SUPREME COURT OF INDIA

C.I.T. (Central) Calcutta

Vs.

Daulat Ram Rawatmull

(H.R.Khanna J.)

12.09.1972

JUDGMENT

KHANNA , J.

This judgment would dispose of civil appeals No. 1133 and 1134 of 1969 which have been filed by special leave by the Commissioner of Income Tax against the judgment of the Calcutta High Court in two references under section 66 of the Indian Income Tax Act, 1922 (hereinafter referred to as the Act) and the question which arises for determination is whether there was relevant material before the Income Tax Appellate tribunal to hold that the sum of Rs. 5,00,000 in fixed deposit in the name of Biswanath Gupta (Bhuwalka) was the concealed income of the, respondent firm for the previous year corresponding to the assessment year 1946-47. Appeal No. 1133 relates to the sum of Rs. 4,50,000 out of the above sum of Rs. 5,00,000, while appeal No. 1134 relates to the remaining sum of Rs. 50,000 out of the sum of Rs. 5,00,000. The assessee firm, who is the respondent inthese two appeals, is a registered firm consisting of six partners.The names. of the partners and their shares are given below Nandlal Bhuwalka /3/-

Girdharilal Bhuwalka /3/-

Shyamlal Bhuwalka /2/-

Bajranglal Bhuwalka /2/-

Bawatmal Nopany /3/-

Ranieshwarlal Nopany -/3/-

The respondent was carrying on business as dealers and commission agents in jute and other commodities. In addition to that it did speculative business. The respondent also acted as procuring agent for rice and paddy in certain areas for the Government of Bengal and received commission on

such procurements. The respondent was originally assessed on March 30, 1948 for the assessment year in question on the basis of an income of Rs. 4,71,752. On appeal, the income assessed was reduced 'to Rs. 4,28,448. On February 19, 1955 the Income Tax Officer issued notice under section 34 of the Act stating that he had reason to believe that the respondent's income assessable to income tax had been under-assessed. He accordingly called upon the respondent to file return of income for the assessment year in question. In response to that notice, the respondent filed a return showing income in accordance with the original assessment as reduced in appeal, namely, Rs. 4,28,448. The Income Tax Officer thereafter examined the matter afresh and made reassessment. It was found by the Income Tax Officer that the respondent had obtained overdraft to the extent of Its. 10,00,000 from the, Central Bank of India Ltd. (hereinafter referred to as the Central Bank), Calcutta upon the security of two fixed deposit receipts of Rs. 5,00,000 each in the Central Bank, Jamnagar branch One of those fixed deposit receipts was dated Novem- ber 8, 1944 in the name of Raghunath Prasad Agarwal, who is the same person as Raghunath Prasad Nopany and is son of Rawatmal Nopany, partner of the respondent firm. The other fixes deposit receipt was dated November 21, 1944 in the name of Biswanath Gupta (B. N. Gupta), who is the same person as Biswanath Bhuwalka and is son of Bajranglal, partner of the respondent firm. There was a third fixed deposit receipt of Rs. 5,00,000 issued by Central Bank Jamnagar branch in the name, of S. P. Agarwal, son of Rameshwarlal, partner of the respondent firm, but we are not much concerned with that receipt.

Alhough the present appeals relate to the fixed deposit of Rs. 5,00,000 in the name of Biswanath, we may also set out them facts concerning the fixed deposit receipt in the name of Raghunath Prasad in so far as they are essential for appreciating the point of controversy. On November 2, 1944 an amount of Rs. 5,00,000 in cash was tendered to the Burrabazar Calcutta branch of the Central Bank for being transferred to Bombay head office of the Bank. The Bombay head office of the Bank issued thereafter demand draft No. 36 for the amount of' Rs. 5,00,000 on- the Jamnagar branch of the Bank. On the basis of that demand draft, a fixed deposit receipt was issued by the Jamnagar branch of the Central Bank on November 8, 1944 in the name of Raghunath Prasad. Jamnagar was at that time a ,part of the Indian princely State of Nawanagar. Another amount of Rs. 5,00,000 was tendered to Central Bank Burrabazar Calcutta branch on November 15, 1944 for being transferred to,, Bombay head office. The head office of the, Bank issued demand draft No. 41 in favour of Biswanath (B. N. Gupta) on its Jamnagar branch. On the basis of that demand draft, the Jamnagar branch of the Bank issued a fixed deposit receipt in favour of Biswanath for Rs. 5,00,000 on November 21, 1944. On November 24, 1944 the respondent firm opened an overdraft account with the Central Bank Calcutta for being operated up to a limit of Rs. 10,00,000. Letter of guarantee and letter of continuity were signed in that connection by Raghunath Prasad and Biswanath on December 2. 1944 at the Calcutta branch of the Central Bank along with a promote signed by the respondent firm for keeping the two fixed deposit receipts under lien of the Bank against overdraft facilities granted to the respondent for an, amount of Rs. 10,00,000. At first it was taken to be a clean overdraft without any security, but on investigation the Income Tax authorities found that the overdraft facility had been granted to the respondent on the basis of the collateral security of the two fixed deposit receipts dated November 8, 1944 and November 21, 1944 issued by Jamnagar branch of the Bank in favour of Raghunath Prasad and Biswanath respectively. No consideration, was received by Raghunath Prasad and Biswanath for the accommodation that they extended to the respondent for giving their fixed deposit receipts in security for the overdraft facility.

Both Raghunath Prasad and Biswanath in their individual assessments for the assessment year 1947-48 claimed that the amount of Rs. 5,00,000 deposited by each of them in Jamnagar branch belonged to them.

The Income Tax Officer held in the order of assessment dated February 20, 1958 made under section 34 read with section 23 of the Act that the amount of Rs. 10,00,000, consisting of the two items of Rs. 5,00,000 each in fixed deposit in the names of Raghunath Prasad and Biswanath, was the concealed profit of the respondent firm. The amount of Rs. 10,00,000, besides several other amounts with which we are not concerned. was added to the total income of the respondent. On appeal the Appellate Assistant Commissioner as per order dated May 12, 1958 held that the respondent firm had been able to explain the source of Rs. 50,000 out of the fixed ,deposit of Rs. 5,00,000 in the name of Biswanath. The Appellate Assistant Commissioner, therefore, reduced the addition in this respect by Rs. 50,000. The Appellate Assistant Commissioner, however, maintained the addition to the total income of 'the respondent of Rs. 9,50,000, out of the sum of Rs. 10,00,000 ,on account of the two fixed deposit receipts. Two cross appeals were filed before the Income Tax Appellate Tribunal against the order of the Appellate Assistant Commissioner, one by the assessee and the other by the department. In the appeal filed by the assessee the Tribunal, as per order dated August 11, 1959/ December 15, 1959, agreed with the Appellate Assistant Commissioner that the fixed deposit receipt of Rs. 5,00,000 in the name ,of Raghunath Prasad and the sum of Rs. 4,50,000 out of the fixed deposit of Rs. 5,00,000 in the name of Biswanath in Jamnagar branch of the Central Bank represented the concealed pro-fits of the assessee firm. In the appeal filed by the department, which related to the deletion of the sum of Rs. 50,000, the Tribunal held, as per order dated July 29, 1960, that the sum of RS. 50,000 also out of the amount of Rs. 5,00,000 in fixed deposit in the name of Biswanath, represented the concealed income of the respondent firm. Certain questions were thereafter referred under section 66(1) of the Act by the Tribunal to the High Court. The Tribunal, however, declined to refer some other questions. Applications were thereafter filed under section 66(2) of the Act in the High Court for directions to the Tribunal to refer certain additional questions to the High Court. As per order dated January 16, 1962 the High Court directed 'the Tribunal to draw a statement of case and refer the following question (hereinafter for sake of convenience mentioned as ,question No. 1) to the High Court "Whether on the facts and in the. circumstances of the case, there was material before the Income Tax Appellate Tribunal to hold that the sum of Rs 5,00,000/- standing in the name of Raghunath Prasad Nopany and a sum of Rs. 4,50,000,/- out of a sum of Rs. 5,00,0001- in the name of Biswanath Bhuwalka representing the fixed deposits were the concealed income of the assessee firm for the relevant previous year for the assessment for the year 1946-47."

By another order made on the same day, viz., January 16, 1962, the High Court issued a direction to the Tribunal to draw a statement of case and refer the following question (hereinafter mentioned as question No. 2) to the High Court: "Whether on the facts and in the circumstances of the case, there was material before the Income Tax Tribunal to hold that the sum of Rs. 50,000/- out of the sum of Rs. 5,00,0001- standing in the name of Biswanath Gupta (Bhuwalka) representing the fixed deposit was the concealed income of the assessee firm for the relevant year for the assessment year 1946-47. "

In the reference relating to question No. 1 about the sum of Rs. 5,00,000 in fixed deposit in the name of Raghunath Prasad and Rs. 4,50,000 out of Rs. 5,00,000 in the name of Biswanath, the High Court held that there was material before the tribunal to hold that the sum of Rs. 5,00,000 sanding in the name of Raghunath Prasad was the concealed income of the respondent firm for the relevant previous year for the assessment year 1946-47. The High Court in this connection took note of the fact that Raghunath Prasad died in August 1945 and after his death the amount of Rs. 5,00,000 was not paid to his heirs but was adjusted against the overdraft of the respondent firm. As regards the

other sum of Rs. 5,00,000 in fixed deposit in the name of Biswanath, the High Court held that there was no material before the Tribunal to hold that it was the concealed income of the respondent for the relevant previous year for the assessment year 1946-47. The answer to the later part of question No. I as well as to question No. 2 was thus given in favour of the respondent firm.

The respondent, it may be stated, filed an appeal in this Court to assail the finding of the High Court 'in answer to question No-. 1 that there was material before the Tribunal to hold that the sum of Rs. 5,00,000 in fixed deposit in the name of Raghunath Prasad was the concealed income of the respondent for the previous year in question. The aforesaid appeal, No. CA 1035/67, was dismissed by this Court as per judgment dated January 18, 1971. The present two appeals, as stated earlier, relate to the finding of the High Court that there was no material before the Tribunal to hold that the sum of Rs. 5,00,000 in fixed deposit in the name of Biswanath was the concealed income of the respondent for the relevant previous year. It may also be stated that in the reference which was made under section 66(i) of the Act by the Tribunal to the High Court, the High Court as per judgment dated April 1, 1966, went into the question as to whether the income tax officer was justified in reopening the assessment under section 34 of the Act and whether on the facts and circumstances of the case, cash credits and fixed deposits in question were assessable for the assessment year 194647. Both these questions were answered in favour of the department. The decision of the High Court in this respect is reported in (1967)64 I.T.R. 593:

We have earlier mentioned that there was a third fixed deposit receipt of Rs 5,00,000 issued by the Central Bank Jamnagar branch in the name of S. P. Agarwal, son of Rameshwarlal, partner of the respondent firm. This amount of Rs. 5,00,000 had also been tendered in cash in the Burrabazar Calcutta branch of the Central Bank in October 1944 with instructions to remit the name to Jamnagar branch. The fixed deposit in the name of S. P. Agarwal was used as a security for overdraft facility to Shri Hanuman Sugar Mills Ltd., in the managing agency of which the partners of the respondent firm had controlling interest. The Tribunal held that the amount of Rs. 5,00,000 in fixed deposit in the name of S. P. Agarwal did not represent the concealed income of the respondent firm. An application was filed by the Commissioner of Income Tax to refer the question to the High Court as to whether in the facts and circumstances of the case the inference of the Tribunal that the fixed deposit of Rs. 5,00,000 in the name of S. P. Agarwal did not represent the concealed income of the assessee firm was justified in law. The Tribunal rejected the application. The Commissioner then applied to the High Court of Calcutta for an order calling upon the Tribunal to state a case and refer the above question to the High Court, The High Court rejected the application. The Commissioner filed an appeal to this Court against the above order of the High Court. The appeal of the Commissioner was dismissed by this Court on March 26, 1964. The judgment of this Court is reported in (1964)53 I.T.R. 575.

In the appeal before us the learned Additional Solicitor General has taken us through the various orders which were made in the case and has contended that there was relevant material before the Tribunal to hold that. the sum of Rs. 5,00,000 in fixed deposit in the name of Biswanath wag the concealed income of the respondent firm. The High Court, it is urged, was not justified in interfering with the finding in this respect of the Tribunal. As against that Mr. Sen on behalf of the respondent submits that there was no relevant material before the Tribunal to hold that the sum in question was the concealed income of the respondent. the answers given by the High Court, according to the learned counsel, should therefore be sustained.

Before dealing with the facts of this case, we may advert to the principles which should govern the

decisions of the court in such like cases. Findings on questions of pure fact arrived at by the Tribunal are not to be disturbed by the High Court on a reference unless it appears that there was no evidence before the Tribunal upon which they, as reasonable men, could come to the conclusion to which they have come; and this is so, even though the High Court would on the evidence have come to a conclusion entirely different from that of the Tribunal. In other words, such a finding can be reviewed only on the ground that there is no evidence to support it or that it is perverse. Further, when a conclusion has been reached on an appreciation of a number of facts, whether that is sound or not must be determined, not by considering the weight to be attached to each single fact in isolation, but by assessing the cumulative effect of all the facts in their setting as a whole [Sree Meenakshi Mills Ltd. v. Commissioner of Income Tax, Madras(1)]. 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. Likewise, if the court of fact bases its decision partly on conjectures, surmises and suspicions and partly on evidence, in such a situation an issue of law arises [see Dhirajlal Girdharlal v. Commissioner of Income Tax, Bombay(1) In the case of Edwards (Inspector of Taxes) v. Bairstow and Another(3), the House of Lords dealt with this aspect of the matter. Viscount Simonds, in that case observed :

"For it is universally conceded that, though 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."

(1) [1957] 31 T.T.R. 28.

(2) [1954] 26 I.T.R. 736.

(3) [1955] 28 I.T.R. 579.

Lord Radcliffee expressed himself in the. following words "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." The above observations were relied upon by Bhagwati J. (speaking for the majority) in the case of Mehta Parikh & Co. v. Commissioner of Income Tax, Bombay(1). The following proposition was laid down in that case :

"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."

Keeping the principles enunciated above in view, let us examine the facts of the present case. The Tribunal in arriving at the conclusion that the amount of Rs. 5,00,000 in fixed deposit in the name

of Biswanath was the concealed income of the respondent firm based its decision on the following circumstances

(1) Explanation furnished by Biswanath with regard to the source of Rs. 5,00,000 in proceedings relating to his personal assessment was found to be incorrect.

(2) The transfer of the two amounts of Rs. 5,00,000 each from Calcutta to Bombay and thereafter to Jamnagar and the issue of fixed deposit receipts by the Bank in the name of the sons of the partners of the respondent firm.

(3) The use of the above mentioned two receipts as collateral security for the overdraft facility of Rs. 10,00,000 afforded to the respondent firm.

(1) (1956) 30 I.T.R. 181

The High Court took the view that the above material was not sufficient for holding that the sum of Rs. 5,00,000 belonged to the respondent firm and that the Tribunal had taken into consideration material which was not relevant to the issue. We have given the matter our consideration and are of the opinion that no case has been made for interfering with the judgment of the High Court.

The explanation furnished about the source of Rs. 5,00,000 in fixed deposit in the name of Biswanath was that he had kept an amount of Rs. 4,50,000 with M/s Soorajmal Nagarmal and Rs. 50,000 in deposit with Comilla Bank. The amount of Rs. 4,50,000 was stated to- have been withdrawn by Biswanath from M/s Soorajmal Nagarmal in January 1941, while the other amount of Rs. 50,000 was withdrawn from Comilla Bank in March 1942. The amount of Rs. 5,00,000 was then transferred by Biswanath to his native place Ratangarh (Desh) in Rajasthan due to bombing panic in Calcutta. When war situation improved, the money was taken from Desh to Jamnagar for deposit. This explanation was found to be false in view-of the admitted position that the amount of Rs. 5,00,000 in fixed deposit in the name. of Biswanath in Jamnagar bank had been tendered at Burrabazar Calcutta branch of Central Bank on November. .15. 1944 and thereafter was transferred through Bombay head office' of. the Bank, to Jamnagar. There were also,. other circumstances which pointed to falsity of the above explanation. The falsity the above explanation of Biswanath, in the opinion of the High Court. did not warrant the conclusion that the amount of Rs. 5,00,000 lakhs belonged to the assessee. We can find no flaw or infirmity in the above reasoning of the High Court. The question which arose for determination in this case was not whether the amount of Rs. 5,00,000 belonged to Biswanath, but whether it belonged to the respondent firm. The fact that Biswanath has not been able to give a satisfactory explanation regardIng the source of Rs. 5,00,000 would not be decisive, even of the matter as to whether Biswanath was or was not the owner of that amount. A person can still be held to be the owner of a sum of money even though the explanation furnished by him regarding the source of that money is found to be not correct. From the simple fact that the explanation regarding the source of money furnished by A, in- whose name the money is lying in deposit, has been found to be false, it 'would be a remote and far fetched conclusion to hold that the money belongs to B. There would be in such a case no direct nexus between the facts found and the conclusion drawn therefrom.

We also see no cogent ground to take a view different from that of the High Court that the other circumstances, namely, the 4--L348SupCI/73 transfer of the amount of Rs. 5,00,000 from Calcutta to Jamnagar for fixed deposit in the name of Biswanath and the use soon thereafter of the said fixed

deposit receipt as security for the overdraft facility to the respondent firm did not justify the inference that the amount belonged to the respondent. The material on record indicates that the facility of overdraft on the security of the fixed deposit receipt in the name of Biswanath was enjoyed by the assessee firm for a little over a year. The Tribunal in this context observed that "it is difficult to see how the firm could obtain an overdraft upon a fixed deposit by B. N. Gupta (Biswanath)". The, approach of the Tribunal in this respect, in our opinion was manifestly erroneous because it is a common feature of commercial and other transactions that securities are offered by other persons to guarantee the payment of the amount which may be found due from the principal debtor. The. concept of security and ownership are different and it would be a wholly erroneous approach to hold that a thing offered in security by a third person to guarantee the payment of debt due from the principal debtor belongs not to the surety but to the principal debtor. the Tribunal has, also referred to the fact that no con- sideration passed to Biswanath for offering the fixed deposit receipt as security for the overdraft facility to the respondent firm. This circumstance, in our opinion, is of a natural character and has no material bearing for determining the ownership of the amount in fixed deposit. Sureties quite often offer security without receipt of consideration from the principal debtor. So far as the present case is concerned, we cannot be oblivious of the fact that Biswanath offered security for the overdraft facility to a firm of which his father was a partner. In the circumstances, the, fact that Biswanath received no consideration for offering the fixed deposit receipt as security for the overdraft facility would not result in any inference against the respondent.

Although the proceedings under section 34 of the Act in the present case were started in 1955, after the lapse of about nine years since the time Biswanath had offered the fixed deposit receipt as security for the overdraft facility to the respondent firm, no material was brought on the record to show that the aforesaid sum of Rs. 5,00,000 in the name of Biswanath went to the coffers of the respondent firm or was adjusted towards its liability as was done in respect of the amount of Rs. 5,00,000 which had been deposited in the name of Raghunath Prasad. Had the sum of Rs. 5,00,000 deposited in the name of Biswanath been ultimately utilised by the respondent firm, the income tax authorities must have brought material on record about that.

The onus to prove that the apparent is not the real is on the party who claims it to be so. As it was the department which claimed that the amount of fixed deposit receipt belonged to the respondent firm even though the receipt had been issued in the name of Biswanath, the burden lay on the department to prove that the respondent was the owner of the amount despite the fact that the receipt was in the name of Biswanath. A simple way of discharging the onus and resolving the controversy was to trace the source and origin of the amount and find out its ultimate destination. So far as the source is concerned, there is no material on the record to show that the amount came from the coffers of the respondent firm or that it was tendered in Burrabazar Calcutta branch of the Central Bank on November 15, 1944 on behalf of the respondent. As regards the destination of the amount, it has already been mentioned that there is nothing to show that it went to the coffers of the respondent. On the contrary, there is positive evidence that the amount was received by Biswanath on January 22, 1946. It would thus follow that both as regards the source as well as the destination of the amount. the material on the record gives no support to the. claim of the department. Learned Additional Solicitor General has urged that the close proximity of time between the transfer of the amount of Rs. 5,00,000 from Calcutta for the issue of fixed deposit receipt in the name of Biswanath at Jamnagar and the opening of overdraft account of respondent firm in Calcutta with the said fixed deposit receipt constituting security for the overdraft account would show that the said amount in fact belonged to the respondent. We find it difficult to accede to this submission because the benefit received by the respondent by the use of the said receipt as a collateral security for

overdraft facility was only of a temporary nature. The receipt remained in the name of Biswanath and it was he who got the amount of the receipt on January 22, 1946.

Reference was also made by the Additional Solicitor General to the order of the Appellate Assistant Commissioner. It is stated that the said order is much more elaborate and the Tribunal has made note of this fact. In this respect we find that the order of the Appellate Assistant Commissioner is vitiated by two factual inaccuracies. According to the said order, the amount of the fixed deposit receipt in the name of Biswanath was received in Calcutta on November 25, 1946 and was transferred to the credit of the respondent firm against the overdraft with the Bank. This observation was incorrect because there is ample material on record to show that the amount of the fixed deposit receipt was received, as mentioned earlier, on January 22, 1946 by Biswanath himself. He also, it would appear, got the interest due on the said amount.

The other factual inaccuracy which crept into the order of the, Appellate Assistant Commissioner was his assumption that the shares of the two groups of Nopany's and Bhuwalkas were equal. It was observed by the Appellate Assistant Commissioner :

"The appellant firm itself consists of two groups of partners Nopany and Bhuwalka. Each group had equal shares. Raghunath Prasad belongs to the Nopany group and Biswanath to the Bhuwalka group. The amount offered for fixed deposits therefore corresponds to the profit sharing proportion of each group. This mass of evidence and circumstances could not be upset merely because the fixed deposits stood in two particular names."

The above factual assumption regarding the equality of shares- of the two groups was incorrect because it is the common case of the parties that the share of Bhuwalka group was 10 annas in a rupee and that of Nopany was 6 annas in a rupee.

The Appellate Assistant Commissioner also took into account the fact that the office of the Central Bank in Burrabazar Calcutta is in the same building in which there are the business premises of the respondent firm. This was, in our opinion, a wholly extraneous and irrelevant circumstance for determining the ownership of Rs. 5,00,000 which had been deposited in fixed deposit in the name of Biswanath. There should, in our opinion, be some direct nexus between the conclusion of fact arrived at by the authority concerned and the primary facts upon which that conclusion is based. The use of extraneous and irrelevant material in arriving at that conclusion would vitiate the conclusion of fact because it is difficult to predicate as to what extent the extraneous and irrelevant material has influenced the authority in Arriving at the conclusion of fact. No case, in our opinion, has been made for interfering with the judgment of the High Court. The appeals consequently fail and are dismissed with costs. On hearing fee. K.B.N. Appeals dismissed