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May 10

MESSRS MEHTA PARIKH & CO.

v.

THE COMMISSIONER OF INCOME-TAX, BOMBAY.

[S. R. DAS C.J., BHAGWATI and VENKATARAMA AYYAR JJ.]

Income-tax—Income from undisclosed sources—Assessment—Assessee's explanation based on accounts supported by affidavits—Accounts accepted as genuine and statements in affidavits not controverted—Finding based on no evidence—Inference from proved or admitted facts—If questions of law—Principle of interference—Indian Income-tax Act (XI of 1922), ss. 62(2), 23(3), 26-A.

The appellants, a partnership firm assessed under ss. 23(3) and 26-A of the Income-tax Act, were called upon by the Income-tax Officer during the assessment year 1947-48 to explain how and when they came to possess 61 thousand-rupee currency notes which they had encashed on the 18th January, 1946, after the promulgation of the High Denomination Bank Notes (Demonetisation) Ordinance of 1946, under which such notes ceased to be legal tender on the expiry of the 12th of January, 1946. The assessees produced their cash-book entries from the 20th December, 1945, to the 18th January, 1946, which were accepted as correct by the Income-tax Officer, who, however, made no further scrutiny of the accounts, and the entries showed that on the 12th of January, 1946, the cash balance in hand was Rs. 69,891-2-6. The case of the appellants was that the said notes were a part of the cash balance and in further support of their case they filed before the Appellate Assistant Commissioner three affidavits by persons actually making the payments, in respect of certain entries in the cash-book to prove that Rs. 20,000 on the 28th December, 1945, Rs. 15,000 on the 6th of January, 1946, and Rs. 8,000, out of a sum of Rs. 8,500, on the 8th of January, 1946, were paid in thousand-rupee notes. The Income-tax Officer and the Appellate Assistant Commissioner in appeal, on a calculation of their own, held that the possession by the appellants of so many thousand-rupee notes was an impossibility and that these notes must represent income from undisclosed sources and as such be added to the assessable income of the appellants. Neither the Appellate Assistant Commissioner nor the Income-tax Officer, who was present at the hearing of the appeal, called for the deponents in order to cross-examine them with reference to their statement in the affidavits. The Appellate Tribunal on appeal accepted the explanation of the assessees in respect of 31 of the notes but not with regard to the rest and rejected their application for a reference of the matter to the High Court. The assessees moved the High Court and the Tribunal was directed under s. 66(2) to state

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a case for its decision. In answering the main question, the High Court was of the opinion that the finding of the Tribunal was a finding of fact or an inference based on such finding and it was not possible to say that such finding or inference was unreasonable or arbitrary.

Held (per curiam), that the High Court was in error in refusing to interfere with the finding of the Tribunal which was based on no evidence and the appeal must succeed.

Per C.J. and BHAGWATI J.—Conclusions based on facts proved or admitted may be conclusions of fact but whether a particular inference can legitimately be drawn from such conclusions may be a question of law. Where, however, the fact finding authority has acted without any evidence or upon a view of the facts which could not reasonably be entertained or the facts found were such that no person acting judicially and properly instructed as to the relevant law could have found, the court is entitled to interfere.

Chunilal Ticamchand Coal Co. Ltd. v. *Commissioner of Income-tax, Bihar and Orissa*, ([1955]) 27 I.T.R. 602), applied.

Cameron v. *Prendergast (Inspector of Taxes)*, ([1940] 8 I.T.R. (Suppl.) 75), *Bomford* v. *Osborne (H. M. Inspector of Taxes)*, ([1942] 10 I.T.R. (Suppl.) 27) and *Edwards (Inspector of Taxes)* v. *Bairstow and Another*, ([1955] 28 I.T.R. 579), referred to.

The High Court was in error in treating the finding of the Tribunal as a finding of fact and failed to apply the true principles of interference applicable to such cases.

The entries in cash-book and the statements made in the affidavits in support of the explanation, which were binding on the Revenue and could not be questioned, clearly showed that it was quite within the range of possibility that the appellants had in their possession the 61 high denomination notes on the relevant date and their explanation could not be assailed by a purely imaginary calculation of the nature made by the Income-tax Officer or the Appellate Assistant Commissioner.

The Tribunal made a wrong approach and while accepting the appellants' explanation with regard to 31 of the notes, it had absolutely no reason to exclude the rest as not covered by it in absence of any evidence to show that the excluded notes were profits earned by the appellants from undisclosed sources. The appellants having given a reasonable explanation the Tribunal could not, by applying a rule of thumb, discard it so far as the rest were concerned and act on mere surmise.

Per VENKATARAMA AYYAR J.—The finding of the Tribunal that high denomination notes of the value Rs. 30,000 represented concealed profits of the appellants being unsupported by any evidence amounted to an error of law and was liable to be set aside. That so many notes of high denomination should have been held as part of

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the cash for so long a time, might be highly suspicious but decisions must be founded on legal testimony and not on suspicion.

The question whether the accounts were genuine or not was a pure question of fact and a finding that they were genuine was binding both on the Revenue and the subject.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 81 of 1954.

Appeal from the judgment and order dated the 10th March 1953 of the Bombay High Court in Income-tax Reference No. 35 of 1952.

R. J. Kolah and *I. N. Shroff* for the appellant.

G. N. Joshi, Porus A. Mehta and *R. H. Dhebar* for the respondent.

1956. May 10. The following Judgments were delivered.

BHAGWATI J.—Two questions were referred by the Income-tax Appellate Tribunal to the High Court of Bombay under section 66(1) of the Indian Income-tax Act.

(1) Whether there is any material to justify the assessment of Rs. 30,000 (Rupees thirty thousand) from out of the sum of Rs. 61,000 (Rupees sixtyone thousand) (for Income-tax and Excess Profits Tax and Business Profits Tax purposes) representing the value of high denomination notes which were encashed on the eighteenth day of January one thousand nine hundred and forty six, and

(2) Whether in any event by reason of the orders of the Revenue Authorities not having found that the alleged item was from alleged undisclosed business profits the assessment of Rs. 30,000 (Rupees thirty thousand) is in law justified for Excess Profits Tax and Business Profits Tax purposes?

The High Court answered the first question in the affirmative but refused to answer the second question, being of the opinion that even though it had asked the Tribunal to refer that question under section 66 (2) of the Act, it had no jurisdiction to do so inasmuch as the appellants had not asked the Tribunal to refer

the second question and, therefore, no question arose of the Tribunal refusing to raise that question or to submit it for the decision of the High Court.

The appellants are a partnership firm doing business in Mill Stores at Ahmedabad. Their head office is in Ahmedabad and their branch office is in Bombay. The Governor-General on 12th January 1946 promulgated the High Denomination Bank Notes (Demonetisation) Ordinance, 1946 and High Denomination Bank Notes ceased to be legal tender on the expiry of 12th day of January 1946. Pursuant to clause 6 of the Ordinance the appellants on 18th January 1946 encashed high denomination notes of Rs. 1,000 each of the face value of Rs. 61,000. This was done in the calendar year 1946 being the account year corresponding with assessment year 1947-48.

During the assessment proceedings for the year 1947-48 the Income-tax Officer called upon the appellant to prove from whom and when the said high denomination notes of Rs. 61,000 were received by the appellants and also the *bona fides* of the previous owners thereof. After examining the entries in the books of account of the appellants and the position of the Cash Balances on various dates from 20th December 1945 to 18th January 1946 and the nature and extent of the receipts and payments during the relevant period, the Income-tax Officer came to the conclusion that in order to sustain the contention of the appellants he would have to presume that there were 18 high denomination notes of Rs. 1,000 each in the Cash Balance on 1st January 1946 and that all cash receipts after 1st January 1946 and before 13th January 1946 were received in currency notes of Rs. 1,000 each, a presumption which he found impossible to make in the absence of any evidence. He, therefore, added the sum of Rs. 61,000 to the assessable income of the appellants from undisclosed sources.

On appeal to the Appellate Assistant Commissioner the appellants produced before him affidavits of three persons to show that the appellants had received Rs. 20,000, in 1,000 rupees currency notes on 28th

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December 1945, Rs. 15,000 in 1,000 rupees currency notes on 6th January 1946 and Rs. 8,500 in 1,000 rupees currency notes (making Rs. 8,000) on 8th January 1946, thus aggregating to Rs. 43,500 during the relevant period. The Appellate Assistant Commissioner did not accept the statements contained in the said affidavits and dismissed the appeal and confirmed the order of the Income-tax Officer.

An appeal was taken by the appellants before the Income-tax Appellate Tribunal. The Tribunal after taking into consideration all the materials which had been placed before the Appellate Assistant Commissioner, including the said affidavits, was of the opinion that if it was to accept the appellants' contention, it would mean that practically every payment above Rs. 1,000 was received by the appellants in high denomination notes, which was almost impossible. The Tribunal could not say that the appellants had no high denomination notes with them. It accepted the books of account of the appellants but thought that the cash balance on 18th January 1946 could not have sixtyone high denomination notes. It came to the conclusion that the appellants appeared to have put in high denomination notes in the cash balance and taken the other notes away. It accepted the appellants' explanation only in regard to 31 notes and directed that the appellants' assessment for the year under reference be reduced by that amount and dismissed the rest of the appeal.

The appellants applied to the Tribunal for stating a case and referring the first question of law to the High Court for its opinion under section 66(1) of the Act. The Tribunal rejected the said application holding that no question of law arose from its order. The appellants thereupon applied to the High Court under section 66(2) of the Act for an order directing the Tribunal to state a case and refer the questions set out in the application. The High Court directed the Tribunal to state a case and refer the two questions of law set out hereinabove to it for its decision under section 66(2) of the Act. In stating the case and referring the said questions of law to the High

Court, the Tribunal pointed out that the second question was not urged before the Tribunal at any stage and hence it was not dealt with by it in its original order.

The reference was heard by the High Court and the High Court answered the first referred question in the affirmative, but did not answer the second referred question. The High Court held that there were materials before the Tribunal to hold that the sum of Rs. 30,000 represented the income of the appellants from undisclosed sources and that the finding of the Tribunal was a finding of fact based on materials before it and even if it was an inference drawn by the Tribunal, the inference was based on the facts and materials before the Tribunal. The High Court observed that it was impossible to say that the inference drawn by the Tribunal from the circumstances was an unreasonable inference or an arbitrary and capricious inference or an inference, which no judicial tribunal could ever draw. It, therefore, answered the first referred question in the affirmative.

As regards the second referred question, the High Court held that that question was not raised by the appellants in their application for reference under section 66(1) of the Act and, therefore, it had no jurisdiction to ask the Tribunal to state a case on a particular question of law, where the appellants themselves had never asked the Tribunal to refer such a question to the High Court and that even though it had directed the Tribunal under section 66(2) to refer the said question, as it had no jurisdiction to ask the Tribunal to refer the said question, it was not open to it to answer the second question which had been raised by the Tribunal at its instance and refused to answer it.

On a petition made by the appellants for leave to appeal to this court, the High Court granted a certificate that this was a fit case for appeal to this court and hence this appeal.

It may be mentioned at the outset that the assessment of the appellants by the Income-tax Officer was under section 23(3) and section 26-A of the Act. The

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books of account of the appellants were accepted by the Income-tax Officer and the only scrutiny made by the Income-tax Officer was whether at the relevant date, i.e. on 12th January 1946, the appellants had in their cash 61 notes of high denomination of Rs. 1,000 each. The cash book entries from 20th December 1945 up to 18th January 1946 were put in before the Income-tax Officer and they showed that on 28th December 1945 Rs. 20,000 were received from the Anand Textiles, and there was an opening balance of Rs. 18,395 on 2nd January 1946. Rs. 15,000 were received by the appellants on 7th January 1946 from the Sushico Textiles and Rs. 8,500 were received by them on 8th January 1946 from Maniben, widow of Shah Maneklal Nihalchand. Various other sums were also received by the appellants from 2nd January 1946 up to and inclusive of 11th January 1946, which were either multiples of Rs. 1,000 or were over Rs. 1,000 and were thus capable of having been paid to the appellants in high denomination notes of Rs. 1,000. There was a cash balance of Rs. 69,891-2-6 with the appellants on 12th January 1946, when the High Denomination Bank Notes (Demonetisation) Ordinance 1946 was promulgated and it was the case of the appellants that they had then in their custody and possession 61 high denomination notes of Rs. 1,000, which they encashed through the Eastern Bank on 18th January 1946. The appellants further sought to support their contention by procuring before the Appellate Assistant Commissioner the affidavits of Kuthpady Shyama Shetty, General Manager of Messrs Shree Anand Textiles, in regard to payment to the appellants of a sum of Rs. 20,000 in Rs. 1,000 currency notes on 28th December 1945, Govindprasad Ramjivan Nivetia, proprietor of Messrs Shusiko Textiles, in regard to payment to the appellants of a sum of Rs. 15,000 in Rs. 1,000 currency notes on 6th January 1946 and Bai Maniben, widow of Shah Maneklal Nihalchand, in regard to payment to the appellants of a sum of Rs. 8,500 (Rs. 8,000 thereout being in Rs. 1,000 currency notes) on 8th January 1946. The appellants were not in a position to give further

particulars of Rs. 1,000 currency notes received by them during the relevant period, as they were not in the habit of noting these particulars in their cash book and therefore relied upon the position as it could be spelt out of the entries in their cash book coupled with these affidavits in order to show that on 12th January 1946 they had in their cash balance of Rs. 69,891-2-6, the 61 high denomination currency notes of Rs. 1,000 each, which they encashed on 18th January 1946 through the Eastern Bank.

Both the Income-tax Officer and the Appellate Assistant Commissioner discounted this suggestion of the appellants by holding that it was impossible that the appellants had on hand on 12th January 1946, the 61 high denomination currency notes of Rs. 1,000 each, included in their cash balance of Rs. 69,891-2-6. The calculations, which they made involved taking into account all payments received by the appellants from and after 2nd January 1946, which were either multiples of Rs. 1,000 or were over Rs. 1,000. There was a cash balance of Rs. 18,395-6-6 on hand on 2nd January 1946, which could have accounted for 18 such notes. The appellants received thereafter as shown in their cash book several sums of monies aggregating to over Rs. 45,000 in multiples of Rs. 1,000 or sums over Rs. 1,000, which could account for 45 other notes of that high denomination, thus making up 63 currency notes of the high denomination of Rs. 1,000 and these 61 currency notes of Rs. 1,000 each, which the appellants encashed on 18th January 1946 could as well have been in their custody on 12th January 1946. This was, however, considered impossible by both the Income-tax Officer and the Appellate Assistant Commissioner as they could not consider it within the bounds of possibility that each and every payment received by the appellants after 2nd January 1946 in multiples of Rs. 1,000 or over Rs. 1,000 was received by the appellants in high denomination notes of Rs. 1,000 each. It was by reason of their visualisation of such an impossibility that they negatived the appellants' contention.

It has to be noted, however, that beyond these

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calculations of figures, no further scrutiny was made by the Income-tax Officer or the Appellate Assistant Commissioner of the entries in the cash book of the appellants. 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 the three affidavits considered necessary by either party. The appellants took it that the affidavits of these parties were enough and neither the Appellate Assistant Commissioner, nor the Income-tax Officer, who was present at the hearing of the appeal before the Appellate Assistant Commissioner, considered it necessary to call for them in order to cross-examine them with reference to the statements made by them in their affidavits. Under these circumstances it was not open to the Revenue to challenge the correctness of the cash book entries or the statements made by those deponents in their affidavits.

This being the position, the state of affairs, as it obtained on 12th January 1946, had got to be appreciated, having regard to those entries in the cash books and the affidavits filed before the Appellate Assistant Commissioner, taking them at their face value. The entries in the cash books disclosed that, taking the number of high denomination notes at 18 on 2nd January 1946, there came in the custody or possession of the appellants after 2nd January 1946 and up to 12th January 1946, 49 further notes of that high denomination, making 67 such notes in the aggregate, out of which 61 such notes could be encashed by the appellants on 18th January 1946 through the Eastern Bank. A mere calculation of the nature indulged in by the Income tax Officer or the Appellate Assistant Commissioner was not enough, without any further scrutiny, to dislodge the position taken up by the appellants, supported as it was, by the entries in the cash book and the affidavits put in by the appellants before the Appellate Assistant Commissioner.'

The Tribunal also fell into the same error. It could

not negative the possibility of the appellant being in possession of a substantial number of these high denomination currency notes. It, however, considered that it was impossible for the appellants to have had 61 such notes in the cash balance in their hands on 12th January 1946 and then it applied a rule of the thumb treating 31 out of such 61 notes as within the bounds of possibility, excluding 30 such notes as not covered by the explanation of the appellants. This was pure surmise and had no basis in the evidence, which was on the record of the proceedings.

The High Court treated this finding of the Tribunal as a mere finding of fact. The position in regard to all such findings of fact, as to whether they can be questioned in appeal, is thus laid down by the House of Lords in *Cameron* v. *Prendergast (Inspector of Taxes)*(1):

"Inferences from facts stated by the Commissioners are matters of law and can be questioned on appeal. The same remark is true as to the construction of documents. If the Commissioners state the evidence and hold upon that evidence that certain results follow, it is open to the Court to differ from such a holding".

To the same effect are the observations of the House of Lords in *Bomford* v. *Osborne (H. M. Inspector of Taxes)*(2):

"No doubt there are many cases in which Commissioners, having had proved or admitted before them a series of facts, may deduce therefrom further conclusions which are themselves conclusions of pure fact. But in such cases the determination in point of law is that the facts proved or admitted provide evidence to support the Commissioners' conclusions".

The latest pronouncement of the House of Lords on this question is to be found in *Edwards (Inspector of Taxes)* v. *Bairstow and Another*(3). Viscount Simonds observed at page 586:—

"For it is universally conceded that, though it is

(1) [1940] 8 I.T.R. (Suppl.) 75, 81.
(2) [1942] 10 I.T.R. (Suppl.) 27, 34.
(3) [1955] 28 I.T.R. 579.

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a pure finding of fact, it may be set aside on grounds which have been stated in various ways but are, I think, fairly summarised by saying that the court should take that course if it appears that the Commissioners have acted without any evidence or upon a view of the facts which could not reasonably be entertained".

and Lord Radcliffe expressed himself as under at page 592:—

"If the case contains anything *ex facie* which is bad law and which bears upon the determination, it is, obviously erroneous in point of law. But, without any such misconception appearing *ex facie*, it may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In those circumstances, too, the court must intervene".

It follows, therefore, that facts proved or admitted may provide evidence to support further conclusions to be deduced from them, which conclusions may themselves be conclusions of fact and such inferences from facts proved or admitted could be matters 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 facts, 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.

The High Court recognised this position in effect but went wrong in applying the true principles of interference with such findings of fact to the present case. The attempt which was made by the High Court to probe into the mind of the Tribunal by trying to discard the affidavit of Govindprasad Ramjivan Nivetia in regard to the payment of Rs. 15,000 to the appellants in 15 currency notes of Rs. 1,000 each on 6th January 1946 and thus reducing the aggregate sum of Rs. 43,500 to Rs. 28,500 and justifying the figure of Rs. 31,000 arrived at by the Tribunal was really far-fetched and contrary to the terms of

the Tribunal's order itself, the Tribunal not having given any inkling, whatever, of what was at the back of its mind when it fixed upon the figure Rs. 31,000. Really speaking the Tribunal had not indicated upon what material it held that Rs. 30,000 should be treated as secret profit or profits from undisclosed sources and the order passed by it was bad. The appellants had furnished a reasonable explanation for the possession of the high denomination notes of the face value of Rs. 61,000 and there was no justification for having accepted it in part and discarded it in relation to a sum of Rs. 30,000. The case was analogous to the one before the Patna High Court in *Chunilal Ticamchand Coal Co. Ltd.* v. *Commissioner of Income-tax, Bihar and Orissa*(1) and should have been similarly decided in favour of the appellants.

For the reasons indicated above, we are of the opinion that the High Court was in error in answering the first referred question in the affirmative. It ought to have answered it in the negative and held that there were no materials to justify the assessment of Rs. 30,000 from out of the sum of Rs. 61,000, for Income-tax and Excess Profits Tax and Business Profit Tax purposes representing the value of the high denomination notes which were encashed on 18th January 1946.

In view of the above it is not necessary for us to go into the question whether the High Court ought to have answered the second referred question also. The answer to the first referred question being in the negative, the very basis for Excess Profits Tax and Business Profits Tax disappears and the second referred question becomes purely academical.

The result, therefore, is that the appeal is allowed and the first referred question is answered in the negative. The appellants will have their costs here as well as in the High Court.

VENKATARAMA AYYAR J.—I agree to the order just proposed; but I prefer to rest my decision on the

(1) [1955] 27 I.T.R. 602.

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ground that the finding of the Tribunal that high denomination notes of the value of Rs. 30,000 represented the concealed profits of the appellant is not supported by any evidence, and is, in consequence, erroneous in point of law and liable to be set aside. The evidence on record has been exhaustively reviewed in the judgment just delivered, and there is no need to traverse the same ground again. To put the matter in a nut-shell, the accounts of the appellant have been accepted by the Tribunal as genuine, and it is impossible to say, having regard to the cash balance as shown therein, that the notes in question could not have been included therein. The Tribunal observes that it is unlikely that so many high denomination notes would have been held as part of the cash on hand for such a large number of days. That, no doubt, is highly suspicious; but the decision of the Tribunal must rest not on suspicion but on legal testimony. For the respondent, Mr. Joshi contended that the cash balance shown in the books could not be accepted as true, because the appellant had ample time to rewrite the accounts, as the Ordinance was issued on 12th January 1946 and the year of account of the assessee was the Calendar year. Whether the accounts are genuine or not is a pure question of fact, and a finding on a question of fact is as much binding on the Revenue as on the subject.