

Commissioner of Income-Tax West Bengal II

Vs

Smt. Anusuya Devi

Income-tax Reference No. 29 of 1959

(V. Ramaswami-I, J. C. Shah JJ)

28.11.1967

JUDGMENT

SHAH J. –

One Amritlal died on October 18, 1944. For the assessment year 1945-46 his estate was assessed to tax on a total income of Rs. 22,160 from salary and other sources. In January, 1946, Anusuya Devi, widow of Amritlal, encashed high denomination notes of the value of Rs. 5,84,000, and made a declaration as required by the High Denomination Bank Notes (Demonetisation) Ordinance, 1946, that :

"A sum of Rs. 5,84,000 in notes were made over and/or directed to be made over by the declarant's deceased husband Amritlal Ojha at Rajkot in April, 1944, some time before his death for the benefit of declarant and her 8 minor sons."

In a proceeding for reassessment of the income of Amritlal for the assessment year 1945-46, the attorney, who appeared on behalf of Anusuya Devi, stated that "Amritlal was from time to time, during the last 30 years of his life, giving gifts to his wife and also setting apart money exclusively for his wife and children and that the fund so accumulated which remained in a cupboard" was found after his death. The Income-tax Officer disbelieved the explanation furnished and brought the amount of Rs. 5,84,000 to tax as income of Amritlal in the year of account 1944-45 from an undisclosed source, and with his decision the Appellate Assistant Commissioner agreed.

At the hearing of the appeal before the Income-tax Appellate Tribunal, Anusuya Devi, widow of Amritlal, filed on an affidavit in which it was stated, inter alia :

"5. From time to time during our married life, late Sri Amritlal Ojha used to make presents of cash moneys to me on the occasion of birthday of myself and of my sons and daughter by him and also on the occasion of his own birthday and on the anniversary of our marriage.

6. My husband late Sri. Amritlal Ojha used to tell me that these presents of cash money that he made was to make provisions for me and my minor sons and daughter and also to meet the expenses of their education and marriage in the event of his death.

8. The total amount of the money so paid by late Sri Amritlal Ojha was Rs. 5,84,000. This amount was my stridhan property and was all along in my possession."

This affidavit was admitted in evidence by the Tribunal, but the Tribunal declined to admit an affidavit of Gunvantary, one of the sons of Amritlal, because in their view an attempt was made to bring on record a large number of new facts which were not disclosed before the departmental authorities. The Tribunal declined to accept the case set up by Anusuya Devi. Besides pointing out the discrepancies in the statements made from time to time, which rendered her case unreliable, the Tribunal expressed the view that gifts made during a long period of "20 to 30 years" could not all have been made only in thousand rupee notes. The Tribunal accordingly upheld that order bringing to tax Rs. 5,84,000 as income from an undisclosed source in the account year 1944-45.

In her application for stating a case to the High Court on eleven questions set out therein Anusuya Devi asserted that in her declaration under section 6 of the High Denomination Bank Notes (Demonetisation) Ordinance, 1946, she had given information pursuant to the queries as follows :

#"Reasons for keeping above in No bank account. The amount is held high denomination notes rather in trust for minors and as prices of than in current fixed deposit securities vary, so for greater securities. safety the amount is held in cash for the benefit of the defendant and in trust for the minors. When and from what source did A sum of Rs. 5,84,000 in notes were declarant come into possession made over and or directed to be made of bank notes now tendered. over by the declarant's deceased husband, Amritlal Ojha, at Rajkot in April, 1944, some time before his death for the benefit of the declarant and her eight minor sons. In the latter part of August and beginning of September, 1945, Rs. 4,94,000 was deposited with the Bank of India Ltd. at its Bombay Branch and transferred by T. T. to their Calcutta Branch in the account of the declarant's major son - Bhupatray Ojha who drew a self cheque for Rs. 4,94,000 received payment by 494 pieces of 1,000 notes (included in the list) and made them over to the declarant..""

The Tribunal rejected the application. The High Court of Judicature at Calcutta, however, directed the Income-tax Appellate Tribunal to state a case on the following question :

"Whether the Tribunal erred in law by basing their decision on a part of the evidence ignoring the statement made as regards the withdrawal of Rs. 4,94,000 by 494 pieces of Rs. 1,000 notes from the bank ?"

In compliance with the order, the Tribunal observed that the extract from the statement incorporated in the petition under section 66(1) was materially different from the statement reproduced in the order of the Income-tax Officer and that the Tribunal was not invited to consider at the hearing of the appeal the truth or otherwise of the alleged copy of the declaration incorporated in the petition under section 66(1) and that at the hearing of the appeal the original declaration had not been produced.

The learned judges of the High Court who heard the reference were apparently of the view that the question referred did not arise out of the order of the Tribunal, but they felt bound by the view expressed in *Chainrup Sampatram v. Commissioner of Income-tax*, that it is not open to the court hearing a reference under section 66(2) to hold, contrary to the decision recorded at the time when the Tribunal was directed to state the case on a question, that the question did not arise out of the order of the Tribunal. *Bijayesh Mukherji J.*, who delivered the principle judgment of the court, observed that the Tribunal had apparently ignored a part of the declaration made by Anusuya Devi that 494 high denomination notes out of those encashed in January, 1946, were received from a bank in Calcutta in realization of a cheque for Rs. 4,94,000 drawn in September, 1945, by Bhupatray, her eldest son; that there was reason to doubt that the statements referred to in his order

by the Appellate Assistant Commissioner were made

In our judgment, the order of the High Court cannot be sustained. The statement that out of 584 high denomination notes disclosed by Anusuya Devi, 494 notes were received in realization of a cheque drawn by Bhupatray at Rajkot was made for the first time in a petition under section 66(2); it did not find place in the statement before the Income-tax officer, nor in the grounds of objection raised before the Appellate Assistant Commissioner, and not even in the affidavit filed before the Tribunal. The Tribunal was never apprised of that part of the case, and had no opportunity to test the correctness of that statement. On the statements made before the Income-tax Officer and in the affidavit there can be no doubt that it was the case of Anusuya Devi that she had encashed high denomination notes which she had received from her husband. No fault can, therefore, be found with the observations of the Tribunal that it was "a peculiar fact that all the money stated to have been received and found in the cupboard was a

In the question which was referred under the direction of a High Court, it was assumed that the Tribunal had before it the statement about the receipt of 494 currency notes of Rs. 1,000 each from a bank at Calcutta in realization of a cheque. But that evidence was not before the Tribunal, and the order of the Tribunal was not open to the objection that it had decided the appeal before it on a partial review of the evidence. Even in the application made to the Tribunal under section 66(1) in the large number of questions which it was claimed arose out of the order of the Tribunal, it was not suggested that the finding of the Tribunal was vitiated because some relevant evidence was ignored.

If the Tribunal refuses to state a case under sub-section (1) of section 66 on the ground that no question of law arises, and the High Court is not satisfied with the correctness of that decision, the High Court may, in exercise of the power under section 66(2), require the Tribunal to state a case, and refer it. When the Tribunal is not invited to state a case on a question of law alleged to arise out of its order, the High Court cannot direct the Tribunal to state it on that question : see *Commissioner of Income-tax v. Scindia Steam Navigation Co. Ltd.* The reason of the rule is clear : the High Court cannot hold that the decision of the Tribunal refusing to state a case on a particular question is correct if the Tribunal was not asked to consider whether the question arose out of its order and whether it was a question of law.

We find it difficult to uphold that view of the Calcutta High Court that, if an order is passed by the High Court calling upon the Tribunal to state a case on question which does not arise out of the order of the Tribunal, the High Court is bound to advise the Tribunal on that question even if the question does not arise out of the order of the Tribunal. The High Court may only answer a question referred to it by the Tribunal : the High Court is however not bound to answer a question merely because it is raised and referred. It is well settled that the High Court may decline to answer a question of fact or a question of law which is purely academic, or has not bearing on the dispute between the parties or though referred by the Tribunal does not arise out of the its order. The High Court may also decline to answer a question arising out of the order of the Tribunal, if it is unnecessary or irrelevant or is not calculated to dispose of the real issue between the taxpayer and the department. If the power of th

We are of the opinion that the very basis of the question on which the Tribunal was called upon to submit a statement of the case did not exist. The Tribunal cannot in this case be charged with recording its decision without considering all the evidence on the record : the decision of the Tribunal was clearly based on appreciation of evidence on the record before it and the High Court was, in our view, incompetent to direct the Tribunal to state the case on the question which was

directed to be referred and dealt with by the High Court. We are also unable to agree with the observation of the High Court that the explanation which the Assistant Commissioner says was made by Anusuya Devi was not made by her or by her attorney. No such plea was apparently raised before the Tribunal. There is also no ground for believing that Anusuya Devi was not given an opportunity to "clear up the discrepancies. " between the statements made by her or on her behalf from time to time in connection with the encashment of the hig

Counsel for Anusuya Devi requested that in any event the question which has been referred by the Tribunal in pursuance of the order of the High Court may be reframed and a supplementary statement may be ordered to be submitted by the Tribunal. But power to reframe a question may be exercised to clarify some obscurity in the question referred, or to pinpoint the year issue between the taxpayer and the department or for similar other reasons; it cannot be exercised for reopening an enquiry on questions of fact or law which is closed by the order of the Tribunal. Again a supplementary statement may be ordered only on the question airing out of the order of the Tribunal, and if the court is satisfied that the statements are not sufficient to enable the court to determine the question raised thereby, and when directed may be only on such material and evidence as may already be on the record but which has not been included in the statement initially made : Keshav Mills Ltd. v. Commissioner of Income-tax. We do not

Finally, counsel for Anusuya Devi submitted that the Tribunal was bound to state a case on the following question which was set out in the application under section 66(1) :

"6. Whether there is any material before the Tribunal to hold that the said sum of Rs. 5,84,000, representing the value of the encashed high denomination notes, was the income of the deceased, Amritlal Ojha, of the period of the year 19-14-45 prior to his death. ?"

Counsel submitted that, since the Tribunal had failed to raise and state a case on that question, and the High Court had also in directing that statement of case be submitted, ignored that question, in the interest of justice and for a final and satisfactory disposal of the case this court may order a statement on that question. Counsel said that merely because on a findings of the Tribunal Amritlal was on April 30, 1944, possessed of a large sum of money it could not be assumed that the whole amount was earned after April 1, 1944, and was on that account taxable in its entirety in the year of assessment. 1945-46.

The question whether the amount of Rs. 5,84,000 was taxable in the proceedings for assessment for the year 1945-46 was considered by the Income-tax Officer and by the Appellate Assistant Commissioner. The Income-tax Officer observed by the explanation submitted on behalf of Anusuya Devi before him, contrary to what was stated at the time of encashment of the high denomination notes, it was attempted "as an after through, to spread over the amount over a number of years. " The contention that the amount of Rs. 5,84,000 was not taxable in the year of assessment 1945-46, was rejected. The Appellate Assistant Commissioner observed that on the statement made by Anusuya Devi that she had received the amount from her husband in the year of account, 1944-45, has that it was unfortunate that there was no complete record, of the "earning and withdrawals" of Amritlal from the various business in which he was interest, and that in the absence of such a record all that was to be done was to examine whether the explanatio

The High Court may answer only those questions which are actually referred to it. New questions which have not been referred cannot be raised and answered by the High Court. If the Tribunal refuses to refer case under section 66(1) which arises out of its order, the proper course is for the

aggrieved party to move the High Court to require the Tribunal under section 66(2) to refer the same. The question whether RS. 5,84,000 represented income of the year of account, 1944-45, was not submitted by the Tribunal to the High Court. Even if it be assumed that the High Court was moved to direct the Tribunal to state a case on the six the question, which was set out in the application filed before the Tribunal under section 66(1), the application must be deemed to have been reject, and the order of rejections has become final. We have no power, without an appeal by the assessee, to set aside that order of the High Court and to direct the Tribunal to state a case on that question.

The appeal must therefore be allowed, and the order passed by the High Court set aside. The answer to the question will be in the negative.

This case discloses a very disturbing state of affairs prevailing in the income-tax department. It is a startling revelation that the entire record of an assessee's case both before the Income-tax Officer and the Appellate Assistant Commissioner was found missing, and has not been traced thereafter. Even if collusion be ruled out, the persons concerned in looking after the safety of the important record of proceedings of assessment cannot escape a charge of gross negligence. In the circumstances of the case, we think, there shall be no order as to costs the High Court and in this court.

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