

Commissioner Of Income-Tax Bombay ... vs Lakhiram Ramdas on 17 January, 1962

**Equivalent citations: AIR1967SC338, [1962]44ITR726(SC), AIR 1967
SUPREME COURT 338**

Author: S.K. Das

Bench: J.C. Shah, M. Hidayatullah, S.K. Das

JUDGMENT

S.K. Das, J.

1. These are two appeals by special leave of this court. One appeal is from the judgment and order of the Income-tax Appellate Tribunal, Bombay Bench "C" (hereinafter referred to as the Tribunal) dated November 7, 1955, by which the Tribunal held that section 34 (1) (a) of the Indian Income-tax Act, 1922, was not applicable in the case, as there was no omission or failure on the part of the assessee to make a return of his income under section 22 for the assessment year 1945-46, or to disclose fully and truly all the material facts necessary for his assessment for that year. The second appeal is from the order of the High Court of Bombay dated December 14, 1956, by which the said High Court rejected an application made by the present appellant under section 66 (2) of the Income-tax Act. By that order the High Court refused to ask the Tribunal to state a case for its consideration of a question of law which the appellant said arose from the order of the Tribunal dated November 7, 1955.

2. A preliminary objection as to limitation was raised before us on behalf of the respondent with regard to the appeal from the order of the Tribunal. It is not necessary to deal with that preliminary objection, because learned advocate for the appellant has conceded that the appeal direct from the order of the Tribunal must be dismissed in view of the decision of this court in Chandi Prasad Chokhani v. State of Bihar, which laid down that save in exceptional and special circumstances, this court would not exercise its power under article 136 of the Constitution in such a way as to by-pass the High Court by entertaining an appeal direct from the order of the Tribunal and thereby ignore the decision given by the High Court. Therefore, the appeal from the order of the Tribunal dated November 7, 1955, must be dismissed.

3. Now, we proceed to consider the appeal from the order of the Bombay High Court dated December 14, 1956. The short facts are these. The present respondent, who was the assessee in the case, carried on a cloth business at Ahmedabad. Later he opened branches at Karachi and Bombay. He was assessee to income-tax in the status of a Hindu undivided family. In the account period

relevant to the assessment year 1943-44, the assessee opened a branch at Karachi. The total income for the assessment year was determined at Rs. 38,400. For the assessment years 1944-45 and 1945-46 the assessee maintained joint accounts for the whole period of two years. In the assessment year 1945-46 he opened a branch office at Bombay. In original assessment for the aforesaid two years was completed under the provisions of section 23 (3) of the Income-tax Act on September 13, 1946. In the assessment for the year 1945-46 (Samvat year 2000) the assessee's income was derived from his cloth business carried on at Ahmedabad, Karachi and Bombay and certain other properties. Separate sets of accounts were maintained for the head office as well as for the two branches. The books of accounts were produced and were examined by the examiner of accounts who submitted a report to the Income-tax Officer concerned. The total income for the assessment year 1945-46 was determined to be Rs. 15,294. Sometime after the completion of the said assessment, the Income-tax Officer concerned received information that the assessee had purchased a draft for Rs. 1,10,000 from the Exchange Bank of India and Africa Ltd. at Bombay and the draft was deposited on July 17, 1944, in a branch of the said bank at Ahmedabad for realisation. In consequence and on the basis of this information, the Income-tax Officer initiated a proceeding under section 34 (1) (a) of the Income-tax Act against the assessee by issuing a notice to the latter on March 24, 1954. It may be here stated that the exact date on which the Income-tax Officer came to know of the purchase of the draft for Rs. 1,10,000 is not known. The Income-tax Officer also issued a notice to the assessee under section 22 (4) to produce his account books for the Samvat year 2000 and his pass books of the Exchange Bank of India and Africa Ltd. The assessee gave a certain explanation for not being able to produce either his account or the pass books of the said bank. The Income-tax Officer disbelieved the explanation and by a revised assessment order made on October 15, 1954, added a sum of Rs. 1,10,000 as income from an undisclosed source, which had escaped assessment in the original assessment. There was an appeal to the Appellate Assistant Commissioner who confirmed the order of the Income-tax Officer. Then, there was no omission or failure on the part of the assessee to make a return of his income under section 22 for the year 1945-46, or to disclose fully and truly all material facts necessary for his assessment for that year. The Tribunal pointed out that at the time of the original assessment the assessee had produced his books of account with regard to all the three offices at Ahmedabad, Bombay and Karachi. The assessee also filed the balance-sheets relating to his business at the aforesaid three places. The Tribunal further pointed out that before completing the assessment for the years 1944-45 and 1945-46, the Income-tax Officer had called for all the relevant account books which had been examined by an examiner of accounts, an officer subordinate to the Income-tax Officer had called for all the relevant account books which had been examined by an examiner of accounts, an officer subordinate to the Income-tax Officer. This officer submitted a report relating to the account books of the Ahmedabad business and he mentioned therein that the assessee had accounts with the Exchange Bank of India and Africa Ltd. and certain other banks. The Tribunal held that in these circumstances it could not be said that there was any omission or failure on the part of the assessee to make a return of his income under section 22 or to disclose fully and truly all material facts necessary for his assessment for the year 1945-46. The present appellant then moved the Tribunal under section 66 (1) of the Income-tax Act and asked the Tribunal to state a case to the High Court of Bombay on the following question of law, which, according to the appellant, arose out of the Tribunal's order :

"Whether on the facts and in the circumstances of the case, and having particular regard to the fact that the return and the statements accompanying the return furnished by the assessee during the course of the assessment proceedings for 1945-46 did not indicate such a large transaction as Rs. 1,10,000 by a single bank draft, the Income-tax Officer was right in starting proceedings under section 34 (1) (a) on the receipt of the information about the above transaction, to make a reassessment for 1945-46 ?"

4. The Tribunal rejected the application under section 66 (1) on two grounds : firstly, that the question which the appellant said arose out of the Tribunal's order was a question of fact and not a question of law; and secondly, that the question suggested by the appellant was misconceived, because the question before the Tribunal at the time of the hearing of the appeal was not whether the assessee had failed to disclose the transaction of Rs. 1,10,000 in his return and the statements accompanying it, but whether there was any omission or failure on the part of the assess to disclose fully and truly all material facts necessary for his assessment for the year in question. The appellant then moved the High Court of Bombay under section 66 (2) of the Income-tax Act. That application, as we have stated already, was summarily dismissed by the High Court by its order dated December 14, 1956.

5. The learned advocate for the appellant has contended before us that the finding of the Tribunal that there was no omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment was based on surmises and conjectures and there were no materials on which the Tribunal could come to such a conclusion; therefore, it has been argued that a question of law arose out of the Tribunal's order and the High Court was wrong in summarily rejecting the petition made by the appellant under section 66 (2) of the Income-tax Act. We are unable to accept this argument as correct. First of all, it must be pointed out that the question which the appellant suggested should be referred to the High Court in his petitions under section 66 (1) and section 66 (2) of the Income-tax Act is different from the question which is now raised by the learned advocate for the appellant. The question now raised for the first time before us by the learned advocate for the appellant is that the appellant is that the Tribunal had no materials on which to find that there was no omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment and that the finding of the Tribunal was based on surmises and conjectures. That, however, was not the question which was suggested for reference to the High Court at the stage when the petitions under S. 66 were made. At that stage the question suggested was whether on the facts and in the circumstances of the case and having particular regard to the return made by the assessee and the statements accompanying it, the assesses did not indicate that he had obtained a bank draft for Rs. 1,10,000. We agree with the view expressed by the Tribunal that the question suggested was misconceived, because what the Tribunal had to consider was whether the proceeding under S. 34 (1) (a) was properly initiated by the income-tax Officer in the year 1954. It must be remembered that the original assessment was completed on September 13, 1946 and more than four years had passed, and at the relevant time the period during which the Income tax Officer could take action under S. 34 CD (a) was eight years. It is true that the eight years had not expired on March 24, 1954 when the notice under S. 34 (1) (a) was issued. But the prerequisite Condition for the initiation of a proceeding under S. 34 (1) (a) is that "the Income-tax

Officer has reason to believe that by reason of the omission or failure on the part of the assessee.....to disclose fully and truly all material facts necessary for his assessment for that year" income, profits or gains chargeable to income-tax have escaped assessment etc. That condition must be fulfilled before the Income-tax Officer can take action under S. 34 (1) (a). (See Calcutta Discount Co. Ltd. v. Income-tax Officer, Companies District I, Calcutta, . Therefore, what the Tribunal had to consider was whether the as-sessee had fully and truly disclosed all material facts necessary for the assessment. The Tribunal examined all the relevant materials produced by the assessee at the time of the original assessment and came to the conclusion that there was no omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. The Tribunal referred to the account books produced by the assessee and particularly to the report of the Examiner of Accounts who submitted a report to the Income-tax Officer with regard to the bank account of the assessee in the Exchange Bank of India and Africa Ltd. In our opinion, in the circumstances of this case the question whether the assessee had or had not failed to disclose fully and truly all material facts necessary for his assessment was a question of fact and we are unable to accept the argument of the learned Advocate for the appellant to the contrary.

6. In the result we hold that no question of law arose in this case and the High Court of Bombay rightly rejected the petition under section 66 (2) of the Income-tax Act. Both the appeals, therefore, fail and are dismissed. In the circumstances of the case there will be no order as to costs.

7. Appeals dismissed.