Anant Sakharam Raut

Vs

State of Maharashtra and Another

And

Leena Anant Raut

Vs

State of Maharashtra and Others

Criminal Appeal No. 575

(V.Khalid, R. S. Pathak JJ)

14.11.1986

JUDGMENT

KHALID, J. -

1. The same questions of law and facts are involved in these two cases. One is a criminal writ petition under Article 32 filed by the detenu's wife and the other a special leave petition filed by him against the judgment of the Bombay High Court rejecting his plea to quash the order of detention. Special leave granted. Both are being disposed of by this common judgment. We will refer to the detenu as the petitioner in this judgment.

2. The petitioner was detained pursuant to an order of detention dated January 15, 1986, issued by the Commissioner of Police, Bombay who is respondent 2 herein, under Section 3(2) of the National Security Act, 1980. The grounds of detention are given in Annexure C. The detention is based on three incidents; one on September 16, 1985, the other on December 1, 1985 and the third on December 25, 1985; the offences involved in the three cases being under Sections 324 and 336 IPC, 324 and 506(ii) IPC and 452 IPC respectively. There are three cases pending in respect of these three incidents.

3. The order of detention discloses that the people within the jurisdiction of Bandra Police Station in Greater Bombay are experiencing a sense of insecurity and fear to their lives due to the petitioner's activities which are "prejudicial to the maintenance of public order sin the said localities and area".

4. From the materials placed before us we find that the first two incidents involves the same persons between whom and the petitioner there appears to be some enmity. The third incident relates to some other person. The petitioner was an undertrial prisoner at the time the detention order was made.

5. We do not think it necessary to go into all the grounds urged before us by the petitioner's counsel in support of his prayer to quash the order to detention. The one contention strongly pressed before us by the petitioner's counsel is that the detaining authority was not made aware at the time the

detention order was made that the detenue had moved applications for bail in the three pendings cases and that he was enlarged on bail on January 13, 1986, January 14, 1986 and January 15, 1985. We have gone through the detention order carefully. Therefore is absolutely no mention in the order about the fact that the petitioner was an undertrial prisoner, that he was arrested in connection with the three cases, that the applications for bail were pending and that he was released on three successive days in the three cases. This indicates a total absence of application of mind on the part of detaining authority while passing the order of detention.

6. In our view this is the short manner in which the two cases can be disposed of. If the petitioner is found disturbing law and order or misusing the bail granted to him, the authorities would be at liberty to move the appropriate court to get the bail orders cancelled. One does not know how the detaining authority would have acted if he was made aware of the above details.

7. We are not satisfied that this is a fit case to resort to preventive detention. We refrain from referring to the other grounds urged before us and from examining them. The petitioner is entitled to succeed on the first ground.

8. We hold that was clear non-application of mind on the part of the detaining authority about the fact that the petitioner was granted bail when the order of detention was passed. In the result we set aside the judgment of the Bombay High Court under appeal, quash the order of detention and direct that the petitioner be released forthwith. The appeal and the writ petition are allowed without any order as to costs.

State Bank of India

Vs

Commissioner of Income-Tax, Ernakulam.

Civil Appeal No. 596 of 1974

(Sabyasachi Mukharji J.)

31.10.1985

JUDGMENT

SABYASACHI MUKHARJI J. -

1. The original appellant, the Bank of Cochin Ltd., has been amalgamated with the State Bank of India and on an oral application of the appellant for substitution and with the consent of the respondent, this application was allowed and the amendment was directed to be effected.

This appeal arises by special leave against the judgment and decision of the High Court of Kerala at Ernakulam dated January 25, 1973, in Income-tax Reference No. 31 of 1971.

The assessee, previously the Bank of Cochin Ltd., a banking company, as part of its banking business, had been purchasing cheques, payment orders, mail transfers, demand drafts, bills and other negotiable instruments drawn in foreign currencies and sometimes foreign currencies themselves from its clients. These foreign exchange assets were subsequently sold or encashed

through the assessee's correspondent-banks in the foreign countries concerned-and the proceeds credited to the current account of the assessee with the correspondent-banks concerned. Consequent on the devaluation of the Indian rupee on June 6, 1966, the amounts credited to the assessee in the foreign banks registered an increase of Rs. 4,65,515. The excess realisation on devaluation was treated by the Income-tax Officer as the income of the assessee during the accounting year ending December 31, 1966, rejecting the assessee's plea that the profit was in the nature of a windfall. There was an appeal from the said decision to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner rejected the assessee's contention. There was a further appeal to the Appellate Tribunal. The Tribunal also did not accept the assessee's submission. There was a further contention that as on the last day December 31, 1966, of the accounting year relevant to the assessment year 1967-68, the assessee had valued the Government securities held by it at the market price and as the market price of the securities on that date was less than the cost price, the difference amounting to Rs. 52,935 was taken as loss arising from the valuation of the closing stock of securities. In the return filed for the assessment year 1967-68, a claim was made to deduct the above loss. As there was no actual loss arising on the sale of securities and as there was no debit to the profit and loss account of the alleged loss and as the method of valuation adopted for this year was not in accordance with the method of accounting regularly employed by the assessee, the Income-tax Officer disallowed the loss. On appeals, the Appellate Assistant Commissioner as well as the Appellate Tribunal came to the same conclusion.

Under section 256(1) of the Income-tax Act, 1961 (hereinafter called "the Act"), two questions were referred to the High Court :

> " (i) Whether, on the facts and in the circumstances of the case, the sum of Rs. 4,65,515, being profit arising on the devaluation of the Indian rupee on June 6, 1966, was income chargeable to income-tax ?
>
> (ii) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in rejecting the assessee's claim to deduct an amount of Rs. 52,935 being loss arising on the valuation of closing stock of Government securities in determining its total income for the assessment year 1967-68 ?"

The High Court answered the first question in favour of the Revenue and against the assessee and the second question was answered against the Revenue and in favour of the assessee.

At the outset, it may be mentioned that the second question is no longer alive before us and the second contention therefore, need not be considered.

The appeal is restricted as mentioned hereinbefore to the first question only. The High Court held that the assessee was doing banking business and as part of banking business it was purchasing cheques, payment orders, mail transfers, demand drafts and other negotiable instruments, drawn in foreign currencies and the sale proceeds of these constituted trading receipts. Consequent on the devaluation of the Indian rupee, the amount receivable by the assessee appreciated in its value and this represented an appreciation in the value of the sale proceeds of the assets in which the assessee was dealing in the course of its business. Therefore, the High Court was of the opinion that there was no doubt that the appreciation in value amounting to Rs. 4,65,515 of all such assets represented trading receipts of the assessee and, therefore, constituted revenue receipts in its hands which were chargeable to income-tax.

Foreign exchange in this case was stock-in-trade of the assessee. It is evident from the statements made that there was excess realisation of the foreign exchange in Indian rupees and the assessee realised their value. If that is the position, then under section 5 of the Income-tax Act, 1961, it would be, in the case of an assessee who was a resident and ordinarily resident of India, assessable. The assessee showed this amount of Rs. 4,65,515 as appreciation on devaluation of the rupee. It is further recorded in the findings of the Income-tax Officer as follows :

> "Shri V. O. John, learned advocate for the bank, filed its objections in his letter dated December 20,1967. He stated 'cheques, payment orders, mail transfers, demand drafts, bills drawn in India and other negotiable instruments drawn in foreign currency and sometimes foreign currency itself are purchased from various parties and sent to correspondent-banks in foreign countries for credit of our account with them. These foreign bank balances are periodically transferred over here and the process is repeated.'

The buying and selling rates in respect of various foreign currencies underwent a change on June 6, 1966, when the Indian rupee was devalued. The balance standing to the credit of the bank in various foreign branches like London, New York, Ottawa, Berlin, Sydney and Paris were transferred subsequent to June 1966, on various dates resulting in huge profit on valuation of Rs. 4,65,515 as noted above. The advocate further pleaded banks' normal profit is the difference between the buying and selling rates of foreign exchange."

Profit was due to the devaluation of the rupee on June 6, 1966, and was not due to any other business activities. This is an incidental income arising from the carrying on of the banking business. See, in this connection, the observations in Imperial Tobacco Co. v. Kelly [1943] 25 STC 292 and CIT v. A. S. A. Concern [1937] 5 ITR 456 (Rangoon). Also see the observations of the Privy Council in the case of Punjab Co-operative Bank Ltd. v. CIT [1940] 8 ITR 635 (PC).

The Appellate Assistant Commissioner noted in his order that in November, 1967, subsequent to the year in question, sterling was devalued and the assessee-bank had suffered a loss in terms of the rupee in respect of their holdings in sterling. This loss was debited by the assessee to its profit and loss account and claimed as allowable deduction in the computation of the assessee's total income for the assessment year 1968-69. Therefore, the conduct and the treatment by the assessee of the result of appreciation or depreciation in value of sterling assets held by an assessee who is a resident and ordinarily resident of India must be considered to be the income of the assessee ancillary or incidental to the carrying on of the business of banking.

It was held by this court in Sutlej Cotton Mills Ltd. v. CIT [1979] 116 ITR 1 (SC) that where profit or loss arose to an assessee on account of appreciation or depreciation in the value of foreign currency held by him, on conversion into another currency, such profit or loss would ordinarily be a trading profit or loss if the foreign currency was held by the assessee on revenue account or as a trading asset or as part of circulating capital embarked in the business. But, if on the other hand, the foreign currency was held as a capital asset or as fixed capital, such profit or loss would be of a capital nature.

The important question to be considered is the true nature of the transaction and whether in fact it had resulted in profit or loss to the assessee. In that context, it is well-settled that the way in which entries are made by the assessee in its books of account is not determinative of the question whether the assessee has earned any profit or suffered any loss. The assessee might, by making entries which

were not in conformity with the proper principles of accountancy, have concealed profit or showed loss and the entries made by him could not, therefore, be regarded as conclusive one way or the other.

CIT v. Mogul Line Ltd. [1962] 46 ITR 590 (Bom) was a case where it was held that if a foreign fund of the assessee was allowed to remain unused where it lay, the mere circumstance that there had been fluctuation in the currency resulting in appreciation of the fund in terms of the coin of another country would not result in profit to the owner of the fund. But if the fund is utilised in the course of the business for a trading purpose, there would be realisation of the profit arising on devaluation and the profit would be taxable. If, on the other hand, the fund was not utilised for a business operation or for the purposes of trade, but for a non-business operation, like payment of income-tax in the foreign country, there was no profit and the difference in the exchange value could not be assessed to income- tax. The Division Bench of the Bombay High Court further observed that the matter of taxability could not be decided on the basis of the entries which the assessee might choose to make in his account, but had to be decided in accordance with the provisions of law. What would determine the taxability is not whether the assessee has shown a particular item as a profit or loss in the accounting year, but whether the said item could be regarded either as a profit or loss under the provisions of the Act. But as the court emphasised that if the foreign currency has increased in value in terms of Indian rupee and that amount has been utilised by the assessee in carrying on his business, as is precisely the case here, i.e., the increased amount has been utilised by repatriation, it was incidental to the banking business.

For the reasons aforesaid, the answer given by the Kerala High Court in the impugned judgment under appeal against the assessee and in favour of the Revenue was right. The appeal accordingly fails and is dismissed with costs.

Appeal dismissed.

</html