

Commissioner of Income-Tax, Patiala

Vs

Piara Singh.

Civil Appeal No. 2752 of 1972

(P. N. Bhagwati, R. S. Pathak, V. D. Tulzapurkar JJ)

08.05.1980

JUDGMENT

PATHAK J. –

Is a smuggler, who is taxed on his income from smuggling under the Indian I.T. Act, 1922, entitled to a deduction under s. 10(1) of the Act on account of the confiscation of currency notes employed in the smuggling activity ?

The respondent, Piara Singh, was apprehended in September, 1958, by the Indian Police while crossing the Indo-Pakistan border into Pakistan. A sum of Rs. 65,500 in currency notes was recovered from his person. On interrogation he stated that he was taking the currency notes to Pakistan to enable him to purchase gold in that country with a view to smuggling it into India. The Collector of Central Excise and Land Customs ordered the confiscation of the currency notes.

The ITO now took proceedings under the Indian I.T. Act, 1922, for assessing the assessee's income and determining his tax liability. He came to the finding that out of Rs. 65,500 an amount of Rs. 60,500 constituted the income of the assessee from undisclosed sources. An appeal by the assessee was dismissed by the AAC. In second appeal before the Income-tax Appellate Tribunal, the assessee represented that if he was regarded as engaged in the business of smuggling gold he was entitled to a deduction under s. 10(1) of the Indian I.T. Act of the entire sum of Rs. 65,500 as a loss incurred in the business on the confiscation of the currency notes. The Tribunal upheld the claim for deduction. It proceeded on the basis that the assessee was carrying on a regular smuggling activity which consisted of taking currency notes out of India and exchanging them with gold in Pakistan which was later smuggled into India. At the instance of the revenue, a reference was made to the High Court of Punjab and Haryana on the following question :

"Whether, on the facts and in the circumstances of the case, the loss of Rs. 65,500 arising from the confiscation of the currency notes was an allowable deduction under section 10(1) of the Indian Income-tax Act 1922 ?"

The High Court answered the question in the affirmative.

And now this appeal by the revenue.

In our judgment, the High Court is right. The I.T. authorities found that the assessee was carrying on the business of smuggling. They held that he was, therefore, liable to income-tax on the income from that business. On the basis that such income was taxable, the question is whether the

confiscation of the currency notes entitles the assessee to the deduction claimed. The currency notes carried by the assessee across the border constituted the means for acquiring gold in Pakistan, which gold he subsequently sold in India at a profit. The currency notes were necessary for acquiring the gold. The carriage of currency notes across the border was an essential part of the smuggling operation. If the activity of smuggling can be regarded as a business, those who are carrying on that business must be deemed to be aware that a necessary incident involved in the business is detection by the customs authorities and the consequent confiscation of the currency notes. It is an incident as predictable in the course of carrying on the activity as any other feature of it. Having regard to the nature of the activity, possible detection by the customs authorities constitutes a normal feature integrated into all that is implied and involved in it. The confiscation of the currency notes is a loss occasioned in pursuing the business; it is a loss in much the same way as if the currency notes had been stolen or dropped on the way while carrying on the business. It is a loss which springs directly from the carrying on of the business and is incidental to it. Applying the principle laid down by this court in *Badridas Daga v. CIT* [1958] 34 ITR 10, the deduction must be allowed.

In *CIT v. S. C. Kothari* [1971] 82 ITR 794, this court held that for the purpose of s. 10(1) of the Indian I.T. Act, 1922, a loss incurred in carrying on an illegal business must be deducted before the true figure of profits brought to tax can be computed. Grover J., speaking for the court, observed (p. 802);

"If the business is illegal, neither the profits earned nor the losses incurred would be enforceable in law. But, that does not take the profits out of the taxing statute. Similarly, the taint of illegality of the business cannot detract from the losses being taken into account for computation of the amount which can be subjected to tax as 'profits' under section 10(1) of the Act of 1922. The tax collector cannot be heard to say that he will bring the gross receipts to tax. He can only tax profits of a trade or business. That cannot be done without deducting the losses and the legitimate expenses of the business."

Reliance was placed by the revenue on *Haji Aziz and Abdul Shakoor Bros. v. CIT* [1961] 41 ITR 350 (SC). In that case, however, the assessee carried on the lawful business of importing dates from abroad and selling them in India. The import of dates by steamer was prohibited. None the less he imported dates from Iraq by steamer, and the consignments were confiscated by the customs authorities. But the dates were released subsequently on payment of fine. The assessee's claim to deduction under s. 10(2)(xv) of the Indian I.T. Act, 1922, was rejected on the ground that the amount was paid by way of penalty for a breach of the law. An infraction of the law was not a normal incident of business carried on by the assessee, and the penalty was rightly held to fall on the assessee in some character other than that of a trader. Reference was made by the revenue to *Soni Hinduji Kushalji & Co. v. CIT* [1973] 89 ITR 112 (AP). The assessee's claim to the deduction of the value of gold confiscated by the customs authorities was found unsustainable by the court. The decision in that case can be explained on the ground that the assessee was carrying on a lawful business in gold, silver and jewellery and committed an infraction of the law in smuggling gold into the country. Our attention has also been invited to *J. S. Parkar v. V. B. Palekar* [1974] 94 ITR 616 (Bom) where on a difference of opinion between two learned judges of the Bombay High Court, a third learned judge agreed with the view that the value of gold confiscated by the customs authorities in smuggling operations was not entitled to deduction against the estimated and assessed income from an undisclosed source. It was observed that the loss arose by reason of an infraction of the law and as it had not fallen on the assessee as a trader or business man a deduction could not be allowed. Apparently, the true significance of the distinction between an infraction of the law

committed in a business inherently unlawful and constituting a normal incident of it was not pointedly placed before the High Court in that case.

We hold that the assessee is entitled to the deduction of Rs. 65,500 and accordingly we affirm the view taken by the High Court on the question of law referred to it.

The appeal fails and is dismissed with costs.

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