

PATNA HIGH COURT

Chunilal Ticamchand Coal Co., Ltd

Vs

Commissioner of Income-tax

Misc. J.C. No. 238 of 1951

(Ramaswami and Ahmad, JJ.)

02.03.1954

ORDER

Ahmad, JJ.

1. The question in this case arises as to the assessment of income-tax on the petitioner for the assessment year 1940-47. The petitioner is a private limited company called Messrs. Chunilal Ticamchand Coal Company carrying on business of coal mining at Kusunda in the district of Manbhum. The shares of the company are held by the members of the two Hindu undivided families of Ticamchand Chaudhury and Baijnath Gopalka. The accounting year in this case is Bengali Samvat 1352 which corresponds to the period from 14-4-1945 to 13-4-1946. For this year the petitioner showed a sum of Rs.27,917 in his return. But this return was not accepted by the Income-tax Officer who increased the assessable income of the petitioner to a sum of Rs.49,779. On appeal the amount was reduced by the Appellate Commissioner to a sum of Rs.29,360. The matter was taken in further appeal to the Income-tax Appellate Tribunal who reduced the assessable income to the figure of Rs.25,360; in other words, the Income-tax Appellate Tribunal practically accepted the figures given by the petitioner in his return except for minor details. In January 1947 the Income-tax Officer received information that the assessee had exchanged high denomination notes after the passing of the Demonetization Ordinance on 12-1-1946. A proceeding under Section 34 was started against the petitioner and as a result of this proceeding the Income-tax Officer held that an additional sum of Rs.68,000/- should be added to the income of the petitioner. An appeal was preferred by the assessee against this assessment before the Appellate Assistant Commissioner but the appeal was dismissed. A further appeal was taken before the Income-tax Appellate Tribunal who took the view that out of the sum of Rs.68,000 only a portion, viz., Rs.35,000 should be treated as coming out of the cash balance of the business and the rest of the amount, viz., Rs.33,000 should be treated as secreted profit of the assessee, liable to be taxed.

2. In this state of facts the Appellate Tribunal has referred the following question of law for the opinion of the High Court:

"Whether there is any material to justify the conclusion that Rs.33,000 is secreted profit for the purpose of assessment, this amount being a part of Rs.68,000 which was the amount represented by high denomination notes encashed by the petitioner on 24-1-1946?"

3. The main argument put forward by Mr. Dutt on behalf of the assessee is that the order of the Appellate Tribunal is wholly arbitrary and; no reasons have been given why a sum of Rs.33,000 should be taken as secreted profit of the business. Mr. Dutt contended also that no reasons have been given by the Tribunal for making apportionment. In our opinion the contention of Mr. Dutt must be accepted as correct. It should be pointed out that the Income-tax Officer gave two main reasons in support of his order that the whole amount of Rs.68,000 should be taxed in the hands of the assessee as secreted profit. The Income-tax Officer stated in the first place that the account books as such did not contain any express reference to the high denomination notes, and secondly that the petitioner did not require high denomination notes for carrying on daily transactions to the coal business. The Income-tax Officer observed that payment of the petitioner hardly exceeded Rs.100 to each labourer per day and it was not necessary for the petitioner to keep the cash balance in high denomination notes. In this connection reference was made to the circumstance that the petitioner had current accounts in several banks located at Jharia and there was no good reason why the petitioner should keep a heavy cash balance. The Income-tax Officer also said that for the week commencing from 14.-12-1945 the account books showed a sum of Rs.20,000 as having been credited on account of the proceeds of a cheque (No.355358) drawn on Virji Bank of Jharia, but the Bank pass book as well as the date mentioned on the cheque showed that cash was paid by the bank to the assessee on 22-12-1945. On this account the Income-tax Officer thought that the cash book produced by the petitioner was not regularly maintained and no reliance could be placed upon it. The Appellate Assistant Commissioner affirmed the order of the Income-tax Officer mainly upon the ground that the petitioner did not require to keep high denomination notes for the purpose of meeting daily expenditure of the coal business. The Appellate Assistant Commissioner also referred to the circumstance that there is no intrinsic evidence in the cash book to show that these high denomination notes were obtained by the petitioner in the course of his business. Upon these reasons the Appellate Assistant Commissioner dismissed the appeal holding that the amount of Rs.68,000 was properly added to the return of the assessee.

When the appeal was heard before the Appellate Tribunal, two grounds were taken on behalf of the Income-tax Department. It was urged in the first place that the account books should be rejected as unreliable on the ground that a sum of Rs.20,000 which was withdrawn from bank on 22-9-1945 was actually entered on 21-12-1945, a day before the actual cash was available. This contention was rejected by the Appellate Tribunal on the ground that the cash book was written up weekly only on 22-12-1945 from the subsidiary books and vouchers and on that day the cash

of the bank had come into the possession of the assessee. The second contention raised on behalf of the Department was that the cash balance on 12-1-1946 could not be Rs.86,000 since a sum of Rs.19,000 was shown which had been credited to the mother of Bhagwan Das on 25-8-1945. It was argued that if the amount of Rs.19,000 is taken out of the cash balance there would not be enough cash balance left to explain the high denomination notes to the value of Rs.68,000. This argument was rejected by the Appellate Tribunal on the ground that the credit to Bhagwandas's mother had been accepted as genuine by the Appellate Commissioner. The complaint of Mr. Dutt is that the Appellate Tribunal has not stated on what grounds the amount of Rs.33,000 should be treated as secreted profit. In our opinion this complaint is well founded. The material portion of the order of the Appellate Tribunal states:

"we have examined the evidence on record and have heard parties and we are of opinion, taking an overall view of the whole case, that out of the sum of Rs.68,000 of high denomination notes, Rs.35,000 may be treated as having come out of cash balances of the business. The appeal is therefore allowed in part."

It is manifest that the Appellate Tribunal has given no reason in support of its finding that the amount of Rs.33,000/- should be treated as secreted profit of the assessee. It should be remembered in this connection that the Appellate Tribunal is a judicial tribunal and under Section 33, Income-tax Act the powers conferred on the Tribunal are very wide and extensive. It is essential in the public interest that these powers should be exercised by the Tribunal carefully and in a judicial manner. In the present case it is a matter of regret that the Tribunal has not indicated upon what material they have reached the conclusion that the amount of Rs.33,000/- out of the amount of Rs.68,000/- should be treated as secreted profit of the assessee. We consider that the order of the Appellate Tribunal is bad on account of this defect.

4. But that does not dispose of the question which has been referred to us in this case. It was pointed out by Mr. Bahadur who argued on behalf of the Department that there was material on the record of the case to support the finding that the whole sum of Rs.68,000/- which was the value of the high denomination notes should be treated as secreted profit of the assessee. Counsel referred in this connection to the order of the Appellate Assistant Commissioner. Two reasons have been given by the Appellate Assistant Commissioner for the finding that the amount of Rs.68,000 did not form a portion of the cash balance on 12-1-1946 on which date the Demonetization Ordinance was promulgated. It was stated by the Appellate Assistant Commissioner in the first place that the books of account did not expressly mention that the high denomination notes were received by the assessee in the course of business dealings. But this is hardly a circumstance which can reasonably be taken into account in deciding whether the cash balance consisted in part of high denomination notes. The possession of high denomination notes did not attract suspicion before the authorities promulgated the Demonetization Ordinance. The mere fact that before the date of the Ordinance the assessee did not choose to mention in the account books the receipt of high denomination notes would not suggest that the cash balance

was not constituted of the high denomination notes as alleged by the assessee. The second ground upon which the Appellate Assistant Commissioner proceeded was that the assessee did not require the high denomination notes for payment to the labourers working in the coal mine. It was assumed by the Appellate Assistant Commissioner that the cash balance was meant to be a ready fund for conducting day to day affairs of the mining business. On this point Mr. Dutt referred to the statement at page 7 showing a summary of the receipts and disbursements for the period from 15-12-1945 to 2-2-1946 and upon the basis of this statement counsel argued that the intention of the assessee was always to keep in his hands a sum of at least over Rs.63,000/- as emergency reserve. It was argued that this cash balance was not meant for conducting the day to day business of the Colliery. For that purpose the assessee drew the amounts whenever necessary from his current account in the various banks at Jharia. For example, the account book dated 22-12-1945 shows that the opening balance was Rs.81,493, the receipt was Rs.11,163, the expenditure was Rs.12,453 and the closing balance on that date was Rs.80,203. The accounts for several other dates, viz., 29-12-1945, 5-1-1946 and 12-1-1946 and so on show that the habit of the assessee was to keep the reserve as far as possible intact and to take out money from the current account of various banks at Jharia for meeting the day to day expenditure of the colliery business. In these circumstances the contention put forward on behalf of the assessee is that the assumption made by the Appellate Assistant Commissioner is incorrect. In our opinion the argument of Mr. Dutt is well founded and the assessee has furnished a reasonable explanation for his possession of the high denomination notes to the extent of Rs.68,000.

5. For the reasons we have expressed we hold that there is no material to justify the conclusion of the Appellate Tribunal that Rs.33,000 was secreted profit of the assessee and is liable to be taxed. We hold that the question referred to the High Court must be answered in favour of the assessee. The Income-tax Department must pay the cost of this reference. We assess the hearing fee at Rs.250/-.

Question answered accordingly.