
(1969) 04 CAL CK 0008

In the Calcutta High Court

Case No : Income-tax Reference No. 60 of 1964

Anil Kumar Singh and Others

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 17-04-1969

Acts Referred:

Income Tax Act, 1922 — Section 23(3), 34, 66, 66(1), 66(2)

Citation : (1972) 84 ITR 307

Hon'ble Judges : Sabyasachi Mukharji, J;S. Deb, J

Bench : Division Bench

Advocate : D. Pal, P.K. Pal and M. Seal, for the Appellant;B.L. Pal and N.L. Pal, for the Respondent

Judgement

Sabyasachi Mukharji, J.—This reference arises out of assessment for the assessment year 1946-47, for which the corresponding accounting year was 1945-46, financial year ending on 31st of March, 1946. The assessee originally was one Joynarain Singh, since deceased, who had been assessed in the status of an individual for the aforesaid year u/s 23(3)/34 of the Indian Income Tax Act, 1922. In response to a notice u/s 34 of the said Act, the assessee had filed a return showing total income of Rs. 6,460. The Income Tax Officer further found that during the accounting year the assessee had encashed 21 high denomination notes of Rs. 1,000 each and 6 high denomination notes of Rs. 10,000 each on 24th January, 1946, through the Allahabad Bank Ltd. When the assessee was asked to explain the source of these notes the assessee stated that 4 high denomination notes of Rs. 10,000 each totalling a sum of Rs. 40,000 were received from one Vijoysingh Gobindjee of Bombay, being the, sale proceeds of S. S. Cossipore; 2 high denomination notes of Rs. 10,000, aggregating to Rs. 20,000, were received from the currency office, Calcutta, and 20 high denomination notes of Rs. 1,000 each were received from one R. P. Shaw by cheque on Comilla Banking Corporation and encashed, through one Sudha Sankar Singh, the assessee's son, while the assessee had one Rs. 1,000 note as cash in hand. The Income Tax Officer accepted the assessee's explanation of Rs.

40,000, received as sale proceeds of S. S. Cossipore, but was unable to accept the assessee's explanation regarding the balance of Rs. 41,000, which was treated as the assessee's income from undisclosed sources. The Income Tax Officer had also found that the assessee had lent a sum of Rs. 1,26,000, in the form of high denomination notes to M/s. Singh & Co., through his wife, Smt. Sadhana Devi. Shri Sudha Sankar Singh, the assessee's son was one of the partners of the said firm, M/s. Singh & Co, The firm encashed these high denomination notes on the 19th January, 1946. The assessee's explanation was that these high denomination notes were part of the sale proceeds of his property at No. 3, Rustomjee Parsee Road, Calcutta, to M/s. Indian Research Institute Ltd. for Rs. 1,53,000. The Income Tax Officer examined the deed of conveyance executed by the assessee in favour of the purchaser, the Indian Research Institute, wherein it was recorded that the consideration money was received in the form of Reserve Bank of India high denomination notes to the extent of Rs. 1,53,000. The numbers of these notes were mentioned in the deed of conveyance. The Income Tax Officer found that the said high denomination notes were encashed by M/s. Singh & Co. Out of the total loan money of Rs 1,26,000, they tallied with the notes mentioned in the deed of conveyance only to the extent of Rs. 1,10,000, and the Income Tax Officer, accepted the source of the loan to the extent of Rs. 1,10,000. He did not accept the assessee's explanation as to the balance of Rs. 16,000, which he also treated as the assessee's income from undisclosed sources. The total addition from the encashment of the high denomination notes as income from undisclosed sources as per order of the Income Tax Officer amounted to Rs. 57,000, comprising the two sums of Rs. 41,000 and Rs. 16,000, mentioned hereinbefore.

2. The assessee preferred an appeal before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner confirmed the order of the Income Tax Officer.

3. There was a further appeal by the assessee to the Income Tax Appellate Tribunal. The Tribunal in Income Tax Appeal No. 3538 of 1952-53, considered a letter produced before it by the assessee written by the official liquidator of Bharati Central Bank Ltd., stating that the assessee's son had withdrawn Rs. 36,696 in high denomination notes and the assessee's case before the Tribunal was that the number of high denomination notes mentioned in the letter of the official liquidator should be compared with the number of the notes encashed by Mm and, to the extent to which these numbers tallied, the source of high denomination notes should be considered as proved.

4. The order contains the following observation :

" Further, the appellant has alleged that he received Rs. 20,000 from the currency office. The appellant's contention is that he has not been able to get this confirmed by the currency officer to whom he has written on this subject. The appellant would be entitled to produce evidence on this point also before the Appellate Assistant Commissioner and we send the case back to him on this point

for re-decision, on the lines indicated above."

5. The assessee, namely, Joynarain Singh, died on the 26th October, 1954, and on 9th March, 1961, the Appellate Assistant Commissioner called upon the legal representative of the assessee to give his explanation. The Appellate Assistant Commissioner also asked for a report from the Income Tax Officer for examining the record of the Bharati Central Bank Ltd. (in liquidation). The Income Tax Officer served a notice u/s 37 of the Indian Income Tax Act on the official liquidator, Bharati Central Bank Ltd. The official liquidator wrote on the 20th of September, 1961, that, apart from the true copy of the office copy of a letter dated 26th April, 1951, addressed to Sri Sudha Sankar Singh by Sri p. N. Guha Roy, the then official liquidator of the bank, there was nothing else on the record and enclosed a copy of the aforesaid letter. The said letter stated that Sri Sudha Sankar Singh encashed a cheque for Rs. 36,696, against which he was paid by the bank 36 high denomination notes of Rs. 1,000 each giving the numbers of such notes. It was further mentioned in the said letter that the details of the notes were written on the back of the cheque in question and presumably the payment was made in G. C. notes of the said denomination and numbers. The Income Tax Officer reported that out of the details of the aforesaid notes given by the then official liquidator, the numbers of 21 high denomination notes of Rs. 1,000 each tallied with those which were encashed by the assessee himself. But, as the cheque was drawn by Sudha Shankar Singh in favour of Sri Sew Nath Singh who had encashed the same on 7th April, 1945, and nothing had been produced to prove that the proceeds of this cheque was actually given to the assessee and the assessee had failed to furnish the date of the receipt of the cheque from Sri R. P. Shaw and to prove in what context the cheque for Rs. 38,877 was received and when this cheque was given to Sri Sudha Sankar Singh for encashment, the assessee's explanation did not admit of any verification. He further reported that no particulars regarding 6 high denomination notes of Rs. 1,000 each were furnished and as such the verification of its numbers did not arise at all. So far as the balance of Rs. 16,000 was concerned, the Income Tax Officer did not accept the assessee's explanation that he received one high denomination note of Rs. 10,000, in exchange for smaller denomination notes from Rameshwar Prasad Shaw of No. 37, Circular Road, Calcutta, and Rs. 6,000 was cash in hand, as neither the books of account nor any other evidence was produced in support of such contentions.

6. When the matter came up for further hearing before the Appellate Assistant Commissioner, the above remand report submitted by the Income Tax Officer was considered. It was contended on behalf of the legal representative of the assessee that, as the assessee was dead, it was not possible to throw any light on the balance of the 15 high denomination notes out of the 36 high denomination notes received from the bank on the encashment of the cheque. The Appellate Assistant Commissioners agreed with the Income Tax Officer that, in the absence of any books of account of the assessee and as the assessee had never disclosed the receipt of Rs. 36,696 from Sri R. P. Shaw on account of

loading and unloading contract in his assessment for 1946-47, the entire amount of Rs. 36,000 was required to be included in the assessment of the assessee as income from undisclosed sources. So far as the high denomination notes of Rs. 20,000 received from the currency office as alleged by the assessee, the Income Tax Officer had reported that the assessee was unable to produce any evidence before him and on a reference being made to the currency officer he was informed that no record showing the names and addresses of the persons to whom the high denomination notes were issued was maintained by that office. It was admitted on behalf of the legal representative of the assessee that he was unable to prove the numbers of the notes from the records of the currency office. The Appellate Assistant Commissioner also upheld the addition of this sum of Rs. 20,000 as the assessee's income from undisclosed sources. He, therefore, confirmed the addition of Rs. 57,000 on account of high denomination notes as the assessee's income from undisclosed sources.

7. The matter came up in appeal for final hearing before the Tribunal. The Tribunal was unable to accept the assessee's case that he had changed one Rs. 10,000 rupee note for another but was unable to recall the details. Further, the Tribunal was also unable to accept that the assessee had Rs. 6,000 in cash in one thousand rupee notes. As the assessee himself had claimed before the Tribunal on the earlier occasion that he would be able to procure confirmation from the currency office as to the high denomination notes of the face value of Rs. 20,000 and such confirmation could not be produced, the Tribunal observed there was no reason to interfere with the assessment of this amount as the assessee's income from undisclosed sources. The Tribunal further accepted the contents of the letter from Sri Guha Roy, the then official liquidator, produced from the records of the bank. As this letter gave the details of the numbers of the notes paid in exchange for the cheque, the Tribunal accepted the assessee's explanation as to Rs. 21,000 received from the bank in high denomination notes which were ultimately encashed by the assessee. In the result, the Tribunal allowed the appeal in part and reduced the addition of Rs. 57,000 as the assessee's income from undisclosed sources by Rs. 21,000.

8. There was an application made u/s 66(1) of the Indian Income Tax Act, 1922, to refer certain questions of law to this High Court. The Tribunal refused to do so. On an application being made to this court the Tribunal was directed u/s 66(2) of the Indian Income Tax Act, 1922, to refer to this court the following question :

" Whether the finding of the Tribunal that rupees thirty six thousand realised by the assessee by encashment of high denomination notes represented the income of the assessee from undisclosed sources is vitiated by reason of its having relied upon suspicions and surmises not supported by any evidence on the record or upon partly inadmissible materials ?"

9. In cases of encashment of high denomination notes by the assessee? how the question should be considered, have come up for consideration before the Supreme Court. In the case of Lalchand Bhagat Ambica Ram Vs. Commissioner

of Income Tax, Bihar and Orissa, the Supreme Court found that the entries in the rokar and the almirah account of the assessee was that there was an aggregate cash balance of Rs. 3,10,681 and it was highly probable that high denomination notes of the value of Rs. 2,91,000 which was the subject-matter of the litigation were included therein. The books of the assessee were not challenged in any other manner except with respect to certain interpolations relating to the number of the high denomination notes and the Income Tax Appellate Tribunal had accepted these books of account as genuine and had based its conclusion on the basis of the entries which appear in these books of account. The Supreme Court was of the opinion that, in these circumstances, it was not open to the Income Tax Appellate Tribunal to accept the genuineness of these books of account and accept the explanation of the assessee in part as to Rs. 1,50,000 and reject the same explanation with regard to the sum of Rs. 1,41,000. There the Income Tax Tribunal had considered the possibility of the assessee's earning a considerable sum secretly as the period was favourable for the food-grain dealers and the assessee was a food-grain dealer. Furthermore, the Tribunal relied on the fact that the places of the business of the assessee had gained sufficient notoriety for smuggling food-grains and other commodities. The Income Tax Appellate Tribunal had also based its conclusion on the above probability. In these circumstances, the Supreme Court was of the opinion that the said circumstances relied on by the authorities were matters of pure conjecture, suspicion and surmises : the notoriety for smuggling food-grains was merely a background of suspicion and the appellant could not be held to have indulged in smuggling" without any evidence. The fact that there was cancellation of the food-grain licence and the prosecution of the assessee, a fact on which the Tribunal had relied, was irrelevant inasmuch as the licence was restored and the assessee was acquitted of the offence with which it was charged; the mere possibility of the assessee earning considerable amount in the relevant accounting year was a matter of pure conjecture. The Supreme Court was also of the opinion that the fact that the assessee indulged in speculation did not legitimately lead to the inference that the profits in speculative transactions could exceed the value of the notes. The Supreme Court was further pleased to observe that the assessment made without disclosing to the assessee the information supplied by the departmental representative and without giving any opportunity to the assessee to rebut the information so supplied and declining to take into consideration all materials which the assessee wanted to produce in support of the case constituted a violation of the fundamental rules of justice and called for interference by the court. In the case of Omar Salay Mohamed Sait v. Commissioner of Income Tax [1958] 37 ITR 151 (S.C.) at page 170, the Supreme Court observed :

" the Income Tax Appellate Tribunal is a fact finding Tribunal and if it arrives at its own conclusions of fact after due consideration of the evidence before it this court will not interfere. It is necessary, however, that every fact for and against the assessee must have been considered with due care and the Tribunal must have given its finding in a manner which would clearly indicate what were

the questions which arose for determination, what was the evidence pro and contra in regard to each one of them and what were the findings reached on the evidence on record before it. The conclusions reached by the Tribunal should not be coloured by any irrelevant considerations or matters of prejudice and if there are any circumstances which required to be explained by the assessee, the assessee should be given an opportunity of doing so. On no account whatever should the Tribunal base its findings on suspicions, conjectures or surmises, nor should it act on no evidence at all or on improper rejection of material and relevant evidence or partly on evidence and partly on suspicions, conjectures or surmises, and if it does anything of the sort, its findings, even though on questions of fact, will be liable to be set aside by this court."

10. These and other cases relevant on the question of high denomination notes were duly considered by the Supreme Court in the case of Smt. Srilekha Banerjee and Others Vs. Commissioner of Income Tax, Bihar and Orissa, .. There the assessee, who was a colliery proprietor and a coal raising contractor, had encashed on January 22, 1946, high denomination notes of the value of Rs. 51,000. In his application under the Ordinance for encashment of the notes he had stated that for the purpose of conducting his business and making payment to labour which was to the tune of Rs. 30,000 to Rs. 40,000 every week, he had to keep large sums of money to meet an emergency as he did not get payment for work done every week. His explanation before the Income Tax Officer that the high denomination notes formed part of the cash balance at his head office was rejected by the Income Tax Officer on the grounds : (1) that there was a discrepancy in the statements filed by the assessee to prove the amount which the assessee claimed was the cash in hand; (2) that although his business was large and the withdrawals from the banks which he had in various banks were large and frequent, the assessee had not maintained a central account showing withdrawals from the banks and remittances made to his various businesses; (3) that none of the books maintained by the assessee and produced by him contained a bank account; (4) that there was no account of the personal expenses of the assessee; and (5) that he failed to show why he kept large sums on hand at one place when at each of the places where work was carried on there were banks with which he had accounts. The Appellate Assistant Commissioner further found that the assessee had withdrawn a sum of Rs. 45,000 on the day on which the high denomination notes were encashed and a further sum of Rs. 6,005 a few days later and neither sum had been utilised by the assessee. The sum of Rs. 51,000 was brought to tax as income from undisclosed sources.

11. In view of these materials the Supreme Court came to the conclusion that there were materials to show that the sum of Rs. 51,000 did not form part of the cash balance of the assessee and the source of the money not having been satisfactorily proved, the department was justified in holding it to be assessable income of the assessee from some undisclosed source.

12. The Supreme Court further observed if there was an entry in the books of the assessee which showed receipt of a sum on conversion of high denomination notes tendered for conversion by the assessee, it was necessary for the assessee to establish, if asked, what the source of that money was and to prove that it did not bear the nature of income. The department at that stage was not required to prove anything. If the assessee gives an explanation then the department cannot unreasonably reject the explanation. If, however, the explanation is unconvincing and one which deserves to be rejected, the department can reject the explanation and draw the inference that the amount represents income either from the sources already disclosed by the assessee or from some undisclosed source. In these circumstances, it cannot be said, the Supreme Court observed, that the department proceeded on no evidence, because the fact that there was receipt of money is itself evidence against the assessee. There is prima facie evidence against the assessee which the assessee fails to rebut.

13. At page 115 of the report, Hidayatullah J. (as His Lordship then was) observed :

" The cases involving the encashment of high denomination notes are quite numerous. In some of them the explanation tendered by the taxpayer has been accepted, and, in some, it has been rejected. The manner in which evidence brought on behalf of the taxpayer should be viewed, has, of course, depended on the facts of each case. In those cases in which the assessee proved that he had on the relevant date a large sum of money sufficient to cover the number of notes encashed, this court and the High Courts, in the absence of something which showed that the explanation was inherently improbable, accepted the explanation that the assessee held the amount or part of it in high denomination notes. In other words, in such cases, the assessee was held, prima facie, to have discharged the burden which was upon him. Where the assessee was unable to prove that in his normal business or otherwise, he was possessed of so much cash, it was held that the assessee started under a cloud and must dispel that cloud to the reasonable satisfaction of the assessing authorities, and that if he did not, then, the department was free to reject his explanation and to hold that the amount represented income from some undisclosed source. "

14. In the background of the above principles we have now to examine the order of the Tribunal. The Tribunal has deleted the addition of Rs. 21,000 but has sustained the addition of Rs. 36,000 as income from undisclosed source. One item in respect of which addition was made on account of income from undisclosed source, which has been sustained by the Tribunal, arises out of the loan transaction of Rs, 1,26,000 given by the assessee alleged to be in high denomination notes to M/s. Singh & Co. The assessee's explanation was that the sum was given out of the sale proceeds of the property of the assessee at No. 3, Rustomjee Parsee Road, Calcutta, to M/s. Indian Research Institute Ltd. The conveyance was for the sum of Rs. 1,53,000. The conveyance recorded that the consideration money was paid in high denomination notes and the particulars of

the said notes were mentioned in the deed of conveyance. The Income Tax Officer had compared the numbers of the high denomination notes encashed by Messrs. Singh & Co. and the high denomination notes mentioned in the deed of conveyance and he found that they tallied to the extent of Rs. 1,10,000. A sum of Rs. 16,000 was, therefore, treated on this account as assessee's income from undisclosed source. The assessee's explanation before the Tribunal was that one ten thousand rupee note which the assessee received as sale price must have got changed before inclusion in the loan to M/s. Singh & Co. The Tribunal observed at page 43 of the paper book:

"We are unable to accept that the assessee changed one ten thousand rupee note for another but was unable to recall the details."

15. It was necessary in this case for the Tribunal to consider whether the assessee had proved that he had on the relevant date a large sum of money sufficient to cover the number of notes encashed in the words of the Supreme Court in the case of *Sreelekha Banerjee v. Commissioner of Income Tax*. It is an admitted position that the assessee sold the property at No. 3, Rustomjee Parsee Road, Calcutta, and got Rs. 1,53,000 in high denomination notes. It is also an admitted position that out of this a large sum of money was paid to Messrs. Singh & Co. In this context is the assessee's explanation that one note for rupees ten thousand got changed, improbable? The Tribunal, in our opinion, has not properly considered this aspect of the matter bearing in mind the principles laid down by the Supreme Court. It has also to be borne in mind that the tallying was done with the number of notes encashed by M/s. Singh & Co., that is not the assessee itself, even though it was closely associated with the assessee. In those circumstances, the explanation that either the assessee or M/s. Sfngh & Co. who had cash in hand in notes might have changed one high denomination note, in our opinion, is not inherently improbable. This aspect of the matter was not appreciated, in our opinion, by the Tribunal. Mr. B. L. Pal, learned advocate for the revenue, urges before us that it was necessary for the assessee to establish that he had at the time of making this loan to M/s. Singh & Co. retained the money that the assessee had received as consideration for the sale of the property. In view of the fact that the assessee had received the money, as consideration for the sale of property in high denomination notes and that the bulk of which was paid as loan to Messrs. Singh & Co., we are of the opinion that position the assessee has established. In that view of the matter we are of the opinion that in so far as the Tribunal was unable to accept the assessee's explanation, we are of the opinion that the rejection of the assessee's explanation by the Tribunal was improper. The assessee further contended that of this loan to M/s. Singh & Co., Rs. 6,000 was paid in cash which the assessee had with him. On this aspect of the matter the onus was on the assessee to establish that the assessee had this amount of cash with the assessee and the assessee has failed to discharge that onus to the satisfaction of the revenue authority and the Tribunal. This finding of the Tribunal is based on the evidence on record and cannot, in our opinion, be interfered with by this court u/s 66 of the Indian

Income Tax Act, 1922.

16. There was another addition of a sum of Rs. 20,000 and in respect of which the assessee's explanation was that he had received two high denomination notes of Rs. 10,000 from the currency office at Calcutta. The assessee wanted an opportunity before the Tribunal to prove that from the currency office and the Tribunal gave such an opportunity to the assessee. In spite of that, the assessee was unable to adduce any evidence or confirmation from the currency office regarding the high denomination notes of the face value of Rs. 20,000. In these circumstances, the Tribunal, on the appreciation of evidence properly, in our opinion, rejected this explanation of the assessee. In that view of the matter we are of the opinion that the finding of the Tribunal so far as it sustained the addition of Rs. 26,000 as income from undisclosed source, is proper and based on materials and evidence, but so far as findings of the Tribunal sustain a further addition of a sum of Rs. 10,000 as income from undisclosed source it is improper, being based on improper rejection of the assessee's explanation. We, therefore, answer the question by saying that the finding of the Tribunal that a sum of Rs. 26,000 represented the income of the assessee from undisclosed sources is valid but the finding of the Tribunal to the extent of a further sum of Rs. 10,000 as income from undisclosed sources is invalid and vitiated being based on improper rejection of the materials, on record.

17. In this case the assessee had sufficient opportunity and had to a certain extent delayed the matter. In that view of the matter the assessee will pay the costs of this reference to the Commissioner of Income Tax.

Deb, J.

I agree.