
(1998) 06 BOM CK 0018

In the Bombay High Court

Case No : Income-tax Reference No. 220 of 1986

Narendra G. Goradia (HUF)

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 25-06-1998

Acts Referred:

Income Tax Act, 1961 — Section 68

Citation : (1999) 154 CTR 365 : (1998) 234 ITR 571 : (1998) 3 MhLj 865 : (1998) 101 TAXMAN 571

Hon'ble Judges : B.P. Saraf, J;A.Y. Sakhare, J

Bench : Division Bench

Advocate : A.P. Sathe, for the Appellant; R.V. Desai and B.M. Chatterjee, for the Respondent

Judgement

B.P. Saraf, J.—By this reference u/s 256(1) of the Income Tax Act, 1961, at the instance of the assessee, the Income Tax Appellate Tribunal has referred the following question of law to this court for opinion :

"Whether the Tribunal was right in treating part of the high Denomination notes as income of the assessee ?"

2. This reference pertains to the assessment year 1979-80. The assessee is a Hindu undivided family carrying on business of selling of coal and coke as commission agents. In the previous year relevant to the assessment year 1979-80, on demonetisation of the high denomination notes by the Demonetisation Ordinance, 1978, the assessee tendered Rs. 2 lakhs in such notes on January 19, 1978, for encashment. When called upon to explain the source of this amount, the assessee pointed out that there was sufficient cash balance in the cash book out of which the above amount was deposited. Though there was no dispute about the fact that the assessee had cash balance of Rs. 3,28,305.47 on the date when the currency notes of Rs. 1,000 denomination for the value of Rs. 2 lakhs were tendered by the assessee to the Reserve Bank of India for encashment, the Income Tax Officer accepted the explanation only to

the extent of Rs. 36,000 covered by 36 notes of Rs. 1,000 denomination and treated the balance amount of Rs. 1,64,000 as unexplained and added the same as income from undisclosed sources u/s 68 of the Income Tax Act, 1961 ("the Act"). This, the Income Tax Officer, held on the basis of his opinion based on some independent enquiries from different banks that the assessee had received on withdrawal of money from those banks only 36 notes of Rs. 1,000 denomination during the period from August 1977, till January 19, 1978, when they were tendered for encashment. The assessee appealed to the Commissioner of Income Tax (Appeals) against the above order. The Commissioner (Appeals) examined the matter, though on the same lines as done by the Income Tax Officer, and came to the conclusion that the assessee could have been in possession of Rs. 96,000 in Rs. 1,000 denomination notes. He, accordingly, reduced the addition to the income of the assessee as income from undisclosed source from Rs. 1,64,000 to Rs. 1,04,000. The assessee went in further appeal to the Income Tax Appellate Tribunal ("the Tribunal"). The case of the assessee before the Tribunal was that there being no dispute about the availability of sufficient cash balance with the assessee, not only on the particular date but during the relevant period, there was no justification for the Income Tax Officer and the Commissioner (Appeals) to add and/or sustain addition of any part of the amount received on encashment of high denomination notes as income from undisclosed sources. It was contended on behalf of the assessee before the Tribunal that it was not incumbent on the part of the assessee to maintain any record of the currency notes of different denominations held by him and, as such, no amount could be added to his income on account of his failure to prove the source of acquisition of the notes of particular denomination held by him. This contention of the assessee did not find favour with the Tribunal. The Tribunal, therefore, refused to interfere with the order of the Commissioner (Appeals) and dismissed the appeal of the assessee. Hence, this reference at the instance of the assessee.

3. Mr. A.P. Sathe, learned counsel for the assessee, submits that in the facts and circumstances of this case and on the face of the undisputed factual position the assessee had cash balance of Rs. 3,28,305 on the date when high denomination notes of Rs. 1,000 of the value of Rs. 2 lakhs were tendered by the assessee to the Reserve Bank for encashment, addition of Rs. 1,04,000 to the income of the assessee as income from undisclosed sources, is wholly illegal and without any authority of law. Our attention was drawn by learned counsel to the fact that the Income Tax authorities had examined even the cash flow of the assessee from October 1, 1977, to January 19, 1978, the date when the high denomination notes were tendered for encashment, which showed that the cash balance in the hands of the assessee during this period fluctuated from Rs. 69,077 to Rs. 3,10,079. It was contended by learned counsel that at no point of time it was disputed by the authorities that it was the regular practice of the assessee to keep such cash balance in the course of business and that the assessee had been keeping cash balance much more than the amount in the form of high

denomination notes. The addition to the income of the assessee of a sum of Rs. 1,04,000 as income from undisclosed sources, according to learned counsel, has been sustained by the Commissioner (Appeals) and the Tribunal on an erroneous understanding of law, It was submitted that the authorities having been satisfied about the availability of sufficient cash with the assessee on the date of the deposit and the genuineness of the same, it was not open to them to add any amount as income from undisclosed sources only on the ground that the assessee failed to furnish details of acquisition of currency notes of a particular denomination. According to learned counsel, additions in this case, having been made merely on suspicion and conjectures, are not tenable in law. Reliance is placed in support of this contention on the decisions of the Supreme Court in Lalchand Bhagat Ambica Ram Vs. Commissioner of Income Tax, Bihar and Orissa, and Smt. Srilekha Banerjee and Others Vs. Commissioner of Income Tax, Bihar and Orissa, .

4. Mr. R.V. Desai, learned counsel for the Revenue, on the other hand, submits that the additions have been made in this case on the basis of the information gathered by the Income Tax Officer on enquiries from the banks about the receipt of the number of Rs. 1,000 denomination notes by the assessee. It was contended that the explanation of the assessee in regard to the source of the amount was accepted by the Revenue to the extent of the evidence received by them about the receipt by the assessee of amounts in high denomination notes. According to Mr. Desai, the assessee having failed to show how he came in the acquisition of the balance amount of Rs. 1,04,000 in high denomination notes of Rs. 1,000, it was open to the Revenue to treat the same as income from undisclosed sources. In support of this contention, reliance was placed on the decision of the Supreme Court in A. Govindarajulu Mudaliar Vs. Commissioner of Income Tax, Hyderabad, .

5. We have carefully considered the rival submissions of learned counsel for the parties and perused the order of the Tribunal as also the Commissioner (Appeals) and the Income Tax Officer. So far as the facts of the case are concerned, we find that there is no dispute about the availability of cash balance of Rs. 3,28,394 with the assessee on the date when the amount of Rs. 2 lakhs was deposited by the assessee in high denomination notes of Rs. 1,000 with the Reserve Bank of India. Moreover, after elaborate enquiries, the Income Tax Officer was also satisfied that in its usual course of his business, the assessee was required to keep sufficient amount in cash. He also found from the cash flow statement that the cash balance held by the assessee during the preceding four months fluctuated from Rs. 69,077 to Rs. 3,10,079. Thus, in the instant case, there is absolutely no dispute about the availability of sufficient cash balance with the assessee out of which the sum of Rs. 2 lakhs in Rs. 1,000 denomination notes was claimed to have been deposited. The source of the amount was, therefore, not in dispute nor the genuineness or correctness of the books of account which showed the cash balance of Rs. 3,28,000 on the material date. The assessee was asked to furnish particulars about the acquisition of Rs. 1,000 denomination

notes worth Rs. 2 lakhs. The case of the assessee was that once the source of deposit of Rs. 2 lakhs by the assessee with the Reserve Bank of India was proved, no amount could be added to his income as income from undisclosed sources. It appears from the order of the Tribunal that the Tribunal itself was conscious of the fact that once the cash balance on the crucial date was sufficient to cover the value of high denomination notes tendered by the assessee for encashment on demonetisation, no further enquiry was required about the source of high denomination notes. The Tribunal, however, felt that in the instant case, the Income Tax Officer, having verified from the banks the receipt of the amount in high denomination notes by the assessee and having considered other possible sources of receipt of Rs. 1,000 denomination notes, was justified in adding the balance amount of Rs. 1,04,000 as income from undisclosed sources. The Tribunal observed that the Income Tax Officer had discharged the initial burden cast upon him by collecting specific information about the acquisition of high denomination notes by the assessee and it was for the assessee to dislodge such finding by means of appropriate evidence. Since, according to the Tribunal, the assessee failed to do so, there was no justification for interfering with the order of the Commissioner (Appeals). We find it difficult to agree with this finding of the Tribunal. In our opinion, the Tribunal took a wholly erroneous approach in the matter. What the assessee is required to prove in such cases is the source of money and once he is successful in proving the same, he cannot be put to further proof of acquisition of such amount in the currency notes of particular denomination. If the explanation shows that the receipt was not of income nature, the Revenue cannot reject the explanation of the assessee to hold that it was income. Where the business and the state of accounts and dealings of the assessee justify a reasonable inference that he might have for convenience kept the whole or a part of a particular sum in high denomination notes, the assessee, prima facie, discharges his initial burden when he proves the cash balance and that it might have been kept in high denomination notes. Before the Department rejects such evidence, it must either show an inherent weakness in the explanation or rebut it by putting to the assessee some information or evidence which it has in its possession. The Department cannot by merely rejecting unreasonably a good explanation, convert good proof into no proof.

6. In the instant case, neither there was any dispute about the source of money nor about the fact that sufficient amount was kept by the assessee in high denomination notes of Rs. 1,000 because the Revenue itself could collect material and evidence regarding availability of high denomination notes worth Rs. 96,000. In such a situation, the assessee cannot be asked to prove the acquisition of each and every Rs. 1,000 denomination note held by him. There is no dispute before us about the fact that it is neither the business practice nor the requirement of any law to maintain details of currency notes of various denominations received by an assessee. Situated thus, an assessee cannot be expected to keep the particulars of the currency notes of various denominations received by him from time to time. In the present case, the case of the assessee

was that as commission agent for various coal dealers, he was required to pay freight on their behalf. Such payments made by the assessee got reimbursed normally within a few hours on the very same day. According to the assessee, almost every day payments were made by the assessee on behalf of its customers for whom he was working as commission agent, which were reimbursed by the customers on the very same day. In such a situation, there is no justification for adding a portion of the amount received by the assessee on encashment of Rs. 1,000 denomination notes as income of the assessee from undisclosed sources for the alleged failure of the assessee to furnish the source of acquisition of the amount in notes of Rs. 1,000 denomination.

7. Reference may be made in this connection to the decision of the Supreme Court in *Smt. Srilekha Banerjee and Others Vs. Commissioner of Income Tax, Bihar and Orissa*, . In that case also a question arose whether the Tribunal could make a guess as to the number of high denomination notes which could be accepted. The Supreme Court said (page 120) ;

"It seems to us that the correct approach to questions of this kind is this. If there is an entry in the account books of the assessee which shows the receipt of a sum on conversion of high denomination notes tendered for conversion by the assessee himself, it is necessary for the assessee to establish, if asked, what the source of that money is and to prove that it does not bear the nature of income. The Department is not at this stage required to prove anything. It can ask the assessee to bring any books of account or other documents or evidence pertinent to the explanation if one is furnished, and examine the evidence and the explanation. If the explanation shows that the receipt was not of an income nature, the Department cannot act unreasonably and reject that explanation to hold that it was income. If, however, the explanation is unconvincing and one which deserves to be rejected, the department can reject it and draw the inference that the amount represents income either from the sources already disclosed by the assessee or from some undisclosed source. The Department does not then proceed on no evidence, because the fact that there was receipt of money is itself evidence against the assessee. There is thus, *prima facie*, evidence against the assessee which he fails to rebut, and being un rebutted, that evidence can be used against him by holding that it was a receipt of an income nature. The very words "an undisclosed source" show that the disclosure must come from the assessee and not from the Department. In cases of high denomination notes, where the business and the state of accounts and dealings of the assessee justify a reasonable inference that he might have for convenience kept the whole or a part of a particular sum in high denomination notes, the assessee *prima facie* discharges his initial burden when he proves the balance and that it might reasonably have been kept in high denomination notes. Before the Department rejects such evidence, it must either show an inherent weakness in the explanation or rebut it by putting to the assessee some information or evidence which it has in its possession. The Department cannot by merely rejecting unreasonably a good explanation, convert good proof into no proof. It is

within the range of these principles that such cases have to be decided."

8. We have also perused the decision of the Supreme court in *Lalchand Bhagat Ambica Ram Vs. Commissioner of Income Tax, Bihar and Orissa*, . That was also a case of encashment of high denomination notes. The assessee in that case was a Hindu undivided family which carried on business in grain as merchants and commission agents. It maintained two accounts in its cash books ; (i) showing the cash balance from day-to-day ; and (ii) almirah account, wherein were kept large balances which were not required for the day-to-day working of the business, but were held to provide monies which might be required at short notice at different branches of the assessee. In the course of assessment for the year 1946-47, the Income Tax Officer noticed that the assessee had encashed high denomination notes of the value of Rs. 2,91,000 on January 19, 1946. The assessee explained that the notes formed part of its cash balances, including the cash balance in the almirah account, which, on January 12, 1946, the date on which the High Denomination Bank Notes (Demonetisation) Ordinance, 1946, was promulgated, were Rs. 29,284 in its rokar and Rs. 2,81,397 in the almirah account, and in order to prove its explanation, the assessee relied on certain entries in its accounts wherein the fact that the moneys were received in high denomination notes had been noted. Portions of these entries were found by the Income Tax Officer to be later interpolations. The Income Tax Officer rejected the assessee's contention and treated Rs. 2,91,000 as undisclosed profits from its business. The Tribunal was of the view that there was no reason to suspect the genuineness of the account books in which interpolations were made and having examined the cash books and taking into consideration all the circumstances which had been adverted to by the Income Tax Officer, held that the assessee might be expected to have possessed as a part of its business a cash balance of at least Rs. 1,50,000 in the shape of high denomination notes on January 12, 1946, when the Ordinance was promulgated and came to the conclusion that the nature of the source from which the assessee derived the remaining 141 high denomination notes of Rs. 1,000 each remained unexplained to its satisfaction. The sum of Rs. 1,41,000, therefore, was treated as undisclosed profits of the assessee from its business. The assessee went to the High Court in reference. The High Court having refused to interfere with the findings of the Tribunal, the assessee, therefore, went in appeal to the Supreme Court. The Supreme Court held that there was no material to support the findings of the Tribunal that a sum of Rs. 1,41,000 was profits liable to Income Tax in the hands of the assessee. The Supreme Court also observed that the entries in the rokar and the almirah account of the assessee showed 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 were included therein. It was further observed that the books of the assessee having been accepted as genuine, it was not open to the Tribunal to accept the explanation of the assessee in part as to Rs. 1,50,000 and to reject the same in regard to a sum of Rs. 1,41,000.

9. The ratio of the above decision and the decision in *Smt. Srilekha Banerjee and*

Others Vs. Commissioner of Income Tax, Bihar and Orissa, in our opinion squarely applies to the facts of the present case.

10. We have also perused the decision of A. Govindarajulu Mudaliar Vs. Commissioner of Income Tax, Hyderabad, , on which reliance is placed by learned counsel for the Revenue. We, however, fail to understand how the above decision helps the Revenue in the instant case. In that case, certain amounts appeared in the account books of a firm of which the assessee was a partner as credits for him. The assessee was asked for an explanation as to how he came to possess this amount. His explanation in regard to the source of this amount in part was not accepted. It was in that context that the Supreme Court observed that where an assessee fails to prove satisfactorily the source and nature of certain amounts of cash received during the accounting year, the Income Tax Officer is entitled to draw the inference that the receipts are of an assessable nature. That is not the position in the case before us. In this case, the assessee could prove satisfactorily the source and nature of the amounts. Addition was made not for that reason. The assessee was further required to prove the receipt of the amount of Rs. 2 lakhs therefrom in high denomination notes. In other words, the assessee was asked to prove as to when and from whom he received the amount in high denomination notes. The assessee gave reasonable explanation for his inability to give detailed account of receipts and disbursements of amounts from time to time in currencies of various denominations including high denomination notes. He could, however, satisfy the authorities about the fact that he was often in possession of Rs. 1,000 denomination notes and the probability of high denomination notes of the value of Rs. two lakhs being included therein. In fact, the Revenue itself was satisfied about the inclusion of 96 notes of Rs. 1,000 each therein. The amount of Rs. 1,04,000 was added as income from undisclosed sources only because, according to the Revenue, the assessee failed to discharge the onus cast on him to prove the acquisition of each and every high denomination note encashed by him. This approach, as earlier indicated, is not correct. The assessee having proved the source and shown satisfactorily the possibility of the inclusion of Rs. 1,000 high denomination notes of the value of Rs. 2 lakhs therein, the addition of Rs. 1,04,000 to his income for his failure to furnish detailed particulars of the receipt of such notes each of the 200 notes of Rs. 1,000 denomination tendered by him for encashment, is not in accordance with law.

11. In view of the above, we answer the question referred to us in the negative, i.e., in favour of the assessee and against the Revenue.

12. This reference is disposed of accordingly with no order as to costs.