

## CALCUTTA HIGH COURT

Mriganka Mohan Sur

Vs

Commissioner of Income-Tax

(D K Sen, C.J. C.K. Banerji , J.)

31.07.1978

### JUDGMENT

#### **C.K. Banerji, J.**

1. This reference under Section 256(2) of the I.T. Act, 1961, is at the instance of Mriganka Mohan Sur, the assessee, and arises out of a reassessment for the assessment year 1946-47, the relevant previous year being the financial year 1945-46.

2. The original assessment for the said assessment year was made on the 23rd June, 1948. On receipt of information that the assessee was the proprietor of a business known as the Oriental Traders of No. 70, Serpentine Lane, Calcutta, which had an account in its name in the Dharmatolla Branch of the Hooghly Bank Ltd., the ITO reopened the said assessment on the 29th March, 1951, under Section 34 of the Indian I.T. Act, 1922. The assessee appeared through his authorised representative at the said reassessment proceeding though he was directed to appear personally in the course of which it was admitted that the assessee had two accounts in the said bank not disclosed in the original assessment. The pass book of only one of the said accounts was produced. From the copy of the accounts of Oriental Traders obtained by the ITO it appeared that the sole proprietor of the said business was one Mriganka Mohan Sur. The other records in respect of the said account were not available as many of the old records up to 1946 were destroyed in fire and the rest of such records shifted to the bank's godown remained unsorted packed in gunny bags. The ITO found that the assessee had several accounts in the said bank, was well known to the bank authorities and the assessee's cousin was a director of the bank. It was also found that the assessee had one-third share in the said premises No. 70, Serpentine Lane, Calcutta, and that there was no other person at the said premises having the same name and surname as that of the assessee. The denial of the assessee that he had any connection with the said Oriental Traders and its bank account was not accepted by the ITO who held that the said bank account in the name of Oriental Traders was that of the assessee. The reassessment was made accordingly.

3. Being aggrieved, the assessee appealed to the AAC, who held that complete records from the bank not being available and by reason of the specific denial of the assessee of having any connection with the said Oriental Traders or with its bank account, the ITO had no positive material or conclusive evidence for holding that the said business of Oriental Traders was carried on by the assessee. Accordingly, he allowed the appeal partly.

4. Being aggrieved by the said appellate order the revenue preferred an appeal to the Income-tax Appellate Tribunal. The Tribunal noted the findings of the ITO as follows:

(a) The bank records showed that a person having the same name as the assessee had operated the said account as the proprietor of the said Oriental Traders.

(b) Premises No. 70, Serpentine Lane, Calcutta, the address of the said Oriental Traders was partly owned by the assessee.

(c) There was no other person having the same name and surname as that of the assessee in the said premises No. 70, Serpentine Lane, Calcutta.

(d) The assessee, an established constituent of the said bank and related to persons in management of the said bank, had other accounts in his own name and in respect of his other businesses and concerns, e.g., Sur Enamel & Stamping Works Ltd., in the same bank.

(e) It was inconceivable that a stranger would operate the said account of Oriental Traders in the name of the assessee.

(f) The two other admitted accounts of the assessee in the said bank had not been disclosed in the original assessment.

5. The Tribunal held that a mere denial by the assessee that he had any connection with Oriental Traders or with the latter's account was not sufficient to rebut the circumstantial evidence before the ITO as above which considered along with the conduct of the assessee who avoided to appear in the proceedings in person and did not swear on oath that the said account did not belong to him, led to the inescapable conclusion that the said account was that of the assessee. The Tribunal set aside the order of the AAC and confirmed the order of the ITO.

6. On an application by the assessee under Section 256(2) of the I.T. Act, 1961, this court directed the Tribunal to draw up a statement and refer the following questions of law for the opinion of this court :

" 1. Whether there was any evidence or material before the Tribunal to support the finding of the Tribunal that the account with the Hooghly Bank Limited, Dharmatolla Branch, standing in the name of Oriental Traders belonged to the assessee ?

2, Whether the conclusion arrived at by the Tribunal that the said account standing in the name of Oriental Traders belonged to the assessee was perverse in the sense that no reasonable man could come to such conclusion on the materials on record ? "

7. Dr. Debi Pal, learned counsel for the assessee, contended at the hearing that the assessee had categorically denied that he had any connection with the said Oriental Traders or with the latter's bank account. The relevant records of the bank were not available and the law did not cast any obligation on the assessee to prove the negative. Dr. Pal urged that the only documents which could establish the connection of the assessee with the said bank account were the account opening form, the specimen signature card and cheques signed by the assessee, none of which were produced. There was no evidence that the assessee operated the said account or that any money was transferred to the said account. The Tribunal was wrong in assuming that the said account was operated by the assessee and as such its conclusion was based on mere conjecture and surmise and was perverse.

8. Mr. Suhas Sen, learned counsel for the revenue, contended on the other hand that the facts found by the ITO and accepted by the Tribunal clearly established that the assessee was the proprietor of Oriental Traders and the said bank account belonged to the assessee and was operated by him. Mr. Sen submitted that there was no warrant for the assumption that the bank, where the assessee was well known and had several accounts in his own name and the names of persons or businesses connected with the assessee and in which the assessee's cousin was a director, would allow an account to be opened and operated by a stranger in the name of the assessee. The denial by the assessee of his connection with the said Oriental Traders or the latter's bank account was otherwise unacceptable by reason of the assessee's suppression of his two other bank accounts in the original assessment which he had to admit in the reassessment proceedings. The cumulative effect of the above facts and circumstances, it was submitted, led to the only inevitable conclusion that the said account belonged to and was operated by the assessed and he was the proprietor of the said Oriental Traders. It could not also be said that there was no evidence or material to support the conclusion of the Tribunal or that the same was perverse. In support of his contentions, Mr. Sen cited a decision of the Patna High Court in *Bhimraj Panna Lal v. CIT*<sup>1</sup> Here, after the original assessment, the ITO received information that the assessee had business transactions with one Messrs. Mangalchand Basantilal of Khurja, income from which had escaped assessment, and proceedings were initiated under Section 34 of the Indian I.T. Act, 1922. The assessee admitted such transactions but contended that as the income related to his zamindari it was not taxable and was not, therefore, recorded in his books of account. The ITO rejected such contention and added the same to the income of the assessee. On appeal, the AAC found that the assessee was carrying on business in Khurja in several names but reduced the income added by the ITO.

9. On further appeal, the Tribunal further reduced the said income but otherwise confirmed the findings of the revenue authorities. On a reference to the Patna High Court where the validity of the reassessment was challenged the findings of the Tribunal and the said reassessment were upheld. The following observations of Danckwerts J. in *Rosette Franks (King Street) Ltd. v. Dick (H. M. Inspector of Taxes*<sup>2</sup>) were noted by the High Court with approval (p. 108) :

" It is perfectly true that this is only one incident and the one incident only, which the Inspector of Taxes was able to establish before the Commissioners but it was open to the Commissioners, as it seems to me, to conclude that this was not merely an isolated transaction but showed the kind of thing which was going on, and they were, in my view, entitled to come to the conclusion to which they did come from this incident, though only one, that there must have been other similar incidents and, therefore, that the accounts of the company could not be relied upon to show the whole of the trading profit of the company."

9. No doubt, the account opening form or the specimen signature card or the cheques drawn on the said account which could conclusively prove the connection of the assessee with the said Oriental Traders could not be produced, but it is well settled that strict rules of evidence do not apply to income-tax proceedings and conclusive proof is also not necessary to arrive at any conclusion or to establish a fact. The Tribunal was entitled to arrive at a conclusion on appreciation of a number of facts, the cumulative effect whereof may be considered to judge the soundness of the conclusion.

10. On such facts, it appears, that there was no dispute that one Mriganka Mohan Sur was the proprietor of Oriental Traders and the account in the latter's name in the Hooghly Bank Ltd. was operated by the said Mriganka Mohan Sur. What is to be determined is whether the said Mriganka Mohan Sur was the assessee.

11. The address of the said Oriental Traders was No. 70, Serpentine Lane, Calcutta, a property let out to various tenants and the assessee was a co-owner thereof having an one-third share therein.

12. No other person in the said premises of the same name and surname as that of the assessee was found nor was the existence of such a person established by the assessee.

13. The other facts showing the connection of the assessee with the bank and the assessee's conduct in suppressing his other accounts in the bank and failing to appear at the reassessment personally were duly considered by the Tribunal.

14. The assessee rested his case only on his denial of any connection with Oriental Traders or with the said account, but adduced no other evidence in support of his contention.

15. In our view, the conclusions arrived at by the Tribunal that the said account in the name of Oriental Traders belonged to the assessee cannot be said to be based on no evidence or material or perverse in the sense that no reasonable man could come to such a conclusion on such materials.

16. Accordingly, we answer question No. 1 in the affirmative and in favour of the revenue and

question No. 2 in the negative, also in favour of the revenue. There will be no order as to costs.

**Sen, J.**

17. I agree.

Cases Referred.

1[1957] 32 ITR 289

2[1955] 36 TC 100 (Ch D)