
(1969) 06 CAL CK 0015
In the Calcutta High Court

WESTMINSTER BANK EXECUTOR AND TRUSTEE COMPANY
(CHANNEL ISLANDS) LTD.

APPELLANT

Vs

NATIONAL BANK OF GREECE S. A.

RESPONDENT

Date of Decision : 25-06-1969

Acts Referred:

Income Tax Act, 1952 — Section 122(1)(b), 123(1), 170

Citation : (1971) 81 ITR 723

Hon'ble Judges : Sachs, J;Karminski, J;Donaldson, J

Bench : Full Bench

Judgement

MASUD J. - The question required to be answered in this reference is stated as follows.

"Whether there was any legal admissible evidence to justify the Tribunals finding that the deposits of Rs. 1,40,000 were the assessee's income from undisclosed source ?"

These reference has arisen under the following circumstances. The applicant, a limited company, was carrying on business at all material times in jute. In the books of accounts of the assessee-company, maintained at Raninagar, Darwani and Domar, there were several cash credits totaling Rs. 1,40,000 in the names of some persons, as stated below :

In Raninagar Books

S.No.

Names :

Date :

Amounts :

Rs.

1.

Suresh Chandra Podder

28-10-46

20,000

2.

do.

23-11-46

10,000

3.

Pannalal Agarwalla

28-10-46

40,000

In Darwani Books :

4.

Satnarain Agarwalla

24-10-46

20,000

5.

Debi Dutta Agarwalla

30-11-46

15,000

In Domer Books :

6.

Banwarilal Oswal

3-12-46

20,000

7.

Nripendra Chandra Roy

8-12-46

15,000

Total

1,40,000

The assessee was asked by the Income Tax Officer to explain in source of these amounts. The assessee's explanation before the Income Tax Officer was that the amount in question was received from the firm of M/s. Surajmull Nagarmull to which the assessee was an associated company. The names of the parties, according to the assessee, were suggested by the said firm. The assessee produced from the said firm a statement to the effect that the loans in question were advanced by the firm in the names of the above persons. The assessee also stated that the said firm had a cash amount of Rs. 16 lakhs, possession of which was admitted by them before the Income Tax Investigation Commissioner and that the amounts shown in the said assessee's books of accounts in Raninagar, Darwani and Domar came out of the said amount. In the premises, the assessee contended that the amount belonged to the said firm and should not be added to the income of the assessee-company. The Income Tax Officer rejected the explanation of the assessee and the said sum of Rs. 1,40,000 was added as the income of the assessee-company from undisclosed sources. An appeal was filed by the assessee before the Appellate Assistant Commissioner without any success. The Appellate Tribunal also, on second appeal, rejected the said explanation put forward on behalf of the assessee-company. The Tribunal found that the amounts had been introduced in the names of petty exploits of the assessee-company and there was no evidence that these employees of the assessee-company and there was no evidence that these employees were the benamidars of M/s. Surajmull Nagarmull. Further, the Tribunal was of opinion that mere acceptance of the deposits by the said firm as their own, two years after their own affairs with the Investigation Commissioner were disposed of could not be a satisfactory explanation. ON these facts, the above question was referred to this court.

Dr. D. Pal (with Mr. A. K. Roy Choudhury) has contended before us that the finding of the Income Tax Officer to the effect that the said amount of Rs. 1,40,000 is the suppressed income of the assessee-company from undisclosed source is a finding arrived at without any evidence at all. The amounts credited in the books of account of the assessee-company are admitted in writing by M/s. Surajmull Nagarmull as their own money and as such, the inference of law that the said sums belonged to a secret income of the assessee-company is based on no positive evidence. According to Dr. Pal, the initial discharge of explaining the cash credits certainly lies with the assessee, but the assessee has explained satisfactorily the said receipts by getting the explanation corroborated by M/s. Surajmull Nagarmull. This fact is further supported by the fact that M/s. Surajmull Nagarmull before the investigation Commission did admit that a sum of Rs. 16 lakhs remained as an idle cash of the firm. Further, it is urged that when M/s. Surajmull Nagarmull's identity is established and it is well-known that the said firm has means to pay, the department should not have refused the

assessee's explanation without any materials. Thus, the onus to explain the receipt of the said sum of Rs. 1,40,000 has been discharged by the assessee and the department should not have included the said sum of Rs. 1,40,000 as the suppressed income of the assessee from an undisclosed source.

Mr. Balai Pal, learned counsel for the respondent, has submitted that the Appellate Tribunal's order should not be interfered with the High Court in its jurisdiction u/s 66(1) of the Income Tax Act, inasmuch as the Tribunal's conclusion cannot be said to be based on no evidence or that such conclusion is perverse. Further, by referring us to the records of the Income Tax proceedings for 1948-49 and 1947-48, he has asked us to hold that, although the assessee was given all the opportunities to the assessee and also M/s. Surajmull Nagarmull, no satisfactory evidence was made available by the assessee-company to the department (sic). He has therefore argued that the said sum being the income of the assessee-company from undisclosed source has rightly been included in the assessee-company's income and assessed.

Several cases were referred to us by the learned counsel for the assessee and the revenue and we may now discuss them. The first case relied on by Dr. Pal is *Mehta Parikh & Co. v. Commissioner of Income Tax* which happened to be a case on high denomination notes. The assessee encashed on 18th January, 1946, high denomination notes of Rs. 1,000 each, of the face value of Rs. 61,000. The Income Tax Officer rejected the assessee's explanation and assessed the whole amount as undisclosed profit. Before the Appellate Assistant Commissioner, however, the assessee produced affidavit from some persons to the effect that Rs. 43,000 were paid in one thousand Rupees notes during the relevant period. The Appellate Assistant Commissioner did not accept the affidavit and confirmed the order of the Income Tax Officer. The Appellate Tribunal thereafter accepted the assessee's explanation as to Rs. 31,000, but rejected as to Rs. 30,000. The Bombay High Court confirmed the Tribunal's order. The Supreme Court, in allowing the appeal and reversing the High Court's order, made the following observations at page 189 :

"It follows, therefore, that facts proved or admitted may provide evidence to support further conclusion to be deduced from them, which conclusion may themselves be conclusion of fact and such, inference from facts proved or admitted could be matter of law. The court would be entitled to intervene if it appears that the fact finding authority has acted without any evidence or upon a view of the fact, which could not reasonably be entertained or the facts found are such that no person acting judicially and properly instructed as to the relevant law would have come to the determination in question."

In the facts of that case, beyond the calculations of figures in general, no further security was made by the Income Tax Officer or the Appellate Assistant Commissioner of the entries in the cash book of the Appellate. The cash book of the appellants was accepted and the entries therein were not challenged. No further documents or vouchers in relation to those entries were called for, nor

was the presence of the deponents of three affidavit considered necessary by either party. The appellants thought that the affidavit of those persons sufficiently explained the assessee's case and those affidavits were not challenged by the department. Under those circumstances, the Supreme Court of opinion that the revenue was not justified in challenging the correctness of the cash book entries on the statements made by those persons in their affidavit.

Dr. Pal next cited *Sreelekha Banerjee v. Commissioner of Income Tax* and relied on the following observations of the Supreme Court at 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 rendered 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 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 unrebutted, 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 profit into no proof."

But it should be remembered that in this Supreme Court case the Tribunal came to the conclusion that the high denomination notes represented not the cash balance but some other money which remained unexplained and the Tribunal treated it as the assessee's income from some undisclosed source. The High Court decided against the assessee and the Supreme Court confirmed the High Court's order because there were materials to show that the disputed

amount did not from part of the cash balance and, the source of money not having been satisfactorily proved, the department was justified in holding it to be assessable income of the assessee from some undisclosed source.

The next case, *Ram Kishan Das Munnu Lal v. Commissioner of Income Tax* is a decision which was decided by the Allahabad High Court in favour of the assessee on the peculiar fact of the case. B, K and R were some of the members of a joint Hindu family. In the account books of the firm in which B was a partner in his individual capacity, certain cash deposits were credited in the name of K, R and Bs mother. Those amounts were not treated as the income of the firm but the family was called upon to explain the deposits and show cause why the amounts should not be treated as its income. The explanation given was not believed and the aggregate of the amounts was assessed as the income of the family. It was held that the assessee family in this case, could not be said to have received the amounts in question at all. In that case, the learned counsel for Income Tax department fairly conceded that there was no material other than the rejection of the explanation on which a finding could be legally based that the amounts were the income of the family. It was clear that the cash credits were found in the books of account of a firm and it was also found that there was nothing to show that the assessee family received the amounts in question at all. It is true that the deposits in the books of account of the firm were made in the names of persons who happened to be members of the assessee joint family. But mere relationship of those persons to the assessee family cannot be a good ground for assuming that the deposits belonged to the assessee family and not to those persons. It is in that connection that the Allahabad High Court has observed :

"The onus lay on the department to establish as a fact that the persons in whose names the deposits were made were not the real owners of the money but that they belonged to the assessee family."

Dr. Pal laid great emphasis on the following observations of the House of Lords in *Bean (H. M. Inspector of Taxes) v. Doncaster Amalgamated Colliery Ltd.* at page 307 :

"Unless the Commissioners, have found the relevant facts and put to themselves the proper question, have proceeded to give the right answer, they may be said, on this view, to have erred in point of law. If an inference from facts does not logically accord with and follow them, then one must say that there is no evidence to support it. To come to a conclusion which there is no evidence to support is to make an error in law."

These are sound propositions of law to which there cannot be any question of our disagreement. The principles have been more fully discussed in *Commissioner of Income Tax v. Daulat Ram Rawatmull*, where the Supreme Court followed the principles laid down in their earlier decision in *Srii Meenakshi Mills Ltd. v. Commissioner of Income Tax*. In that case two sums of Rs. 5 lakhs each were

rendered in cash on different dates at the Burrabazar branch of the Central Bank and transferred to the head office at Bombay. Demand drafts for those amounts were issued by the Bombay office on its Jamnagar branch. A third remittance of Rs. 5 lakhs was made through the Burrabazar branch directly to the Jamnagar branch. At Jamnagar these three sums were severally held in fixed deposit in the names of R, G, and S, who were sons of the three partners of the assessee firm. The deposit in Rs name was adjusted against an overdraft of the assessee-firm and the assessee's account books showed a corresponding credit in favour of R. Similarly, G's name was utilized for securing overdraft facilities for the assessee-firm. But the third sum of Rs. 5 lakhs, which happened to be held in the name of S, was offered as a security for overdraft to a company, in the managing agency of which the partners of the assessee-firm had a controlling interest. The Appellate Tribunal came to the conclusion that the amounts deposited in the name of R and G represented secret profits of the assessee-firm. There the Tribunal found no connecting link between the third remittance and the assessee and decided in favour of the assessee in respect of this amount. The Supreme Court in refusing to interfere with the decision of the Tribunal reiterated the principles laid down in the said earlier case and made the following observations at page 579 :

"The rules which govern the approach of the High Court are :

- (1) When the point for determination is a pure question of law, such as construction of a statute or a document of title, the decision of the Tribunal is open to reference to the court u/s 66(1).
- (ii) When the point for determination is a mixed question of law and fact, while the finding of the Tribunal on the facts found is final, its decision as to the legal effect of those findings is a question of law which can be reviewed by the court.
- (iii) A finding on a question of facts is open to attack u/s 66(1) as erroneous in law when there is no evidence to support it or if it is perverse.
- (iv) When the finding is one of fact, the fact that it is itself and inference from other basic facts will not alter its character as one of fact.....

The High Court exercises an advisory jurisdiction u/s 66 of the Indian Income Tax Act. Only a question which arises out of the order passed by the Appellant Tribunal can be referred by that authority u/s 66(1) of the Indian Income Tax Act and, if the Tribunal declines to state a case, the High Court, if it is not satisfied of the correctness of the decision of the Tribunal, may require the Appellant Tribunal to state a case and to refer it. But the High Court has no power to call upon the Tribunal to state a case, if there is some evidence to support the finding recorded by the Tribunal, even if it appears to the High Court that on reappreciation of the evidence, it might arrive at a conclusion different from that of the Tribunal."

In that case, the Supreme Court held that the conclusion recorded by the Tribunal on the facts brought to their notice by the learned counsel for the

department could not be said to be perverse and, accordingly, rejected the contention of the revenue.

Our attention was also drawn to the following observation of the Bombay High Court in *Orient Trading Co. Ltd. v. Commissioner of Income Tax*, at page 735 :

"It seems to us that where the entry stands in the name of the assessee's wife or children, or in the name of any other near relation or an employee of the assessee, the burden will lie on the assessee, though the entry is not in his own name, to explain satisfactorily the nature and source of the entry. Where the entry stands not in the name of any such person having a close relation or connection with the assessee, but in the name of an independent party, the burden will still lie upon him to establish the identity of the said party, and to satisfy the Income Tax Officer that the entry is real and not fictitious. When, however, in a case where the entry stands in the name of the third party, the assessee satisfies the Income Tax Officer as to the identity of the third party and also supplies such other evidence which will show, *prima facie*, that the entry is not fictitious, the initial burden which lies on him can be said to have been discharged by him. It will not, thereafter, be for the assessee to explain further how or in what circumstances the third party obtained money and how or why he came to make a deposit of the same with the assessee's case cannot be accepted and why it must be held that the entry, though purporting to be in the name of a third party, still represents the income of the assessee from a suppressed source. In order to arrive at such a conclusion, however, the department has to be in possession of sufficient and adequate material."

In our opinion, when cash credit entry appears in the assessee's books of account in an accounting year, the assessee has legal obligation to explain the source of such receipt. The initial onus is entirely on the assessee, but the question whether such onus has been duly discharged by the assessee or has been shifted to the revenue can only be determined after the evaluation of all the surrounding circumstances. There cannot be one general or universal proposition of law which could be the guiding yardstick in the matter. Each cash has got to be decided on the facts and circumstances of that cash. The surrounding circumstances to be considered must however be objective facts, evidence adduced before the taxing authorities, presumptions. In holding a particular receipt as income from undisclosed source, the fate of the assessee cannot be decided by the revenue on the basis of surmise, suspicions or probabilities. Further, the High Court in deciding a reference can and should always intervene in the conclusions of the Tribunal, if it is satisfied that such conclusion were arrived at although there is no evidence or that the conclusion are perverse. To say that the High Court is not concerned with the sufficiency or insufficiency of the evidence is to oversimplify the matter. In a particular case, there may be some evidence before the Tribunal but the necessary link which the Tribunal's conclusion could not be arrived at might be absent. In such a case it can legitimately be stated that there is no proper relevant evidence and, as such, there is no evidence. Similarly,

in those cases where there are materials on the basis of which the Tribunal has arrived at a conclusion to the effect that the disputed cash credits are the income of the assessee the High Court, in its advisory jurisdiction u/s 66, cannot interfere with such conclusion, although it is possible for the High Court to come to a different conclusion on the re-examination of these very material.

Applying the aforesaid principle to the facts of the instant case, we find that the Tribunal has come to a finding of fact that the amounts have been introduced in the name of the petty employees of the assessee-company and there is nothing to show that the said employees are benamidars of Messrs. Surajmull Nagarmull. Mere admission of cash credits as the money belonging to the said firm two years after the proceedings before the Investigation Commission may be after thought. The break-up of the said sums of Rs. 16 lakhs, as the cash of Messrs. Surajmull Nagarmull was never mentioned before the Commissioner and the link between the said sum of Rs. 16 lakhs, and the cash credits in the assessee's books of account is, therefore, not necessarily established. Further, according to the assessee, the total sum of Rs. 1,40,000 was paid by way of loan by Messrs. Surajmull Nagarmull to the assessee-company, but no attempt was made to prove that these sums were actually drawn from the said firm. A memorandum from the said firm to the effect that the said sum Rs. 1,40,000 belonged to the said firm and the fact that the said sum was credit from time in the assessee's books of account in the name of alleged benamidars do not necessarily justify the conclusion that the said sum could not be the income of the assessee unless the contents of such memorandum are proved to be correct by some positive evidence, oral or documentary, from the firm itself. There is nothing to show that the said memorandum was accepted by the department. Messrs. Surajmull Nagarmull is a well-known firm and there is no difficulty for the assessee, to adduce best evidence by calling somebody or producing documentary evidence from the said firm. It is true that, according to the assessee, the money belonged to the firm, and constituted parts of the firm's undisclosed income as admitted by them before the investigation Commissioner and, therefore, their books of account would not reveal any entry showing the said amount; even then it should be remembered that when the cash credits are entered in the assessee's books of account in the name of their own employees, the onus would be much heavier than in case of receipt credited in the name of independent third parties. The receipts or cash credit in his books of account of the assessee-firm are prima facie evidence in favour of holding them as assessee's income and the initial onus cannot be said to be discharged by mere production of a letter from a third party admitting such money as their money. Such a course will open wide the flood-gate of tax evasion. There is another point to be remembered. The Appellate Assistant Commissioner in his order (page 12 of the paper book) has stated :

"The appellants representative has admitted frankly that he has nothing to produce or to say beyond what has already been placed or urged before my predecessor."

The reference to a predecessor relates to the Income Tax proceedings of the assessee-company for the assessment year 1948-49 where the order of another Income Tax Officer was confirmed. The latter (vide page 28 of the paper book) held that the assessee's statement regarding the source of the said sum of Rs. 1,40,000 remained unexplained and, as such, unacceptable. Although this order was affirmed by the Appellate Assistant Commissioner as stated above, the Appellate Tribunal in the said proceedings came to the conclusion that the said deposits aggregating to Rs. 1,40,000, having been made between 24th October, 1946 to 8th December, 1946, the said sum could not be included in the assessee's total assessment for the assessment year 1948-49 and directed that the Income Tax Officer should proceed to assess the amount, according to law, in the assessment year 1947-48. In pursuance of the said direction, the Income Tax Officer proceeded with the assessment for 1947-48 and came to the same conclusion that the said sum of Rs. 1,40,000 was the assessee's income from undisclosed source. It was in the above context, the Appellate Assistant Commissioner in his report made the aforesaid observations. It may be added that the assessee's representative in 1948-49 proceedings, Mr. J. P. Gupta, also appeared before the Income Tax Officer and the Appellate Assistant Commissioner of Income Tax in the Income Tax proceedings for 1947-48. Reference may also be made to the following statements in the assessment order of the Income Tax Officer for the assessment year 1948-49 :

"3. Mr. Gupta's explanation was that these amounts were received from Messrs. Surajmull Nagarmull but were credited in various names which were given by them. He produced a certificate from Messrs. Surajmull Nagarmull saying that the loans in question were advanced by them in various benami names.

4. Now, in the books of the assessee-company, there is no mention anywhere that the money came from Messrs. Surajmull Nagarmull, as claimed. Messrs. Surajmull Nagarmull and the assessee were therefore requested to produce some substantial independent evidence to show that the money actually came from Messrs. Surajmull Nagarmull as now claimed."

The said observations of the Appellate Assistant Commissioner in the Income Tax proceedings for the year 1947-48 and 1948-49, if read together, go to show that reliance was not placed by the department on the said certificate and opportunities were given to the assessee-company and Messrs. Surajmull Nagarmull for giving satisfactory explanation as to the source of the said sum of Rs. 1,40,000. It appears from these facts that the assessee's onus to prove the source remains undischarged. Further, these statements in the Appellate Assistant Commissioner's order also repel a faint suggestion of Dr. Pal that there was denial of natural justice to his client.

For all these reasons stated above, it is impossible to say that there is no evidence which would support the Tribunal's conclusion. Nor can we hold that the conclusions arrived at by the Tribunal are perverse. Accordingly, we answer the question in the affirmative and against the assessee-company. The assessee-

company shall pay the costs of this reference to the respondent.

BENERJEE J. - I agree

Question answered in the affirmative.