
(1954) 07 PAT CK 0008

In the Patna High Court

Case No : Misc. Judicial Case No. 343 of 1952

Manindranath Dash

APPELLANT

Vs

Commr. of Income Tax

RESPONDENT

Date of Decision : 21-07-1954

Acts Referred:

Income Tax Act, 1961 — Section 23(3), 34

Citation : (1955) 27 ITR 522

Hon'ble Judges : Ramaswami, J;Ahmad, J

Bench : Division Bench

Advocate : S.N. Gupta and S.N. Bhattacharyya, for the Appellant; R.J. Bahadur, for the Respondent

Judgement

1. For the assessment year 1946-47 the petitioner was assessed u/s 23(3), Income Tax Act, upon the total income of Rs. 32,689/-. After the assessment was completed the Income Tax Officer received information that on 19-1-1946, the petitioner had encashed high denomination notes to the extent of Rs. 28,000/-. Proceedings were thereupon initiated u/s 34, Income Tax. Act. The assessee filed a fresh return and gave explanation that the amount of Rs. 28,000/- represented the amount of savings accumulated from his personal income upon which Income Tax had already been paid. In his letter dated 16-6-1947 the assessee states:

"The funds of the high denomination notes accumulated from savings of my personal income since the date of our disruption of joint Hindu family.

There was a run in the bank when England was off gold standard; since then we were in the habit of keeping some reserve cash at home in order to meet the personal and business needs. The high denomination notes in question form part of this reserve cash."

The Income Tax Officer did not accept the explanation and included the entire amount of Rs. 28,000/- as secreted profits of the assessee during the accounting year. An appeal was taken by the assessee to the Appellate Assistant

Commissioner but the appeal was rejected. The matter then came up before the Appellate Tribunal. It was contended on behalf of the assessee that out of 28 notes 15 notes were received from the Hongkong and Shanghai Banking Corporation. The Appellate Tribunal did not accept this explanation but held that the case should be remanded back to the Income Tax Officer with a direction that the claim should be investigated after examination of the books of the Busserya Coal Company to whom Rs. 1000/- notes were actually paid by the Hongkong and Shanghai Banking Corporation.

An enquiry was held by the Income Tax Officer and the matter again came up before the Income Tax Appellate Tribunal for the determination of the question whether the assessee had given sufficient explanation of the source of the entire amount represented by high denomination notes or portion thereof. After a comparison of the numbers of notes given by the Hongkong and Shanghai Banking Corporation with the numbers in the declaration made under the Denomination Ordinance the Income Tax Appellate Tribunal took the view that there was an agreement with respect to 15 notes. The Appellate Tribunal, therefore, accepted the explanation of the assessee with regard to Rs. 15,000/- out of the total amount of Rs. 28,000/-, which represented the value of the high denomination notes. As regards the balance of Rs. 13,000/-, the Appellate Tribunal held that the explanation furnished by the assessee was insufficient and Rs. 13,000/- should be held as secreted profits of the assessee for the accounting year and liable to be taxed.

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

"Whether on the facts and the circumstances of the case there is material for holding that the sum of Rs. 13,000/- representing high denomination notes encashed on 19-1-1946 is income assessable to income tax?"

On behalf of the assessee Mr. Gupta put forward the argument that the assessee was the owner of several collieries, that he had fixed deposits in banks and that he also obtained dividends from companies' shares. It was contended that the assessee was in the habit of keeping large amounts of cash in the high denomination notes though the assessee also had opened several bank accounts. In support of his argument Mr. Gupta pointed out that for the period from December 1943 to January 1945 the assessee had withdrawn a sum of Rs. 28,000/- from the Lloyds Bank. In order to substantiate the point Mr. Gupta produced the pass book of the assessee maintained by the Lloyds Bank and showed to us that from 1937 to 1945 the assessee had withdrawn large amounts totalling about Rs. 57,000/-. Counsel submitted that at the time high denomination notes were presented for encashment, the assessee had sufficient amount which had accumulated from the savings of the previous years. It was, therefore, argued that the assessee had discharged the onus which lay upon him of proving the source and nature of the amount of Rs. 28,000/-, which represented the value of high denomination notes which he had presented on

19-1-1946 for encashment.

3. In our opinion the argument of Mr. Gupta must be rejected as unsound. The principle is well established that if the assessee receives a certain amount in the course of the accounting year, the burden of proof is upon the assessee to show that the item of receipt is not of an income nature; and if the assessee fails to prove positively the source and nature of the amount of the receipt, the revenue authorities are entitled to draw an inference that the receipt is of an income nature. The burden of proof in such a case is not upon the department but the burden of proof is upon the assessee to show by sufficient material that the item of receipt was not of an income character.

The question, therefore, arises whether in the present case the assessee has discharged the onus which lay upon him of showing that this amount of Rs. 28,000/- was not liable to be taxed. It is true that Mr. Gupta showed in the course of argument from the bank pass book that for the period from 1937 to 1945 the assessee withdrew a sum of Rs. 57,000/- from his account in the Lloyds Bank. It is admitted that the assessee does not maintain any Home Chest Account. Mr. Gupta further admitted that he did not produce before the Income Tax authorities materials to show what was the disbursement for the various years out of the total of Rs. 57,000/-, which the assessee had withdrawn from the Lloyds Bank.

The difficulty in the way of the assessee is that unless we are shown what the amount of disbursement is for the various years, it is impossible to arrive at a finding that on the material date, that is, on 19-1-1946, the assessee had in his possession sufficient cash balance representing the value of high denomination notes which were being encashed. It is possible that the quantity of disbursement may be such that the amount of cash balance was Rs. 28,000/- on the material date. On the contrary it is also possible that the disbursement was to such an extent that the amount of cash balance was Rs. 15,000/-. But there is no room for speculation in a case of this description and unless the assessee produces material to show what was the exact quantum of the disbursement, it is difficult to say that the onus of proof in this matter has been properly discharged by the assessee.

Mr. Gupta referred in the course of his argument to the decision of this Court in -- Nilkantha Narayan Singh Vs. Commr. of Income Tax, B and O, but the principle of that case is of no assistance to the assessee in the present case. It appears from the report of that case that the assessee had produced accounts for seven years from 1346 to 1352 B. S. showing receipts of disbursements and also showing that there was a cash balance of Rs. 1,82,000/- and odd which was more than sufficient to cover and explain the sum of Rs. 84,000/- representing the value of high denomination notes.

As we have said, the assessee in the present case has not produced complete accounts for the disbursements for several years. It is not sufficient for the

assessee to prove merely that he had withdrawn a sum over Rs. 28,000/- from the Lloyds Bank for several years preceding the year of account. It is necessary that the assessee should have given further material to indicate what was the disbursement out of the total income and satisfied the authorities in that manner that on the material date the cash balance in his hand was not less than the amount of Rs. 28,000/- which was the value of the high denomination notes. It is clear that the Income Tax authorities are right in holding that the assessee has failed to give sufficient explanation of the source and nature of the high denomination notes which he encashed on 19-1-1946.

4. For these reasons we are of opinion that the sum of Rs. 13,000/- representing high denomination notes encashed on 19-1-1946, was income liable to Income Tax, and the question referred to this High Court must be answered against the assessee and in favour of the Income Tax department. We assess hearing fee at Rs. 250/-.