

(1954) 09 PAT CK 0001

In the Patna High Court

Case No : Misc. Judicial Case No. 266 of 1952

M.L. Tewary

APPELLANT

Vs

Commr. of Income Tax

RESPONDENT

Date of Decision : 01-09-1954

Acts Referred:

Income Tax Act, 1961 — Section 33(4)

Citation : AIR 1955 Patna 59 : (1955) 27 ITR 630

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

Bench : Division Bench

Advocate : S.N. Dutt and S.K. Mazumdar, for the Appellant; R.J. Bahadur, for the Respondent

Judgement

1. In this case the assessee is the Managing Director of a private limited company doing Automobile business, in which his joint family had a controlling interest.

The assessee has been taxed as an individual for the assessment year 1946-47. The accounting year corresponds to the period from 1-4-1945 to 31-3-1946 and for this accounting year the assessee made a return of income showing Rs. 16,661 as salary and Rs. 3000 as dividend.

It appears that on 26-1-1946 the assessee encashed 78 high denomination notes of the value of Rs. 1000 each. In the declaration which is required to be made under the Ordinance the assessee said that the amount was his personal saving kept in the safe custody of the Ruler of Sakti State when there was panic in the year 1942 and there was danger of bombing of Jamshedpore.

Before the Income Tax Officer the assessee produced a certificate from the Ruler of Sakti dated 2-4-1947. The certificate was to the following effect

"With reference to your letter enclosing & request for a certificate for Mr. S.M. Patnaik, Income Tax Officer, Chaibasa, regarding the amount of Rs. 73,000 deposited by you with me in the year 1942 in my personal keeping, I have

pleasure in confirming that you had deposited the amount in question with me in 1942 when you were on your way to Jubbulpore."

The Income Tax Officer did not accept the explanation of the assessee on the ground that the high denomination notes were not put into circulation in the year 1942 but were put into circulation for the first time in the year 1943. The assessee took an appeal to the Appellate Assistant Commissioner against the order of the Income Tax Officer.

In the course of the appeal the assessee produced a second certificate from the Ruler of Sakti wherein it was mentioned that the assessee made the deposit of Rs. 73,000 in 1942 not in high denomination notes but in currency notes of much smaller amount. The ruler admitted in this certificate that he himself converted the money into high denomination notes after the assessee had made the deposit. The Appellate Assistant Commissioner set aside the order of assessment and remanded the case to the Income Tax Officer for taking the evidence of the Ruler of Sakti and after ascertaining the actual fact to make fresh assessment.

Against this order the Income Tax Department preferred an appeal to the Appellate Tribunal and contended that the Appellate Assistant Commissioner was wrong in remanding the case to the Income Tax Officer and in setting aside the assessment made upon the assessee. After hearing the parties the Tribunal issued a commission to the Income Tax Officer of Raigarh to examine the Ruler of Sakti and submit report.

After the evidence of the Ruler of Sakti was taken on commission the Tribunal heard the parties again and reached the finding that the Ruler of Sakti has given false evidence and that the amount of Rs. 73,000 was the concealed income of the assessee which was liable to be taxed.

2. As ordered by the High Court the Tribunal has stated a case on the following questions of law--

"(1) Whether in an appeal directed against the order of remand passed by the Appellate Assistant Commissioner, it was open to the Tribunal to take fresh evidence and consider the correctness of the assessment on the merits; and

(2) Whether, in the circumstances of the case, there is material for holding that the sum of Rs. 73,000, the value of the high denomination notes, encashed on 26-1-1946, was concealed income?"

(3) With respect to the first question the argument addressed on behalf of the assessee was that the Tribunal had no authority to take the evidence of the Ruler of Sakti on commission and consider the correctness of the assessment imposed upon the assessee on merits.

Mr. Dutt pointed out that in the petition of appeal-made before the Tribunal the Income Tax Department mentioned only two grounds-- (1) that the Appellate Assistant Commissioner has erred in remanding the case for examination of

further evidence in respect of the high denomination notes of Rs. 78,000; and (2) that the Appellate Assistant Commissioner should not have entertained fresh evidence which was not produced at the assessment stage. It was argued by Mr. Dutt that the appeal of the Department was confined only to these two grounds and therefore it was not open to the Tribunal to Judge the assessment on its merit or to issue a commission direct for the examination of the Ruler of Sakti.

In our opinion the argument of Mr. Dutt on this point cannot be accepted as correct. u/s 33(4), Income Tax Act, the Tribunal has the authority "to pass such orders as it thinks fit" upon the appeal and the only condition precedent to the exercise of this power is that the Tribunal should give an opportunity to both the parties to the appeal to be heard in the matter.

It is not correct to say that the scope of the appeal preferred by the Income Tax department was limited only to the two grounds mentioned in the petition of appeal. The subject-matter of the appeal was the correctness of the assessment imposed by the Income Tax Officer and we think that the Tribunal had jurisdiction to issue a commission direct for the examination of the Ruler of Sakti and also to decide the correctness of the assessment made by the Income Tax Officer upon its merit. The first question referred to the High Court must therefore be answered in favour of the Income Tax Department and against the assessee.

4. The next and more important question is whether the Tribunal had material for holding that the sum of Rs. 73,000, the value of the high denomination notes encashed on 26-1-1946, was concealed income of the assessee liable to be taxed.

In the approach to this question it should be remembered that the onus is upon the assessee to prove positively the source and nature of the money which was received during the accounting year. In the absence of any explanation of the assessee the Revenue authorities are entitled to draw the inference that the receipt is of an income nature; in other words, the burden of proof in such a case is not upon the Revenue authorities but the burden of proof is upon the assessee to show, that the item of receipt is not of an income nature.

Mr. Dutt did not dispute the correctness of this principle but his contention was that the assessee in this case has given a sufficient explanation as to the source and nature of the amount of Rs. 73,000. Counsel pointed out in the first place that the assessee had made a declaration at the time of encashment that the amount of Rs. 73,000 represented his personal saving kept in the safe custody of the Ruler of Sakti State at the time Jamshedpore was being evacuated. On 19-9-1947 the assessee wrote a letter to the Income Tax Officer wherein he stated that the sum of Rs. 73,000 was carried to Sakti in cash and deposited with the Ruler of Sakti in 1942.

The letter of the assessee reads as follows--"I carried to Sakti liquid cash as per my statement given to you and when the Ordinance was promulgated the Ruler of Sakti handed over to me the high denomination notes in lieu of the above liquid cash which I tendered in the Treasury for encashment. The Ruler has also

confirmed that I had deposited a sum of Rs. 73,000 with him in 1942 and it is but logical that in 1942 I could not be in possession of high denomination notes that were issued by the Reserve Bank in 1943."

Mr. Dutt also referred to a certificate granted by the Ruler of Sakti dated 2-4-1947. The certificate is in the following terms--

"With reference to your letter enclosing a request for a certificate for Mr. S.M. Patnaik, Income Tax Officer, Chaibasa, regarding the amount of Rs. 73,000 deposited by you with me in the year 1942 in my personal keeping. I have pleasure in confirming that you had deposited the amount in question with me in 1942 when you were on your way to Jubbulpore."

The second certificate granted by the Ruler to December 1947 reads as follows--

"Referring to your request for further particulars relating to your deposit with me of Rs. 73,000 in 1942 and the return thereof to you I may inform you that it was an usual practice then for the sake of convenience to change one's smaller value notes into higher denomination notes. After your deposit of the amount which was mixed up with my money I must have converted a number of times in the ordinary course. When the High Denomination Demonetizing Ordinance was passed, I did hand over to you 73 notes of Rs. 1000 each for encashment in lieu of the amount that you had deposited with me. I hope this will clear up the doubts raised by you."

Mr. Dutt put forward the argument that in the face of the declaration made by the assessee and in the face of the two certificates granted by the Ruler of Sakti the Tribunal had no Justification for holding that the amount of Rs. 73,000 was not deposited by the assessee with the Ruler of Sakti in 1942.

As regards the source of the money it was explained on behalf of the assessee that from the year 1926 to the year 1945 the assessee and his brother D. Tewary had withdrawn a sum of Rs. 2,72,722 from two companies, viz., Narbheram & Co. and Tiwary, Bechar & Co. This explanation was furnished by the assessee to the Income Tax Officer in his letter dated 17-1-1947. It was argued by Mr. Dutt that this explanation should have been accepted by the Income Tax authorities and the assessee had discharged the onus of proving in this case the nature and source of the amount of Rs. 73,000 which represented the value of the high denomination notes encashed after the promulgation of the Demonetization Ordinance.

But the difficulty in accepting the argument of Mr. Dutt is that the Tribunal has examined the materials and has reached the finding that the Ruler of Sakti has not given true evidence and the story of the assessee that he had taken liquid cash to the extent of Rs. 73,000 from Jamshedpur to Sakti in 1942 was a myth. The question at issue is a question of fact and the High Court would normally have no jurisdiction to interfere with the finding of the Tribunal on a question of this description. But counsel on behalf of the assessee contended that there was

no material upon which the Tribunal could reach the finding that the Ruler of Sakti has given false evidence. We are unable to accept the argument of Mr. Dutt that there is no material to support the finding of the Tribunal that the Ruler of Sakti has not given true evidence.

The Tribunal has given three reasons on this point. The Tribunal stated in the first place that the story of the assessee that he took Rs. 73,000 in liquid cash from Jamshedpore to Sakti cannot be accepted since it would have been more convenient for the assessee to have taken high denomination notes instead of taking money in small currency notes. Mr. Dutt stated that this reason was not a satisfactory reason because it was the time of panic and the assessee would not by changing small currency notes into high denomination notes, risk the disclosure to the public that he was in possession of a large amount of money and it was therefore more probable that the assessee would have carried the amount to Sakti without changing them into high denomination notes. The view taken by the Tribunal on this point cannot however be brushed aside as capricious or irrelevant and it is a possible view which it was open to the Tribunal to take.

The second reason given by the Tribunal is a much stronger reason. The admitted case of the assessee is that the Ruler handed back the amount of Rs. 73,000 to the assessee and the 73 high denomination notes a fortnight after the promulgation of the Ordinance. The Tribunal has made an important remark that it is wholly improbable that the assessee would accept the amount of Rs. 73,000 from the Ruler of Sakti in high denomination notes knowing full well that these high denomination notes were not legal tender in British India. The Demonetization Ordinance was promulgated on 12-1-1946 and the assessee must be deemed to have known this important fact. It is therefore not clear why the assessee should gratuitously undertake the responsibility of changing the high denomination notes which actually belonged to the Ruler of Sakti.

If the case of the assessee is right and if the Ruler of Sakti had himself changed the money deposited by the assessee into high denomination notes it appears to be highly improbable that the Ruler of Sakti would not himself undertake to cash the high denomination notes and hand over the proceeds to the assessee instead of asking the assessee to encash the high denomination notes himself. In this connection the statement of the Ruler of Sakti at page 26 of the paper book is important. In answer to question Nos. 18 and 19 the Ruler has made the following statements--

"18. Did you tender yourself or did any one else tender on your behalf any such H. D. notes for exchange and if so, give details as to by whom, when and where and how many?

Either my State-treasurer or the palace Superintendent encashed my notes. I did not do it. I cannot say how many and when. When the Ordinance was promulgated, I had made it known by the beat of drums that those who were in

possession of H. D. notes should present them into the State treasury with a proper declaration form and the same were sent to Raipur imperial Bank for encashment. When the money was received it was disbursed to the owners.

19. Since Mr. Tiwary had deposited his money with you in form other than these very 73 notes, did he object to take them knowing very well that they were not legal tender in British India then? If he did, how did you induce him to accept?

He did object but I had assured him to accept them. I certified that these notes were with me and I would have got them encashed myself."

In answer to question No. 18 the Ruler admitted that he had encashed high denomination notes presented by other persons and in answer to question No. 19 the Ruler said that the assessee objected at the time the high denomination notes were given to him and the Ruler assured him and also "certified that these notes were with me and I would have got them encashed myself." It does not appear that this statement is true since no certificate has been produced on behalf of the assessee from the Ruler of Sakti granted in January or February of 1946.

In this connection the Tribunal has referred to another important circumstance that though the money was deposited with the Ruler of Sakti in 1942 the assessee did not take the trouble to get it back until after the Ordinance was promulgated. The Tribunal has also referred to the fact that the assessee was a businessman and it was not likely that he would keep such a large amount of money in the hands of the Ruler of Sakti in an idle and locked up state without earning interest.

As we have stated already the question whether the Ruler of Sakti has given true or false evidence is a question of fact and we are not prepared to say that in finding that the Ruler of Sakti has given false evidence the Tribunal has acted without any material. If the evidence of the Ruler of Sakti is disbelieved it is manifest that the assessee has not discharged the onus of proving the source of the amount of Rs. 73,000 and that amount was rightly added by the Income Tax Officer to the income of the assessee for the assessment year as being liable to be taxed.

5. Where the case involves a question of fact the jurisdiction of the High Court to interfere with the finding of the Tribunal is of a very limited character. If the Tribunal decides the question of fact without any material at all or if the tribunal decides the question of fact by applying a wrong legal principle the High Court has jurisdiction to interfere. But the High Court has no jurisdiction to interfere with the finding of the Tribunal, merely because the High Court takes a different view upon the question of fact after examination of the same material. In the present case we are satisfied that the question has not passed from the region of fact into the region of law and the High Court has no authority to interfere with the finding of the Tribunal on the question referred.

The principle has been well stated by Lord Sterndale in -- "Currie v. Commr. of Inland Revenue" 1920-12 Tax Cas 245

"The first question that has been debated before us is this: Is the question whether a man is carrying on a profession or not, a matter " of law or a matter of fact? I do not know that it is possible to give a positive answer to that question, because it must depend upon the circumstances with which the Court is dealing. There may be circumstances in which nobody could arrive at any other finding than that what the man was doing was carrying on a profession; and therefore, taking it from the point of view of a Judge directing a jury, or any other tribunal which has to find the facts the Judge would be bound to direct them that on the facts they could only find that he was carrying on a profession. That reduces it to a question of law. On the other hand, there might be facts on which the direction would have to be given the other way. But between those two extremes there is a very large tract of country in which the matter becomes a question of degree; and where it becomes a question of degree, it is then undoubtedly, in my opinion, a question of fact; and if the Commissioners come to a conclusion of fact without having applied any wrong principle, then their decision is final upon the matter".

In the present case we are not satisfied that the finding of fact reached by the Tribunal is based upon no material or that a wrong legal principle has been applied. It follows that the High Court has no jurisdiction to interfere with the conclusion reached by the Appellate Tribunal and the question referred to the High Court must be answered against the assessee and in favour of the Income Tax Department. The assessee must pay the cost of the reference. Hearing fee Rs. 250/-.