Messrs Lalchand Bhagat Ambical Ram

Vs

The Commissioner of Income Tax Bihar & Orissa

Civil Appeals Nos. 679 and 680 of 1957

(CJI S. R. Dass, N. H. Bhagwati, M. Hidayatullah JJ)

14.05.1959

JUDGMENT

BHAGWATI J. –

These are two connected appeals with special leave granted by this Court under Art. 136 of the Constitution and arise out of the appellant's assessment to Income-tax for the assessment year 1946-47 and Excess Profits Tax for the chargeable accounting period January 9, 1945, to February 2, 1946.

The appellant is a Hindu undivided family carrying on extensive business in grain as merchants and commission agents. It is one of the premier grain merchants and wholesalers of Sahibganj in the District of Santhal Parganas in the State of Bihar. It has branches at Nawgachia in the District of Bhagalpur and at Dhulian in the District of Murshidabad in West Bengal.

The appellant filed its income-tax Return for the assessment year 1946-47 showing a loss of Rs. 46,415 in the business. The Income-tax Officer, Patna, however, in the course of the assessment noticed that the appellant had encashed high denomination notes of the value of Rs. 2,91,000 on January 19, 1946. The Income-tax Officer asked for an explanation which the appellant gave stating that these notes formed part of its cash balances including cash balance in the Almirah account. The cash balances of the appellant on January 12, 1946, on which date the High Denomination Bank Notes (Demonetisation) Ordinance, 1946, was promulgated were Rs. 29,284-3-9 in its Rokar and Rs. 2,81,397-10-0 in the Almirah account. The Almirah account was an account for moneys withdrawn and kept at home. The appellant sought to prove the fact that the high denomination notes encashed by it formed part of its cash balances from certain entries in its accounts wherein the fact that moneys were received in high denomination notes had been noted. Portions of these entries to the effect that moneys had been received in high denomination notes were found by the Income-tax Officer to be subsequent interpolations made by the appellant with a view to advance its case that the cash balances contained the high denomination notes encashed by it. The Income-tax Officer found that the appellant's food grains license at Nawgachia had been cancelled for the accounting year for its failure to keep proper stock accounts and that the appellant was prosecuted under the Defence of India Rules but had been acquitted having been given the benefit of doubt. The Income-tax Officer also had regard to the fact that the appellant was a speculator and that as a speculator the appellant could easily have earned amounts far in excess of the value of the high denomination notes encashed. He considered that even in the disclosed volume of business in the year under consideration in the Head Office and in the branches, there was possibility of his earning a considerable sum as against which it showed a net loss of about Rs. 46,000. The Income-tax Officer also noticed that notwithstanding the fact that the period was very favourable to food grains

dealers, the appellant had declared a loss for the assessment year 1944-45 up to 1946-47, though it had the benefit of a large capital on hand. The Income-tax Officer further took into consideration the circumstances that Nawgachia and Dhulian were very important business centres and Sahibganj, the principal place of business, had gained sufficient notoriety for smuggling foodgrains and other commodities to Bengal by country boats. Dhulian which was just on the Bengal, Bihar border was also reported to be a great receiving centre for such commodities. Having regard to all these circumstances, the Income-tax Officer rejected the appellant's explanation that the high denomination notes formed part of its cash balances and treated the sum of Rs. 2,91,000 as the appellant's secreted profits from business and included it in its total income and assessed the appellant for the said assessment year on the income of Rs. 1,39,117. Dealing with the Excess Profits Tax assessment, he also held that the said income was derived from the business of the appellant and hence it was liable to excess profits tax also.

The appellant preferred an appeal to the Appellate Assistant Commissioner against both these assessment orders and by his orders dated February 28, 1951, the Appellate Assistant Commissioner upheld the orders of the Income-tax Officer and dismissed the appeals.

On further appeals from the said orders of the Appellate Assistant Commissioner to the Income-tax Appellate Tribunal, the Tribunal by its order dated April 29, 1952, dismissed both the appeals as regards the Income-tax as well as Excess profits tax. Even though before the Income-tax Officer and the Appellate Assistant Commissioner the case of the appellant was that the account book which contained the entries in regard to the receipts of moneys in high denomination notes were genuine and correct, this position was abandoned by the appellant before the Tribunal. Before the Tribunal, the appellant stated that the said entries were made in sheer nervousness after coming into force of the High Denomination Bank Notes (Demonetization) Ordinance, 1946, on January 12, 1946, as the appellant did not know that it had specific proof in its possession of having the high denomination notes as part of its cash balances. The Tribunal held that there was no other reason to suspect the genuineness of the account books in which these interpolations were made. If the entire account books were fabricated to serve its purpose, there would be no need for the appellant to make interpolations between the lines already written in a different ink and in such an obvious manner as to catch one's eye on the most cursory perusal. The Tribunal, however, examined the cash book and taking into consideration all the circumstances which had been adverted to by the Income-tax Officer held that the appellant might be expected to have possessed as part of its business cash balance of at least Rs. 1,50,000 in the shape of high denomination notes on January 12, 1946, when the Ordinance above-mentioned was promulgated. A copy of the statement of large amounts received by the appellant from a single constituent had been filed by the appellant which showed that sums aggregating to Rs. 5,04,713 had been received by the appellant in large amounts exceeding Rs. 1,000 between February 6, 1945, and January 11, 1946. As to large payments made by the appellant, no statement was filed, but the Tribunal examined the accounts with a view to ascertain the payments which could have been made in high denomination notes. The Tribunal came to the conclusion that the nature of the source from which the appellant derived the remaining 141 high denomination notes of Rs. 1,000 each remained unexplained to its satisfaction. It accordingly ordered that the addition made by the authorities be reduced from Rs. 2,91,000 to Rs. 1,41,000. The Income-tax Officer was also directed to make the necessary consequential adjustment in the Income-tax assessment based upon the result of the connected Excess Profits Tax appeal. In regard to the Excess Profits Tax appeal the Tribunal after taking into account the preceding and succeeding assessments and the nature of the appellant's business and the opportunities that it had to make substantial business profits outside the books held that the add back of Rs. 1,41,000 must be made to the business profits disclosed by the appellant. Consequential relief was accordingly given in the

Excess Profits Tax appeal also.

The appellant thereafter applied to the Tribunal for stating a case and raising and referring to the High Court the following questions of law arising from the said order of the Tribunal both as regards the Income-tax and the excess profits tax assessments :-

> (1) "Whether there is any material to justify the conclusion that Rs. 1,41,000 is secreted profit for the purpose of assessment, this amount being a part of Rs. 2,91,000 and which was the amount represented by high denomination notes encashed by the Petitioner.
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> (2) "Whether there is any material for a finding that the sum of Rs. 1,41,000 is the secreted value of the high denomination notes was business income liable to excess profits tax."

By its order dated August 15, 1952, the Tribunal dismissed these applications stating that the finding of the taxing authorities was a pure finding of fact based on evidence before them and that no question of law arose out of the said order of the Tribunal.

The appellant thereupon made applications to the High Court under s. 66(2) for directing the Tribunal to state a case and raise and refer the said questions of law to the High Court for its decision. By its order dated January 21, 1953, the High Court directed the Tribunal to state a case and raise and refer the following question of law to the High Court for its decision in both the applications :

> "Whether there is any material to support the finding of the Appellate Tribunal that a sum of Rs. 1,41,000 is secreted profit liable to be taxed in the hands of the assessee under the Indian Income-tax Act and under the Excess Profits Tax Act."

The tribunal accordingly stated a case and raised and referred the aforesaid question of law to the High Court.

The said Reference was heard by the High Court and judgment was delivered on January 5, 1955, whereby the High Court answered the referred question in the affirmative. The High Court was of the opinion that the onus of proving the source of the said amount was on the appellant which the appellant did not discharge and that there was evidence before the Tribunal to come to the conclusion it did. The finding arrived at by the Tribunal was therefore a pure finding of fact and it could not be urged that it was based on no evidence. The High Court further held that as the appellant itself claimed that the said amount of Rs. 2,91,000 formed part of the cash balance of its business, the said profits were profits of the business and as such liable to excess profits tax.

The appellant then applied to the High Court for a certificate under s. 66A(2) of the Income-tax Act for leave to appeal to this Court. These applications were rejected by the High Court on August 25, 1955, observing that it had answered the question of law not on the academic principles of onus but on the material from which it was open to the Income-tax authorities to arrive at the conclusion at which they arrived.

The appellant hereupon on October 22, 1955, applied to this Court for special leave to appeal which was granted by this Court on November 28, 1955, in both the appeals arising out of the assessment for Income-tax as well as the excess profits tax. Both the appeals arising out of these orders being

Civil Appeals Nos. 679 and 680 of 1957 are now before us.

The main question to determine in these two appeals is whether there was any material of support the finding of the Tribunal that the sum of Rs. 1,41,000 represented the secreted profits of the appellant's business and as such liable to be taxed in the hands of the appellant under the Indian Income-tax Act and the Excess Profits tax Act ? The connection of the Revenue all throughout has been that it is a finding of fact reached by the authorities competent in that behalf and this Court should not interfere with such findings of fact. The contention of the appellant on the other hand, has been that even though it may be a finding of fact to be reached by the authorities concerned on the materials on the record before them, such finding is vitiated by reason of the authorities indulging in conjectures, suspicions and surmises and basing the same on no material whatever which goes to support the same. It is also contended that the finding reached by them is a perverse one which a reasonable body of men could not have arrived at on the material on the record.

The limits of our jurisdiction to interfere with finding of fact reached by the courts or tribunals of facts have been laid down by us in various decisions of this Court. In Dhirajlal Girdharilal v. Commissioner of Income-tax, Bombay [[1954] 26 I.T.R. 736] we observed that when a Court of fact arrives at its decision by considering material which is irrelevant to the enquiry, or acts on material, partly relevant and partly irrelevant, where 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 decision, a question of law arises : Whether the finding of the Court of fact is not vitiated by reason of its having relied upon conjectures, surmises and suspicions not supported by any evidence on record or partly upon evidence and partly upon inadmissible material. We also observed in Dhakeswari Cotton Mills Ltd. v. Commissioner of Income-tax, West Bengal [[1955] 1 S.C.R. 941] that an assessment so made without disclosing to the assessee the information supplied by the departmental representative and without giving any opportunity to the assessee to rebut the information so supplied and declining to take into consideration all materials which the assessee wanted to produce in support of the case constituted a violation of the fundamental rules of justice and called for interference on our part. In Messrs. Metha Parikh and Co. v. The Commissioner of Income-tax, Bombay [[1956] S.C.R. 626] this Court observed that the conclusions based on facts proved or admitted may be conclusions of fact but whether a particular inference can legitimately be drawn from such conclusions may be a question of law. Where, however, 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 were such that no person acting judicially and properly instructed as to the relevant law could have found, the Court is entitled to interfere. In our decision in Meenakshi Mills, Madurai v. Commissioner of Income-tax, Madras [[1956] S.C.R. 691] after discussing the various authorities on the subject we laid down that :-

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> (3) A finding on a question of fact is open to attack under S. 66(1) as erroneous in law when there is no evidence to support it or if it is perverse."

The latest pronouncement of this Court in Omar Salay Mohamed Sait v. The Commissioner of Income-tax, Madras [C.A. No. 15 of 1958 decided on March 5, 1959] summarises the position thus :-

> "We are aware that the Income-tax Appellate Tribunal is a fact finding Tribunal and if it arrives at its own conclusions of fact after due consideration of the evidence

> before it this Court will not interfere. It is necessary, however, that every fact for and against the assessee must have been considered with due care and the Tribunal must have given its finding in a manner which would clearly indicate what were the questions which arose for determination, what was the evidence pro and contra in regard to each one of them and what were the findings reached on the evidence before it. The conclusions reached by the Tribunal should not be coloured by any irrelevant considerations or matters of prejudice and if there are any circumstances which required to be explained by the assessee, the assessee should be given an opportunity of doing so. On no account whatever should the Tribunal base its findings on suspicions, conjectures or surmises nor should it act on no evidence at all or on improper rejection of material and relevant evidence or partly on evidence and partly on suspicions, conjectures and surmises and if it does anything of the sort, its findings even though on questions of fact will be liable to be set aside by this Court."

It is in the light of these observations that we have to determine the question arising before us in the present appeals. It is clear on the record that the appellant maintained its books of account according to the mercantile system and there were maintained in its cash books two accounts : one showing the cash balances from day to day and other known as "Almirah account" wherein were kept large balances which were not required for the day-to-day working of the business. Even though the appellant kept large amounts in bank deposits and securities monies were required at short notice at different branches of the appellant. There were also collections made from various Beoparies or merchants and monies were also required for doing the grain purchase work on behalf of the Government. These monies were credited in the Almirah account which showed heavy cash balances from time to time. In the books of account for previous years it was the practice of the appellant to give details of the notes of high denominations giving the distinctive numbers of these notes received or paid or at least other description e.g., "So many notes" of Rs. 1,000 each. In the assessment year, however, this practice does not appear to have been followed but entries continued to be made of monies thus received from the banks, different branches, Beoparees etc., without any such details being filled therein. A statement of these cash balances viz., the balance in the Rokar and the balance in the Almirah from September 1, 1945, to January 31, 1946, was filed before the Income-tax authorities and this statement showed that apart from the balance in the Rokar the balance in the Almirah rose from Rs. 1,36,397-10-0 on September 1, 1945, to Rs. 1,97,397-10-0 on September 30, 1945, to Rs. 2,23,397-10-0 on October 13, 1945, to Rs. 2,65,397-10-0 on November 27, 1945, to Rs. 2,91,397-10-0 on December 29, 1945, and remained at Rs. 2,81,397-10-0 on January 10, 1946. The balance in the Rokar fluctuated considerably but on the relevant date January 10, 1946, it stood at Rs. 26,092-10-9. It was Rs. 24,976-13-3 on January 11, 1946, and Rs. 29,284-3-9 on January 12, 1946, when the High Denomination Bank Notes (Demonetization) Ordinance, 1946, was promulgated. These entries showed that there was with the appellant on January 12, 1946, an aggregate sum of Rs. 3,10,681-13-9 and it was highly probable that the High Denomination notes of Rs. 2,91,000 were included in this sum of Rs. 3,10,681-13-9. The books of account of the appellant were not challenged in any other manner except in regard to the interpolations relating to the number of high denomination notes of Rs. 1,000 each obviously made by the appellant in the accounts for the assessment year in question in the manner aforesaid and even in regard to these interpolations the explanation given by the appellant in regard to the same was accepted by the Tribunal. Even though the Income-tax Officer made capital out of the interpolations and subsequent insertions in the books of account and styled the evidence furnished by them as created or manipulated evidence thus discounting the story of the appellant in regard to the source of these high denomination notes, the Tribunal was definitely of opinion that there was

no other reason to suspect the genuineness of the account books in which these interpolations were found. As a matter of fact the Tribunal accepted these books of account as genuine and worked up its theory on the basis of the entries which obtained in these books of account. The Tribunal had before it the statement of large amounts received by the appellant from the banks, different branches of the appellant and its Beoparees or merchants which showed that between February 6, 1945, and January 11, 1946, amounts exceeding Rs. 1,000 aggregating to Rs. 5,04,713 had been received by the appellant. Even though large amounts may have been paid out by the appellant in this manner between the said dates, the entries of the balance in Rokar and the balance in Almirah showed that on January 12, 1946, the balance in Rokar was Rs. 29,234-3-9 and the balance in Almirah was Rs. 2,81,397-10-0 the total cash balance thus aggregating to Rs. 3,10,681-13-9. Nobody had any inkling of the promulgation of the High Denomination Bank Notes (Demonetization) Ordinance, 1946, on January 12, 1946, and if in the normal course of affairs and situated as the appellant was, the appellant kept these large cash balances in High Denomination Notes of Rs. 1,000 each, there was nothing surprising or improbable in it. If the appellant had to disburse such large sums of monies at short notices at the different branches of the appellant and also to its Beoparees apart from financing the Government for grain purchase work which it used to carry on, it would be convenient for it to handle these large sums of monies in high denomination notes of Rs. 1,000 each and the most natural thing for it to do was to keep these cash balances in as many high denomination notes as possible. The Tribunal in fact took count of this position and after giving due weight to all the circumstances arrived at the conclusion that the appellant might be expected to have possessed as part of its business cash balance at least Rs. 1,50,000 in the shape of high denomination notes on January 12, 1946, when the Ordinance above mentioned was promulgated. This conclusion of the Tribunal could only be arrived at on the basis that the entries in the books of account in regard to the balance in Rokar and the balance in Almirah were correct and represented the true state of affairs, in spite of the interpolations and subsequent insertions which had been made to bolster up the true case.

If these were the materials on record which would lead to the inference that the appellant might be expected to have possessed as part of its cash balance at least Rs. 1,50,000 in the shape of high denomination notes on January 12, 1946, when the Ordinance was promulgated, was there any material on record which would legitimately lead the Tribunal to come to the conclusion that the nature of the source from which the appellant derived the remaining 141 high denomination notes of Rs. 1,000 each remained unexplained to its satisfaction. If the entries in the books of account in regard to the balance in Rokar and the balance in Almirah were held to be genuine, logically enough there was no escape from the conclusion that the appellant had offered reasonable explanation as to the source of the 291 high denomination notes of Rs. 1,000 each which it encashed on January 19, 1946. It was not open to the Tribunal to accept the genuineness of these books of account and accept the explanation of the appellant in part as to Rs. 1,50,000 and reject the same in regard to the sum of Rs. 1,41,000-0-0. Consistently enough, the Tribunal ought to have accepted the explanation of the appellant in regard to the whole of the sum of Rs. 2,91,000 and held that the appellant had satisfactorily explained the encashment of the 291 high denomination notes of Rs. 1,000 each on January 19, 1946.

The Tribunal, however, appears to have been influenced by the suspicions, conjectures and surmises which were freely indulged in by the Income-tax Officer and the Appellate Assistant Commissioner and arrived at its own conclusion, as it were, by a rule of thumb holding without any proper materials before it that the appellant might be expected to have possessed as part of its business, cash balance at least Rs. 1,50,000 in the shape of high denomination notes on January 12, 1946, - a mere conjecture or surmise for which there was no basis in the materials on record before it.

The Income-tax Officer had indented in support of his conclusion the surrounding circumstances, viz., that the appellant was one of the premier Arhatdars and grain merchants of Sahibganj with branches, doing similar business, at Nawgachia and Dhullian and all these places were very important business centres and Sahibganj, the principal place of business, had gained sufficient notoriety for smuggling foodgrains and other commodities to Bengal by country boats, and Dhulian which was just on the Bihar-Bengal border was reported to be a great receiving centre for such commodities, that the foodgrains licence of the appellant at Nawgachia was also cancelled during the accounting year for not keeping proper stock accounts and the appellant was prosecuted under the Defence of India Rules but was given the benefit of doubt and was acquitted, that the accounting year and the year preceding it as also the year succeeding it were very favourable for the foodgrain dealers but the appellant though he had large capital in hand declared losses all through from 1944-45 assessment year up to 1946-47 assessment year, the loss according to its books in the year under consideration being to the tune of about Rs. 46,000, that the appellant was in very favourable circumstances in which there was a possibility of its earning a considerable amount in the year under consideration, that it also indulged in speculation (a loss of about Rs. 40,000 shown in Nawgachia branch (in Kalai account)), in which profit in a single transaction or in a chain of transactions could exceed the amounts involved in the high denomination notes, that even in the disclosed volume of business in the year under consideration in the Head Office and in branches there was possibility of its earning a considerable sum as against which showed a net loss of about Rs. 45,000 and that the appellant had all these probable source or sources from which the appellant could have earned the sum of Rs. 2,91,000 which was represented by the high denomination notes of Rs. 1,000 each.

The Appellate Assistant Commissioner also emphasized the said aspect but based his conclusion mainly on the ground that the appellant had failed to prove that the high denomination notes had their origin in capital and not in profit and held that the Income-tax Officer was justified in treating the sum of Rs. 2,91,000 as secreted profits.

This was the background against which the Tribunal came to its own conclusion. Even though it recognised that it was not improbable that when very large sums, say in excess of Rs. 10,000 at a time were received, a fairly good portion thereof consisted of high denomination notes and as high denomination notes were valid tender and nobody could have foreseen that they would be demonetised suddenly in January 1946, there was nothing out of the way in persons dealing with tens of thousands of rupees and whose balances ran to lakhs, being in possession of a fair proportion of their balances in the shape of high denomination notes. While recognising this probability of the appellant having been in possession of a fair proportion of its balances in the shape of high denomination notes, the Tribunal unconsciously though it was, fell into an error when it held that the appellant might be expected to have possessed at least Rs. 1,50,000 in the shape of high denomination notes as part of its cash balance, thus treating the remaining Rs. 1,41,000 in the high denomination notes of Rs. 1,000 each as outside the purview of these cash balances.

Unless the Tribunal had at the back its mind the various probabilities which had been referred to by the Income-tax Officer as above it could not have come to the conclusion it did that the balance of Rs. 1,41,000 comprising of the remaining 141 high denomination notes of Rs. 1,000 each was not satisfactorily explained by the appellant.

If the entries in the books of account were genuine and the balance in Rokar and the balance in Almirah on January 12, 1946, aggregated to Rs. 3,10,681-13-9 and if it was not improbable that a fairly good portion of the very large sums received by the appellant from time to time, say in excess

of Rs. 10,000 at a time consisted of high denomination notes, there was no basis for the conclusion that the appellant had satisfactorily explained the possession of Rs. 1,50,000 the high denomination notes of Rs. 1,000 each leaving the possession of the balance of 141 high denomination notes of Rs. 1,000 each unexplained. Either the Tribunal did not apply its mind to the situation or it arrived at the conclusion it did merely by applying the rule of thumb in which event the finding of fact reached by it was such as could not reasonably be entertained or the fact found were such as no person acting judicially and properly instructed as to the relevant law could have found, or the Tribunal in arriving at its findings was influenced by irrelevant considerations or indulged in conjectures, surmises or suspicions in which event also its finding could not be sustained.

Adverting to the various probabilities which weighed with the Income-tax Officer we may observe that the notoriety for smuggling foodgrains and other commodities to Bengal by country boats acquired by Sahibgunj and the notoriety achieved by Dhulian as a great receiving centre for such commodities were merely a background of suspicion and the appellant could not be tarred with the same brush as every Arhatdar and grain merchant who might have been indulging in smuggling operations, without an iota of evidence in that behalf. The cancellation of the foodgrain licence at Nawgachia and the prosecution of the appellant under the Defence of India Rules was also of no consequence inasmuch as the appellant was acquitted of the offence with which it had been charged and its licence also was restored. The mere possibility of the appellant earning considerable amounts in the year under consideration was a pure conjecture on the part of the Income-tax Officer and the fact that the appellant indulged in speculation (in Kalai account) could not legitimately lead to the inference that the profit in a single transaction or in a chain of transactions could exceed the amounts, involved in the high denomination notes, - this also was a pure conjecture or surmise on the part of the Income-tax Officer. As regards the disclosed volume of business in the year under consideration in the Head Office and in branches the Income-tax Officer indulged in speculation when he talked of the possibility of the appellant earning a considerable sum as against which it showed a net loss of about Rs. 45,000. The Income-tax Officer indicated the probable source or sources from which the appellant could have earned a large amount in the sum of Rs. 2,91,000 but the conclusion which he arrived at in regard to the appellant having earned this large amount during the year and which according to him represented the secreted profits of the appellant in its business was the result of pure conjectures and surmises on his part and had no foundation in fact and was not proved against the appellant on the record of the proceedings. If the conclusion of the Income-tax Officer was thus either perverse or vitiated by suspicions, conjectures or surmises the finding of the Tribunal was equally perverse or vitiated if the Tribunal took count of all these probabilities and without any rhyme or reason and merely by a rule of thumb, as it were, came to the conclusion that the possession of 150 high denomination notes of Rs. 1,000 each was satisfactorily explained by the appellant but not that of the balance of 141 high denomination notes of Rs. 1,000 each.

The position as it obtained in this case was closely analogous to that which obtained in Messrs. Mehta Parikh & Co. v. The Commissioner of Income-tax, Bombay [[1956] S.C.R. 626]. In that case the assessee had to satisfactorily explain the possession of 61 High Denomination Notes of Rs. 1,000 each and the Tribunal came to the conclusion that the assessee had satisfactorily explained the possession of 31 of these notes and not of the remaining 30. The High Court had treated the finding of the Tribunal as a finding of fact. It was held by this Court that the entries in cash-book and the statements made in the affidavit in support of the explanation, which were binding on the Revenue and could not be questioned, clearly showed that it was quite within the range of possibility that the assessee had in their possession the 61 High denomination notes on the relevant date and their explanation in that behalf could not be assailed by a purely imaginary calculation of the nature made by the income-tax Officer or the Appellate Assistant Commissioner. It further held that the Tribunal

made a wrong approach and while accepting the assessee's explanation with regard to 31 of the notes, it had absolutely no reason to exclude the rest as not covered by it in the absence of any evidence to show that the excluded notes were profits earned by the assessee from undisclosed sources. The assessee having given a reasonable explanation the Tribunal could not, by applying a rule of thumb discard it so far as the rest were concerned and act on mere surmise. In arriving at its decision this Court referred to the case of Chunilal Ticamchand Coal Co. Ltd. v. Commissioner of Income-tax, Bihar and Orissa [[1955] 27 I.T.R. 602] and stated that the case before it should also have been similarly decided by the High Court in favour of the assessee.

A decision of the Allahabad High Court reported in Kanpur Steel Co. Ltd. v. Commissioner of Income-tax, Uttar Pradesh [[1957] 32 I.T.R. 56] may also be noted in this context. The assessee there encashed 32 currency notes of Rs. 1,000 each on January 12, 1946, when the High Denomination Bank Notes (Demonetisation) Ordinance, 1946, came into force, and when the Income-tax Officer called upon it to explain how these currency notes came into its possession, the assessee claimed that the notes represented part of its cash balance which, on that date, stood at Rs. 34,313. The Income-tax Officer rejected the explanation and assessed the amount of Rs. 32,000 represented by these currency notes as suppressed income of the assessee from some undisclosed source. The Tribunal took into account the statement of sales relating to a few days preceding the date of encashment and found that the highest amount of any one single transaction was only Rs. 399. The Tribunal also referred to another statement of the daily cash balances of the assessee from December 20, 1945, to January 12, 1946, and noted that the cash balance of the assessee was steadily increasing. The Tribunal, however, estimated that high denomination currency notes to the value of Rs. 7,000 only could form part of the cash balance of the assessee. It therefore upheld the assessment to the extent of Rs. 25,000. On a reference to the High Court it was held (i) that the burden of proof lay upon the Department to prove that the sum of Rs. 32,000 represented suppressed income of the assessee from undisclosed sources, and the burden was not on the assessee to prove how it had received these high denomination currency notes; for, until the Demonetisation Ordinance came into force high denomination currency notes could be used as freely as notes of any lower denomination and no one had any idea that it should be necessary for him to explain the possession of high denomination currency notes, the assessee had naturally not kept any statement regarding the receipt of these currency notes, and it was for the first time on January 12, 1946, when the Ordinance came into force, that it became necessary for the assessee to explain its possession of these currency notes and (ii) that the explanation given by the assessee that the notes formed part of the cash balance of Rs. 34,000 and odd was fairly satisfactory and was not found by the Tribunal to be false; the statement of sales was hardly relevant to the question; the Department, in relying on the entries relating to the bills of each day committed an error and no inference should have been drawn from them; that any one single transaction did not exceed Rs. 399 did not preclude the possibility of payment in high denomination notes for such transaction; therefore, the Tribunal rejected the explanation of the assessee on surmises, and there was no material for the Tribunal to hold that the sum of Rs. 25,000 represented suppressed income of the assessee from undisclosed sources.

In arriving at the above decision the High Court referred to the cases of Mehta Parikh & Co. v. Commissioner of Income-tax, Bombay [[1956] S.C.R. 626] and Chunilal Ticamchand Coal Co., Ltd. v. Commissioner of Income-tax, Bihar and Orissa [[1955] 27 I.T.R. 602].

It is, therefore, clear that the Tribunal in arriving at the conclusion it did in the present case indulged in suspicions, conjectures and surmises and acted without any evidence or upon a view of the facts which could not reasonably be entertained or the facts found were such that no person acting judicially and properly instructed as to the relevant law could have found, or the finding was, in

other words, perverse and this Court is entitled to interfere.

We are therefore of opinion that the High Court was clearly in error in answering the referred question in the affirmative. The proper answer should have been in the negative having regard to all the circumstances of the case which we have adverted to above.

The appeals will accordingly be allowed, the judgment and order passed by the High Court will be set aside and the referred question will be answered in the negative. The appellant will be entitled to its costs of the reference in the High Court and of these appeals in this Court as against the respondent.

Appeals allowed.

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