

## Commissioner Of Income-Tax (Central), ... vs Daulatram Rawatmull on 26 March, 1964

**Equivalent citations:** [1964]53ITR574(SC)

**Bench:** J.C. Shah, K. Subba Rao, S.M. Sikri

### JUDGMENT

Shah, J.

1. The respondent, Daulatram Rawatmal, is a firm registered under the Indian Income-tax Act, 1922. At all material times there were six partners of the firm. They were Nandlal Bhowalka, Giridharilal Bhowalka, Shyamlal Bhowalka, Bajranlal Bhowalka, Rawatmal Nopany and Rameshwarlal Nopany. The firm carried on business as dealers and commission agents in jute, rice and other commodities. For the account year 2001-2002 Bikram Samvat (September 27, 1944, to October 15, 1945) the firm was assessed in the assessment year 1946-47 by the Income-tax Officer Non - Companies - cum - E. P. T. Circle, under section 23(3) of the Indian Income-tax Act. On February 19, 1955, the Income-tax Officer, Central Circle VI, to whom the case was transferred by the Central Board of Revenue, issued a notice under section 34 of the Act calling upon the firm to file a revised return of income for the corresponding accounting year. Pursuant to this notice the firm filed a return showing an income of Rs. 2,75,168 according to its original assessment as reduced in appeal. The Income-tax Officer thereafter inspected the books of account of the assessee and found that on November 2, 1944, an amount of Rs. 5,00,000 was tendered in cash to the Barabazar Branch of the Central Bank of India with instruction to transfer the same to the Bombay head office of the bank and a demand draft for the said amount was issued through the Bombay head office of the bank on its Jamnagar branch, which was at the material time situate in the territory of the Indian State of Nawanagar. Out of the remittance a fixed deposit receipt was purchased in the name of Raghunath Prasad Agarwalla, son of Rawatmul Nopany, with the Jamnagar branch of the Central Bank of India on November 8, 1944. this Raghunath Prasad Agarwalla died on August 16, 1945, and the fixed deposit receipt matured on December 19, 1945. Upon maturity the sum of Rs. 5,00,000 was not paid to the heirs of Raghunath Prasad Agarwalla, but it was adjusted against the over draft of the assessee. The assessee's books account showed a credit of Rs. 5,00,000 in the account of Raghunath Prasad Agarwalla. The account of Raghunath Prasad Agarwalla in the assessee's books showed a current account involving large sums of money and the balance of Rs. 5,64,970 was carried forward to the next year. Although Raghunath Prasad Agarwalla had died in August, 1945, the account continued in the same name in the next year.

2. The Income-tax Officer also found that on November 15, 1944, another amount of Rs. 5,00,000 was tendered in cash in the Barabazar branch of the Central Bank of India with instructions to transfer the same to the Bombay head office of the bank and a demand draft was

issued from Bombay in the name of B. N. Gupta, son of Bajranglal Bhowalka - a partner of the assessee - on the Jamnagar branch of the bank and that with the aid of this amount a fixed deposit account was opened with the Central Bank of India, Jamnagar, on November 21, 1944. On December 2, 1944, a letter of guarantee and "a letter of continuity" signed by Raghunath Prasad Agarwalla and B. N. Gupta along with promissory notes signed by the firm for keeping these two deposits under lien were lodged with the bank for securing over draft facilities for the assessee in the sum of Rs. 10,00,000.

3. The Income-tax Officer also found that an amount of Rs. 5,00,000 was tendered in cash in the Barabazar branch of the Central Bank of India on October 5, 1944, with instructions to remit the same to the Jamnagar branch by a demand draft to be converted into a fixed deposit dated October 11, 1944, in the name of Sheo Prasad Agarwalla, Son of Rameshwarlal Nopany - a partner of the assessee. This deposit was later offered as security for overdraft facility granted to Sri Hanuman Sugar Mills Ltd., in the managing agency of which the partners of the assessee had a controlling interest.

4. In the view of the income-tax officer the amounts of the fixed deposits receipts credited in the Jamnagar branch of the Central Bank of India in the names of the three sons of the partners of the assessee were "secreted profits" belonging to the assessee and on that view he added the sum of Rs. 15,00,000 to its total assessable income and completed the reassessment. In appeal by the assessee the Appellate Assistant Commissioner of Income-tax held that the assessee was able to explain the source of Rs. 50,000 only, out of the fixed deposit of Rs. 5,00,000 in the account of B. N. Gupta, but not in respect of the other deposits. Accordingly the Appellate Assistant Commissioner modified the order of the Income-tax Officer and added an amount of Rs. 14,50,000 out of the amount of Rs. 15,00,000 representing the three fixed deposit receipts in the names of the three sons of the three partners of the assessee as "secreted profits". The order passed by the Appellate Assistant Commissioner was confirmed in appeal, in so far as it related to the two deposit receipts dated November 8, 1944, and November 21, 1944. But in respect of the receipt dated October 11, 1944, the Tribunal held that even though a similar modus was adopted for transferring "secreted profits" from Calcutta to Jamnagar there was "no connecting link in the matter between the assessee and the amount deposited in the name of Sheo Prasad Agarwalla". The Accountant Member of the Tribunal observed :

"In the case of the fixed deposit in the name of S. P. Agarwalla (Sheoprasad Agarwalla), however, there is a slight difference. The amount was not utilised by the assessee for an overdraft. Neither the amount found its way into the assessee's account books. this deposit was utilised by Sri Hanuman Sugar Mills Ltd., Therefore, I cannot say for certain that the firm made any income and that income was utilised in the shape of a deposit for obtaining overdraft for the said Sri Hanuman Sugar Mills Ltd. In this respect in my mind, there is little evidence to show that the firm was interested in the money and the concealment was of the firm was interested in the money and that the concealment was of the firm. It might be the concealment of another person. I find no connecting link in the matter and, therefore, in regard to this amount, I am of Opinion that the same cannot be brought to tax."

5. With this view the Judicial Member of the Tribunal agree, because in his view there was good reason to suspect that the amount of Rs. 5,00,000 represented the income of the assessee but no finding could be based upon suspicion, however strong it may be. On the view taken by the Tribunal the order passed by the Appellate Assistant Commissioner was modified and the amount of Rs. 5,00,000 relating to the fixed deposit receipt dated October 11, 1944 in the name of Sheo Prasad Agarwalla was excluded from the total assessable income.

6. The Commissioner of Income-tax applied under section 66(1) of the Indian Income-tax Act to the Income-tax Appellate Tribunal to refer to the High Court of Calcutta the following question :

"Whether in the facts and circumstances of this case the inference drawn by the Tribunal that the fixed deposit of Rs. 5 lakhs in the names of S. P. Agarwalla did not represent the concealed income of the assessee firm was justified in law.

7. The Tribunal rejected the application observing that the question suggested by the Commissioner whether the Tribunal was justified in drawing an inference that "the fixed deposit of Rs. 5 lakhs in the name of Sheo Prasad Agarwalla did not represent the concealed income of the assessee firm was a question of fact not referable under section 66(1) of the Indian Income-tax Act." The Commissioner of Income-tax then applied to the High Court of Calcutta for an order calling upon the Tribunal to state a case and refer it to the High Court. The High Court rejected the application., With special leave, the Commissioner of Income-tax has appealed to this court.

8. On behalf of the Commissioner, Mr. Rajagopala Sastri has contended that the decision of the Tribunal involves a question of law in that no person acting judicially and properly instructed as to the relevant law could have arrived at that decision. principles which govern references under section 66 of the Indian Income-tax Act are well settled. In *Sree Meenakshi Mills Ltd. V. Commissioner of Income-tax* this court held that findings on questions of pure fact arrived at by the Tribunal are not to be disturbed by the High Court on a references unless it appears that there was no evidence before the Tribunal upon which they, as reasonable men, could have reached those findings. This is so even if the High Court left to itself would on the evidence have reached a conclusion different from that of the Tribunal. The rules which govern the approach of the High Court are :

"(i) When the point for determination is a pure question of law such as construction of a statute or document of title, the decision of the Tribunal is open to reference to the court under section 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 fact is open to attack under section 66(1) as erroneous in law when there is no evidence to support it or if it is perverse.

(iv) When the findings is one of fact, the fact that it is itself an inference from other basic facts will not alter its character as one of fact."

9. Mr. Sastri says that the income-tax authorities had found the following facts :

(1) that the three deposits were made in quick succession, and the deposits in the name of Raghunath Prasad Agarwalla and B. N. Gupta were in fact held by the Tribunal as representing "secreted profits" of the assessee.

(2) that the three deposits were in the same bank in the same Indian State and at the same branch and were made in similar circumstances;

(3) that the same modus was adopted for making overdraft arrangements in British India in respect of the three deposit receipts with the aid of these "secreted funds."

(4) that the names utilised for making the deposits were of the sons of the three partners of the assessee;

(5) that the source of the fixed deposits was clouded in obscurity and that the deposits could not represent bona fide transactions. If it was so intended, a loan could have been directly advanced to Sri Hanuman Sugar Mills Ltd., by Sheo prasad Agarwalla instead of adopting the circuitous method involving payment of large amount of interest and commissions charges to the Central Bank of India;

(6) that the assessee had denied connection with Sri Hanuman Sugar Mills Ltd., but the record disclosed that a large amount exceeding Rs. 8,00,000 was advanced to Hanuman Investment Ltd. - managing agents of the Sugar Mills Ltd., - and the entire amount so advanced had ultimately found its way into the account of the sugar mills. Out of the six partners of the assessee three were directors of Sri Hanuman Sugar Mills Ltd., and the Sugar Mills Ltd., was under the control of the assessee firm.

10. These facts Mr. Sastri contends are capable of only one inference, viz. that the deposit in the name of Sheo Prasad Agarwalla was of the assessee and represented its "secreted profits" and any conclusion contrary thereto must be regarded as perverse. We are unable to agree with that contention.

11. The High Court exercise an advisory jurisdiction under section 66 of the Indian Income-tax Act. Only a question which arises out of these order passed by the Appellate Tribunal can be referred by that authority under section 66(I) 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 required the Appellate Tribunal to state a case and top 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 re-appreciation of the evidence, it might arrive at a conclusion different from that of the Tribunal.

12. It cannot be said that the conclusion recorded by the Tribunal on the facts brought to our notice by Mr. Sastri is perverse. The Tribunal has rightly pointed out that the similarity of the transactions in respect of the three deposit receipt and the proximity of time were matters which may raise suspicion and this suspicions may be strengthened because Sri Hanuman Sugar Mills Ltd. was the ultimate beneficiary of the amount deposited on October II, 1944, and the deposit was apparently obtained in the name of Sheo Prasad Agarwalla benami for the real owner. But these facts did not justify an inference that the assessee had anything to do with the deposit of Rs. 5,00,000 out of its "secreted profits". The circumstance relied upon fail to establish the one link which must be established by evidence that the assessee was concerned with the transaction of the deposit made on October II, 1944. It may be noticed that the amount of Rs. 5,00,000 deposited on November 8, 1944, in the name of Raghunath Prasad Agarwalla together with the interest thereon was brought into the amount of the assessee. Even the connection of the assessee with the deposit dated November 21, 1944, was indicated by the letter of guarantee and the "letter of continuity" signed by Raghunath Prasad Agarwalla and B. N. Gupta and from the fact that on the security of the two deposit receipt an overdraft account was opened on November 24, 1944. But in respect of the deposit made on October 11, 1944, no such connection appears. We are not in this case called upon consider whether any question of law arise from the finding of the Tribunal in respect of the two deposit receipts in the names of Raghunath Prasad Agarwalla and B. N. Gupta, but it would be impossible to hold that the finding of the Tribunal in respect of the two deposit made on October 11, 1944. But in respect of the deposit made on October II, 1944, in the name of Sheo Prasad Agarwalla was so perverse that no reason able body of person properly instructed in the law could have reached it. The circumstances relied upon by Mr. Sastri do raise suspicion, but suspicion cannot take the place of evidence.

13. In that view of the case, this appeal fails and is dismissed with costs.

14. Appeal dismissed.