings. The learned counsel drew out attention to a portion of the judgment of the Appellate Assistant Commissioner to show that the point had been raised earlier. We do not agree that there is any thing in the judgment of the Appellate Assistant Commissioner to show that the point had been taken earlier. The portion referred to dealt with the remittances to British India of interest earned in Bikanere and not with the notes with which we are concerned. As the question had clearly never been raised by the appellant at any earlier stage we would not be justified in allowing him to raise it now.

The result, therefore, is that the appeal fails and it is dismissed with costs.

Appeal Dismissed.

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