
(1970) 11 P&H CK 0029

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 38 of 1969

Commissioner of Income Tax

APPELLANT

Vs

Piara Singh

RESPONDENT

Date of Decision : 05-11-1970

Acts Referred:

Income Tax Act, 1922 — Section 10(1)

Citation : (1972) 83 ITR 678

Hon'ble Judges : D.K. Mahajan, J; Bal Raj Tuli, J

Bench : Division Bench

Advocate : D.N. Awasthy and B.S. Gupta, for the Appellant; Dharampal Mahajan and S.S. Mahajan, for the Respondent

Judgement

1. At the instance of the Commissioner of Income Tax, Patiala, the following question of law has been referred for our opinion:

" Whether, on the facts and in the circumstances of the case, loss of Rs. 65,500, arising from the confiscation of the currency notes was an allowable deduction u/s 10(1) of the Income Tax Act, 1922 ? "

2. The assessee, Piara Singh, and his companion. Chain Singh, were apprehended by the police on the Indo-Pakistan border on the night between 19th and 20th September, 1958. They were moving towards a village, Sarja Mirja, on the Pakistan side. On search, an amount of Rs. 65,500 in currency notes was recovered from the person of Piara Singh and a sum of Rs. 69,800 from the person of Chain Singh. On interrogation, both these persons stated on 20th of September, 1958, that they were taking the currency notes out of India to Pakistan with a view to smuggle gold which had to be purchased in Pakistan and brought into India. They admitted that they were doing so through the assistance of one Rehmat, a Pakistani smuggler. A notice was consequently served on Piara Singh, assessee, as to why the amount recovered from him should not be confiscated and further penal action taken against him under Sections 5 and 7 of the Land Customs Act, 1924, read with Section 167(8) of the

Sea Customs Act, 1878, read with Section 23A of the Foreign Exchange Regulation Act, 1947, and Section 19 of the Sea Customs Act. After hearing the assessee, the Collector of Central Excise and Land Customs ordered the confiscation of the entire amount recovered from him and imposed a penalty of Rs. 1,000.

3. The Income Tax Officer thereupon called upon the assessee to explain the source of the currency notes amounting to Rs. 65,500 that had been seized from him. The assessee's explanation was that Rs. 40,000 was his saving from agriculture and Rs. 25,500 was the amount of loan he had incurred from his father-in-law, Teja Singh. The Income Tax Officer recorded the statements of Teja Singh and others and, thereafter, held that the assessee could not have saved more than Rs. 5,000 from his agricultural income. As he was not satisfied as to the source of the balance of the amount he treated the amount of Rs. 60,500 as the income of the assessee from undisclosed sources. The assessee preferred an appeal to the Appellate Assistant Commissioner but without success. The assessee then moved the Appellate Tribunal in appeal and there for the first time the contention was raised that the assessee was engaged in the smuggling business with a gang of several persons and if the amount of Rs. 60,500 was to be treated as his income, it should be treated as the income of the whole gang and not his exclusive income. It was further maintained that, even if this contention was not accepted, the entire amount of Rs. 60,500 could not be held to be the income of the year under appeal and the amount could very well have included income earned by him in the previous years. Only the income earned during the relevant year could be considered for purposes of assessment. As a last resort, it was contended that the amount that was confiscated, namely, Rs. 65,500, was lost in the business activities of smuggling and, therefore, was an allowable deduction u/s 10(1) of the Income Tax Act.

4. The stand taken up by the revenue before the Tribunal was that the assessee was a smuggler who was smuggling gold into India and he was arrested in the activity and, as a consequence, the currency notes of the value of Rs. 65,500 were seized from him, that the assessee was not a big agriculturist and no part of the amount recovered represented his agricultural income and that the amount of Rs. 65,500 represented the assessee's income of the previous year only. Regarding the claim of the assessee for a deduction u/s 10(1) of the Act, it was contended that, as the assessee had denied having carried on any smuggling activity, he was not entitled to claim deduction on that footing. It was further pleaded that there was no evidence that the assessee was engaged in smuggling activity. The last contention was that the amount confiscated was a penalty and, therefore, could not be allowed as loss.

5. The Appellate Tribunal, after considering the respective contentions of the assessee and the department, held that the sum of Rs. 65,500 exclusively belonged to the assessee. It was further held that the amount so recovered did not represent his capital as distinct from income. On the question whether the

entire sum recovered amounted to his income during the previous year, it was held that only Rs. 20,000 was the income of the previous year from smuggling activity. The claim of the assessee for deduction of the amount of Rs. 65,500 as loss was accepted on the basis that the assessee was carrying on a regular smuggling activity which consisted of taking out of India currency notes and exchanging them with gold in Pakistan and smuggling that gold into India. As the hazard of losing the money with which the gold had to be acquired was inherent in the activity, any confiscation of that amount would be a loss and thus allowable deduction within the meaning of Section 10(1). The Tribunal upheld the assessee's claim on the basis of the amount of Rs. 65,500 being a permissible deduction within the meaning of Section 10(1) of the Act. The department was dissatisfied with this decision and moved an application u/s 256(1) of the Income Tax Act, 1961, and only one question of law has been stated as already referred. The question whether the income of the assessee during the previous year was only Rs. 20,000 out of Rs. 65,500 was not pressed for a reference to this court.

6. The contention of the learned counsel for the department before us has principally been based on the decision of the Bombay High Court in Commissioner of Income Tax, Bombay City II Vs. Haji Aziz and Abdul Sakoor Bros., which decision was affirmed by the Supreme Court in Haji Aziz and Abdul Shakoor Bros. Vs. The Commissioner of Income Tax, Bombay City II, . This case was really a case u/s 10(2)(xv) and related to the claim for permissible deduction on account of expenditure laid out or expended wholly and exclusively for the purpose of such business. It is now common ground that we must proceed on the basis that the assessee was carrying on the business of smuggling. It is maintained that the amount confiscated was an amount which was being expended by the assessee for the purposes of smuggling business and, therefore, it is not a permissible deduction in view of the decision of the Bombay High Court inasmuch as it was an amount expended for an illegal purpose. In our opinion, the decision of the Bombay High Court is not in point so far as the present case is concerned. So far as the Bombay decision is concerned, it related to a case where goods which could not be imported into India were imported. The goods were confiscated. In order to get the goods released, a certain amount was levied as a penalty by the customs authorities. The amount paid as penalty was claimed as a deduction u/s 10(2)(xv) and that claim was disallowed by the Bombay High Court the reason being that under no circumstances the amount could be said to be expended for the acquisition of goods. The goods had already been acquired. They had been confiscated and the amount expended was to get the goods released. This is not so in the case in hand.

7. The currency notes, which were recovered from the assessee, were being taken by him to Pakistan to acquire gold. The income would only arise if that gold was sold in the Indian market and a profit derived therefrom. This amount merely represented an amount with which gold of the corresponding value had to be acquired in Pakistan, of course, for purposes of making profits but that stage

did not arise. There is no evidence worth the name on the record that the amount of Rs. 65,500, which was in the possession of the assessee, represented the income from his smuggling activity carried on previously. The amount may have been obtained by illegal means by the assessee and, therefore, he may not have been in a position to explain its source, but that is a matter wholly beside the point. We have to proceed on the basis that the assessee was engaged in the business of smuggling and the amount recovered from him was an amount which he was carrying in furtherance of that business, and if that amount is lost in the process of that business, it would necessarily be a permissible deduction. It would be another matter if an illegal business is not a business for purposes of the Income Tax Act. The Income Tax Act does not let income escape whether that income is out of legitimate business or out of illegal business. The purpose of the Act is to catch income, no matter in what manner it is earned.

8. The matter is really not *res Integra*, and there is a direct decision of the Gujarat High Court in *Commissioner of Income Tax Vs. S.C. Kothari*, It is for this reason that we are not elaborating the matter any further and would be content to follow that decision wherein all the authorities referred to by Mr. Awasthy in the course of his arguments, excepting *INDIAN ALUMINIUM CO. LTD. Vs. COMMISSIONER OF Income Tax, WEST BENGAL.*, , *MAHABIR SUGAR MILLS (P.) LTD. Vs. COMMISSIONER OF Income Tax, U.P.*, and *Deoria Sugar Mills Ltd. Vs. Commissioner of Income Tax*, have been considered. So far as the last three authorities are concerned, they are similar to the Bombay decision which we have already dealt with. There is no dispute with the view which the authorities have taken on the facts on which the Bombay decision proceeded. The present case has no parallel with the facts of the Bombay decision. It has only a parallel with the facts in *S.C. Kothari's* case. The relevant passage from *S.C. Kothari's* case is reproduced below:

" These decisions clearly show that even where a trade is illegal, it would still be a trade within the meaning of the Income Tax Act and if any profits are derived from such trade, they would be assessable to tax under the Income Tax Act. The assessee cannot be heard to say that the profits from the trade carried on by him are not assessable because the trade is illegal. To permit any such contention to prevail would be to put a premium on dishonesty. Now, up to this point there was no dispute between the assessee and the revenue but at this point their argument (agreement) ended. The assessee contended that if profits arising from an illegal business are assessable to tax, equally losses arising from such business should be liable to be taken into account in computing the business income of the assessee and in principle there was no distinction between profits and losses of such business. The revenue, on the other hand, urged that losses from illegal business should not be allowed to be taken into account, for to do so would be to encourage breaches of law on the part of the assessee and to permit the assessee to profit by his own wrong. The revenue inv'oked the principle that no person can benefit by an unlawful act; no person can be permitted in support of his claim to put forward an act which is an unlawful act and pleaded that this

principle should be projected into the Income Tax law and losses arising from unlawful acts of the assessee should not be permitted to be taken into account. We do not think the contention of the revenue is well-founded and we are unable to accept it. We are of the view that illegal business is business within the meaning of the Income Tax Act and if profits from illegal business are assessable to tax, there is no reason either on principle or on authority for refusing to take into account losses from illegal business."

9. We are in respectful agreement with the observations quoted above and in our view these observations conclude the matter.

10. For the reasons recorded above, we hold that the decision of the Tribunal is correct. We answer the question referred to us in the affirmative, that is, in favour of the assessee. There will be no order as to costs.