

Roshan Di Hatti

Vs

Commissioner of Income-Tax, Delhi.

Civil Appeal No. 284 of 1972

(P. N. Bhagwati, R. S. Sarkarkaria, Syed M. Fazal Ali JJ)

08.03.1977

JUDGMENT

BHAGWATI J. -

This is an appeal by special leave directed against the judgment of the Delhi High Court answering in favour of the revenue a question which was directed to be referred by the Tribunal under section 66(2) of the Indian Income-tax Act, 1922. The controversy between the parties arises out of an assessment made on the assessee as a Hindu undivided family for the assessment year 1948-49, the corresponding accounting year being the financial year 1947-48. The assessee was at the material time a Hindu undivided family with one Roshan Lal as its manager and karta. Till June, 1947, the assessee was carrying on business in gold and at Chowk Surjan Singh in Lahore. In view of the impending partition of India, Roshan Lal decided to move out of Lahore and, accordingly he transferred a sum of Rs. 12,094 from the account of the assessee with the Lahore branch of the Punjab National Bank Ltd., to the New Delhi branch of that bank in June, 1947. He also transferred from the Lahore branch of the Punjab National Bank Ltd., to the branch of that bank at New Delhi two sums of Rs. 13,000 and Rs. 6,000, the former in his own name and the latter in the name of his wife and obtained fixed deposit receipts for these two amounts from the New Delhi branch of the bank in July, 1947. He left Lahore in June, 1947, and proceeded to Mussoorie but on his way he stopped at Amritsar for a few days. He opened an account with the Amritsar branch of the Imperial Bank of India by depositing a sum of Rs. 300 with a view to obtaining a locker in the safe deposit vault where he could deposit for safe custody a trunk which he had brought with him from Lahore containing gold ornaments, jewellery and cash. It seems that a locker was not available and hence he deposited the trunk in a sealed condition with the Amritsar branch of the Imperial Bank of India on June, 1947. The sealed trunk, according to the assessee, contained gold ornaments of the value of Rs. 1,19,320, gold rawa of the value of Rs. 1,69,020 and stones of the value of Rs. 4,000. Roshan Lal then went to Mussoorie via Hardware and stayed at Mussoorie until about October, 1947. The case of the assessee was that, during this period, Roshan Lal did not carry on any business nor did he have any other means of income. In October, 1947, Roshan Lal came over to Delhi and rented a house in Kinari Bazar with a view to settling down in Delhi. He started looking for suitable premises for commencing business and it was only in February, 1948, that he succeeded in securing suitable premises at Dariba Kalan in Delhi. He then started gold and jewellery business in these premises in the name and style of Roshan-di-Hatti on March 30, 1948. The business was joint family business of the assessee and the first entry made in the books of account of the assessee was dated March 30, 1948, and it was as follows :

# Rs. Gold ornaments 1,19,320 Gold rawa 1,69,020 Stones 4,000 Bank balance with the Imperial Bank of India, Delhi 35,053 Bank balance with Hindustan Commercial

Bank, Delhi 221Cash 2,800##

The assessee thus brought in an aggregate capital of Rs. 3,33,414 in the business on March 30, 1948. It appears that the assessee prospered in this gold and jewellery business of Roshan-di-Hatti but it did not file any return of income nor paid any income-tax. It came to the notice of the Income-tax Officer some time in the beginning of 1957 that the assessee had made considerable income in its gold and jewellery business but had failed to pay any tax on such income and hence the Income-tax Officer issued a notice to the assessee under section 34(1)(a) of the Indian Income-tax Act, 1922, for bringing the income of the assessee for the assessment year 1948-49 to tax. The assessee filed its return of income and in the course of the assessment proceedings, the Income-tax Officer called upon the assessee to explain the nature and source of the capital of Rs. 3,33,414 brought by it into the business on March 30, 1948. The assessee pointed out that gold rawa, ornaments and cash representing this capital were brought by Roshan Lal when he migrated from Lahore and they were kept in a sealed trunk with the Amritsar branch of the Imperial Bank of India and when Roshan Lal came over to Delhi in October, 1947, he deposited the same in the locker in the safe deposit vault of Hindustan Commercial Bank at Delhi and when the business of the assessee was commenced, he surrendered the locker and brought the entire gold, jewellery and cash into the business. It was emphasised by the assessee as a supportive fact that after Roshan Lal migrated from Lahore in June, 1947, until the assessee started the business of Roshan-di-Hatti on March 30, 1948, neither the assessee nor Roshan Lal had any other business or means of income from which the assets of Rs. 3,33,414 could have been earned. This explanation was given in the course of various statements made by the assessee from time to time before the Income-tax Officer. The assessee also examined Hira Lal, father-in-law of Roshan Lal, and filed affidavits of Mulk Ram, Billa Mal, Dalal, Wazir Chand, Devidas Mehra and Panna Lal before the Income-tax Officer for the purpose of showing that the assessee was having a large gold and jewellery business in Lahore before migration and that it did not carry on any business in India before starting the business of Roshan-di-Hatti on the March 30, 1948. The Income-tax Officer also examined Prem Nath and Kishan Chand, brothers of Roshan Lal. The statement of Prem Nath was to the effect that their father was a man of ordinary means who was almost reduced to penury by about 1940 and that he had given a sum of Rs. 2,000 to his son, Roshan Lal, for starting gold and jewellery business in 1935 and he had also subsequently lent some monies to Roshan Lal at nominal interest. Prem Nath deposed that, for the purpose of the business of the assessee, Roshan Lal was occupying a shop belonging to his father but he was not paying rent though demanded on the ground that he did not have sufficient income to pay the rent. It was stated by Prem Nath that before the partition of the country the standard of living of Roshan Lal and his family was no higher than that of Prem Nath who was getting a salary of Rs. 150 per month. The statement of Prem Nath was clearly directed towards showing that the assessee did not have any flourishing business or large income prior to partition. The Income-tax Officer, on the basis of this material before him, rejected the explanation offered by the assessee and came to the conclusion that it was not possible to believe that the assessee had been able to accumulate capital to the extent of Rs. 3,33,414 out of income from the business carried on by it in Lahore and since the nature and source of the capital of Rs. 3,33,414 credited in the books of account of the business on March 30, 1948, was not satisfactorily explained, the Income-tax Officer gave credit only for a sum of Rs. 20,000 and treated the balance of Rs. 3,13,414 as income of the assessee from undisclosed sources.

The assessee appealed against this order of the Income-tax Officer and, an appeal, the Appellate Assistant Commissioner took the view that, on the facts as disclosed by the material placed on record in the proceedings, a much larger allowance should have been made in respect of the capital brought by the assessee from Lahore and he allowed a further sum of Rs. 80,000. The reason given by the Appellate Assistant Commissioner for taking this view are a little material and they may be

reproduced as follows :

"There is documentary evidence to show that the assessee transferred an amount of Rs. 12,094 from the Punjab National Bank account at Lahore to the same bank in New Delhi in June, 1947. It is also seen that he also transferred two amounts of Rs. 13,000 in his own name and Rs. 6,000 in his wife's name from the Punjab National Bank, Lahore, to the same bank at Minto Road, New Delhi, and fixed deposit receipts were taken for this total sum of Rs. 19,000 from the Delhi bank in July, 1947. All these monies including the realised fixed deposits later on went into the assessee's account with the State Bank of India which reveals a credit balance of Rs. 35,053 as on March 30, 1948. This at least shows that the assessee was not a man of very small means while he was at Lahore. He was having four accounts in different banks at Lahore. The particulars, however, are not available and it is also stated that most of these accounts were very small; but even then a man of very modest means would not normally have so many bank accounts. Moreover, while at Lahore Shri Roshan Lal had taken life insurance policies for Rs. 22,000. A number of letters and receipts regarding business transaction in Lahore were also filed which indicate that the Lahore business was not as small as the Income-tax Officer has taken it to be. There are some papers which relate to deals worth Rs. 10,000 or more at one time. There are also several vouchers relating to advertisement charges paid at Lahore. All these things together with the fact that the assessee was in a position to transfer a sum of Rs. 31,000 approximately through banks indicate that he was doing fairly well in the business at Lahore. How he could have managed to evade tax at Lahore for all these year is a mystery; but from the circumstances of the case it appears that the assessee had certainly assessable income while he was doing business there during the pre-partition period.

There is another factor which has also to be given its due weight. While leaving Lahore and coming over to India in June, 1947, the assessee stopped for a few days at Amritsar. There, on the June 25, 1947, he deposited a sealed box with the State Bank of India, Amritsar Branch. This box was withdrawn by him on October 20, 1947. These facts are corroborated by the bank certificate. The assessee claims that he had considerable amount of jewellery and gold, etc., (part of his trading stock in Lahore), as well as cash in this box; that is why he did not take the risk of carrying it with him on his way to Mussoorie, but kept it in deposit with the State Bank of Amritsar till such time as he was able to settle down in India. The contents of the sealed box are unknown to the bank and so it is not possible to ascertain what the box actually contained. But it is reasonable to presume that there must have been something quite valuable in the box as, otherwise, the assessee would not have kept it in the custody of a bank like the State Bank of India. It must also be noted that as early as June, 1947, the assessee hired a locker in the Hindustan Commercial Bank Ltd., New Delhi. It is clear, therefore, that when in June, 1947, the assessee was leaving Lahore he must have had with him quite a substantial amount either in the form of jewellery, etc., or cash, or otherwise he would not have taken the precaution of either depositing the sealed box with the State Bank of India at Amritsar or opening a locker in New Delhi bank.

Considering all the evidence discussed above, I am of the opinion that the Income-tax Officer's allowance of Rs. 20,000 only as capital brought over from Pakistan is too low. It is true that the capital disclosed in the books as on March 30, 1948, is mostly unverifiable and even assuming that the assessee was doing reasonably well in his business at Lahore, there are hardly any reasons to believe that he could have accumulated so much capital and could have brought all that capital

safely into India; but the circumstances of the case do, in my view, justify an much larger allowance for old capital than has been allowed by the Income-tax Officer. In my opinion, a reduction of the assessment by Rs. 80,000 will meet the requirement of the case."

The Appellate Assistant Commissioner thus reduced the figure of undisclosed income of the assessee to Rs. 2,33,414.

But this relief was not enough and the assessee preferred a further appeal to the Tribunal. When the appeal came to be heard by the Tribunal, Roshan Lal, who was present at the hearing, was asked by the members of the Tribunal as to how he has brought gold and jewellery from Lahore and he stated that it was brought in train in a box of the size of 2 1/2' \* 1 1/2' \* 1' and he was then asked what was the weight of the box, to which he replied stating that the weight of the contents of the box was about eight seers. The Tribunal then, after hearing the arguments of the parties, rejected the appeal, the main arguments which weighed with the Tribunal in negating the appeal of the assessee were : first, if the weight of the contents of the box was only eight seers, the value of gold and jewellery in the box could not be more than Rs. 66,000 at the then current rate of gold at Rs. 90 per tola; secondly, the Government of India had issued a Press Note in January, 1952, requiring all evacuees to declare the amounts of money brought by them from Pakistan and assuring them that in case they did so, no further enquiries would be made from them as to how they had earned the same and whether they had paid any tax on it and yet the assessee had not declare before the revenue authorities until the commencement of the assessment proceedings in 1957 that it had brought the capital of Rs. 2,33,414 from Pakistan; thirdly, the assessee claimed to have a flourishing business in Lahore in the course of which it was supposed to have earned enough to enable it to save a capital of Rs. 3,33,414 and yet it had not filed any income-tax return nor was it ever assessed to income-tax in Lahore and, fourthly, the depositions of Mulk Ram, Billa Mal, Dalal, Wazir Chand, Devidas Mehra and Panna Lal were vague and based on hearsay and they had no evidentiary value in the absence of contemporaneous primary evidence. The Tribunal, accordingly, held that the assessee could not have brought assets worth more than Rs.1,00,000 from Lahore and the estimate made by the Appellate Assistant Commissioner did not call for any interference and, in this view, the Tribunal confirmed the assessment of the balance of Rs. 2,33,414 as the undisclosed income of the assessee for the assessment year 1948-49.

The assessee applied to the Tribunal for referring to the High Court the question of law arising out of its order but the Tribunal declined to make a reference on the ground that in its opinion no question of law arose out of its order, this led to the making of an application to the High Court under section 66(2), but the High Court also took the same view and rejected the application. The assessee thereupon preferred an appeal to this court by special leave and in the appeal, an order was made by this court referring the following question for the opinion of the High Court :

"Whether there was material for coming to the conclusion that Rs. 2,33,414, out of the capital of Rs. 3,33,414 credited in the books of account of the assessee on March 31, 1948, represented income from undisclosed source ?"

Pursuant to this order the Tribunal stated a case for the opinion of the High Court and the High Court answered the question referred to it in favour of the revenue by holding that there was material on the basis of which the Tribunal could come to the conclusion that Rs. 2,33,414 represented the undisclosed income of the assessee. Hence, the present appeal by the assessee with special leave obtained from this court.

Now, the law is well settled that the onus of proving the source of a sum of money found to have been received by an assessee is on him. If he disputes the liability for tax, it is for him to show either that the receipt was not income or that if it was, it was exempt from taxation under the provisions of the Act. In the absence of such proof, the revenue is entitled to treat it as taxable income. This was laid down as far back as 1958 when this court pointed out in *A. Govindarajulu Mudaliar v. Commissioner of Income-tax* [1958] 34 ITR 807, 810(SC) that :

"There is ample authority for the position that where an assessee fails to prove satisfactorily the source and nature of certain amount of cash received during the accounting year, the Income-tax Officer is entitled to draw the inference that the receipts are of an assessable nature." To put it differently, where the nature and source of a receipt, whether it be of money or of other property, cannot be satisfactorily explained by the assessee, it is open to the revenue to hold that it is the income of the assessee and no further burden lies on the revenue to show that that income is from any particular source. Vide *Commissioner of Income-tax v. Devi Prasad Vishwanath Prasad* [1969] 72 ITR 194(SC). Here, in the present case, the assessee introduced in the books of account of its business on March 30, 1948, capital of Rs. 3,33,414 which consisted of gold rawa, gold ornaments, stones and cash. The burden of accounting for the receipt of these assets was clearly on the assessee and if the assessee failed to prove satisfactorily the nature and source of these assets, the revenue could legitimately hold that these assets represented the undisclosed income of the assessee. The assessee offered the explanation that these assets had been brought by Roshan Lal when he migrated from Lahore in June, 1947, and they represented the entire savings of the assessee in Pakistan. This explanation was disbelieved by the Tribunal which took the view that, on the material on record, it was not possible to hold that the assessee must have brought more than Rs. 1,00,000 from Lahore and, hence, the Tribunal added the balance of Rs. 2,33,414 as undisclosed income of the assessee. This conclusion reached by the Tribunal was clearly a finding of fact and, hence, it could be assailed only if it was shown that the Tribunal had acted without any material 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 would have come to that determination. Vide *Mehta Parikh & Co. v. Commissioner of Income-tax* [1956] 30 ITR 181(SC).

Let us consider what were the primary facts established by the material on record. The assessee was admittedly carrying on the business of Roshan-di-Hatti in Lahore from 1935, until June, 1947, when Roshan Lal migrated from Lahore. It is true that the assessee was not paying any income-tax in Lahore but, as pointed out by the Appellate Assistant Commissioner in his order, a number of letters and receipts regarding business transaction in Lahore were filed by the assessee which showed that the business in Lahore was not small and there were documents and papers which referred to dealings involving Rs. 10,000 or more at a time and there were also several vouchers produced by the assessee relating to advertising charges paid at Lahore. The business carried on by the assessee at Lahore was, therefore, a reasonably large business though its extent could not be verified by any reliable material produced by the assessee. The assessee undoubtedly filed affidavits of Mulk Ram, Billa Mal, Dalal, Wazir Chand, Devidas Mehra and Panna Lal, but as commented upon by the Tribunal, these affidavits were vague and could not be regarded as having much evidentiary value. Still they did go to show that the Lahore business of the assessee was a fairly large business. The Tribunal was no doubt right in commenting that primary evidence with regard to the extent of the

Lahore business of the assessee was not forthcoming, but it must be remembered that the assessee was being called upon to prove the extent of its business in a territory from which the members of the Hindu undivided family had to flee for their lives and from where it was totally impossible to produce any primary evidence. Be that as it may, it was found a fact by the Appellate Assistant Commissioner and this finding was not disturbed by the Tribunal, that the assessee "was doing fairly well in the business in Lahore". Roshan Lal, in anticipation of the partition of the country, which was soon to follow, decided to move out of Lahore in June, 1947, at a time when massacre and holocaust had not year started and he was in a position to remove his belongings. He migrated from Lahore with all his belongings and came over to Amritsar and he brought with him a trunk which he wanted to keep in a locker in safe deposit vault of the Imperial Bank of India. He could not obtain a locker and hence he deposited the sealed trunk with the Amritsar branch of the State Bank of India instead of carrying it with him to Mussoorie. There is no documentary evidence to show as to what were the contents of the sealed trunk but, as pointed out by the Appellate Assistant Commissioner and not dissented from by the Tribunal, "it is reasonable to presume that there must been something quite valuable in the box as otherwise the assessee would not have kept it in the custody of a bank like the State Bank of India". There can be no doubt, as observed by the Appellate Assistant Commissioner, and not disputed by the Tribunal, that the assessee "must have had with" him quite a substantial amount either in the form of jewellery, etc., or cash, or otherwise he would not have taken the precaution of either depositing the sealed box with the State Bank of India, Amritsar, or opening a locker in a New Delhi bank". The clear finding of the Appellate Assistant Commissioner, affirmed by the Tribunal, therefore, was that Roshan Lal did bring ornaments, jewellery and cash with him when he migrated from Lahore in June, 1947, and kept the same in a sealed trunk with the Amritsar branch of State Bank of India. If that be so, then on what material could be said that the ornaments, jewellery and cash brought by the assessee and kept in the sealed trunk were of the value of only Rs. 1,00,000 and no more. What were the materials on the basis of which the claim of the assessee that Roshan Lal had brought gold, ornaments and cash of the value of Rs. 3,33,414 could be rejected ?

The only material relied upon by the Tribunal was that the assessee had never filed any income-tax return nor ever paid any tax on the income of its business in Lahore and the presumption must, therefore, be that the assessee did not earn any assessable income before emigration from Lahore. Now, it is true that where an assessee has not paid income-tax, the presumption ordinarily must be that the assessee transferred no less than an aggregate sum of Rs. 31,094 from Lahore to New Delhi and also brought "substantial amount either in the form of jewellery, etc., or cash" and deposited the same in a sealed trunk with the Imperial Bank of India, Amritsar branch, in June, 1947. This obviously the assessee could not have done unless it had a reasonably large business in Lahore and, therefore, the fact that the assessee did not pay income-tax in Lahore cannot have much evidentiary value. All that it would show is that, as pointed out by the Tribunal, "the assessee has not been very straightforward in his dealings with the income-tax department".

The Tribunal also relied upon certain answers given by Roshan Lal when he was questioned by the members of the Tribunal at the hearing of the appeal. It must be pointed out straightaway that these answers given by Roshan Lal could not be relied upon by the Tribunal for the purpose of coming to any conclusion adverse to the assessee, because there is a procedure prescribed in rules 29, 30 and 31 of the Income-tax Appellate Tribunal rules for taking additional evidence before the Tribunal and if the Members of the Tribunal wanted to examine Roshan Lal on any aspect of the case, they should have followed this procedure. But, unfortunately, the Members of the Tribunal, disregarding the prescribed procedure, put questions to

Roshan Lal in an informal manner unauthorised by the rules. The answers given by Roshan Lal could not in the circumstances form part of the record and the Tribunal was not entitled to rely upon the same in arriving at its findings of fact. It may be noted that the High Court also took the view that the procedure adopted by the Tribunal was irregular and the answers given by Roshan Lal should be left out of account.

One other circumstance on which the Tribunal relied was that notwithstanding the Press Note issued by the Government of India in January, 1952, the assessee did not declare that it had brought assets of the value of Rs. 3,33,414 from Pakistan and this circumstance, according to the Tribunal, cast considerable doubt on the version put forward by the assessee. Now, the Press Note of the Government of India was not produced before us but we will assume that it did promise a certain concession to the evacuees who declared the assets brought by them from Pakistan. Even so, we fail to see how it could be utilised as a circumstance militating against the explanation of the assessee. Both according to the Appellate Assistant Commissioner as well as the Tribunal, the assessee did bring assets worth Rs. 1,00,000 from Lahore in June, 1947, and these assets were admittedly not disclosed by the assessee despite the Press Note issued by the Government of India. Then, how could any inference be drawn from the non-disclosure of the assets by the assessee that the assessee must not have brought assets representing the balance of Rs. 2,33,414? Where the assets brought by the assessee were Rs. 1,00,000, or Rs. 3,33,414, the fact remains that they were not disclosed by the assessee despite the Press Note of the Government of India and hence no adverse inference could be drawn from the fact of non-disclosure of the assets by the assessee. It will, therefore, be seen that there was no material on the basis of which the Tribunal would come to the conclusion that though the assessee had a fairly large business in Lahore and had brought its entire ornaments, jewellery and cash from Lahore and deposited the same in a sealed trunk with the Amritsar branch of the Imperial Bank of India, these ornaments, jewellery and cash, were worth not more than Rs. 1,00,000. One may also ask the question that if the assessee did not bring assets worth more than Rs. 1,00,000 from Lahore, where and how did it get the remaining assets of the value of Rs. 2,33,414? Roshan Lal had come away from Lahore as a refugee and conditions in post-partition India were also highly unsettled and the clear and undoubted evidence was that neither Roshan Lal nor the assessee had any business or other means of income in India until March 30, 1948. In this situation, it is impossible to believe that the assessee could have earned such a huge amount of profit of Rs. 2,33,414 within a few months, even if it be assumed that some business was started by it in October, 1947, when Roshan Lal came down to Delhi. The utter improbability, amounting almost to impossibility, of the assessee having earned such a large amount of Rs. 2,33,414 as profit within a few months in the disturbed conditions which then prevailed in India was a circumstance which ought to have been taken into account by the Tribunal but which the Tribunal unfortunately failed to do. It may be pointed out that it was not the case of the revenue that the books of account of the business were subsequently written up and the entry crediting the capital of Rs. 3,33,414 on March 30, 1948, was not a genuine entry and the undisclosed profits of the subsequent year were sought to be concealed by showing a bogus entry of Rs. 3,33,414 as capital contribution on March 30, 1948. If such had been the case, the present arguments to the improbability of the assessee having earned such huge amount of Rs. 2,33,414, within a few months, would not have been available to the assessee. But the revenue did not dispute the correctness of the entry and accepted that assets worth Rs. 3,33,414, were introduced in the business on the business on March 30, 1948, and sought to include the amount of Rs. 3,33,414, representing the value of these assets as undisclosed income of the assessee for the assessment year 1948-49. The only question could, therefore, be whether these assets were brought by the assessee from Lahore in June, 1947, or they represented the concealed

income earned by the assessee during the period June, 1947, to March 30, 1948. The impossibility of the assessee having earned such a huge amount of profit within a few months immediately after migration to India in the disturbed and unsettled conditions which then prevailed must, therefore, necessarily support the inference that the assessee must have brought these assets from Lahore.

We are, therefore, of the view that in reaching the conclusion that out of the capital of Rs. 3,33,414, credited in the books of the assessee on March 30, 1948, assets of the value of Rs. 2,33,414 represented undisclosed income of the assessee for the assessment year 1948-49, the Tribunal acted without any material or, in any event, the finding of fact reached by the Tribunal was unreasonable or such that no person acting judicially and properly instructed as to the relevant law would come to such a finding. We accordingly allow the appeal, set aside the order of the High Court and answer the question referred by the Tribunal in the negative. The Commissioner will pay the costs of the appeal to the assessee.

Appeal allowed.

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