

Parsram Parumal vs Commissioner Of Income-Tax, West ... on 7 November, 1960

Equivalent citations: [1962]44ITR506(SC)

Bench: J.C. Shah, M. Hidayatullah

JUDGMENT

Shah, J.

1. These are two appeals filed with special leave under article 136 of the Constitution.
2. Appeal No. 407 of 1958 is filed against the order of the Income-tax Appellate Tribunal, Calcutta Bench, Calcutta, dated December 7, 1955, refusing to state a case under section 66 (1) of the Indian Income-tax Act, 1922. Appeal No. 408 of 1958 is filed against the order of the High Court of Judicature at Calcutta dated March 22, 1957, dismissing summarily an application under section 66 (2) of the Income-tax Act for a direction to the Appellate Tribunal to state a case. These appeals have been filed with special leave restricted to "the question relating to the transactions in sovereigns only". In the course of the assessment proceedings before the income-tax authorities, diverse contentions were raised, but in view of the restricted leave, we will refer only to the "transactions in sovereigns from the Bombay branch" of the appellant and to no others.
3. The appellant is a deal in gold and silver and other commodities and had his head office at Calcutta. In the year of account Samvat year 2002 and 2003 (November 4, 1954, to October 23, 1946) corresponding to the assessment year 1946-47, he also carried on business at branch offices at Bombay, Karachi and other places. In the year of account, out of 1,80,997 sovereigns purchased by the appellant in his Bombay branch 1, 66,188 pieces were dispatched to Karachi, 14,309 pieces were sold locally in Bombay and 500 pieces were dispatched to Calcutta. The Income-tax Officer (Non-Companies, I. T. cum. E. P. T.), District Calcutta, by his order from transactions in sovereigns at Rs. 56,901. It was the appellant's case that 1,66,188 pieces of sovereigns were dispatched by him at cost price to his Karachi office, and were not sold and that by the sale of 14,309 pieces in Bombay, he had earned a profits of Rs. 6,462-4-0. The appellant produced before the Income-tax Officer the journal of the Bombay branch showing the record relating to dispatch of 1,66,188 sovereigns to the Karachi branch, and the commission and the transport charges etc. incurred in that behalf. The appellant also produced before the Income-tax Officer his "Noondh" showing the record of the transactions as entered in the books. In the view of the Income-tax Officer, the "gross profit of Rs. 6,462 shown on the total sales of the value of Rs. 1,13,80,331 at the rate of .06% was very low." He observed :

"No cash memos are available either for purchase or sales. Assessee was asked to give the addresses of certain parties from whom sales and purchases were made but he expressed his inability to do so. It is however observed that mostly sales have been made to Karachi office and the margin of profit is likely to be much less."

4. The Income-tax Officer estimated the profits on the total sales of sovereigns at the rate of 0.5% at Rs. 56,901 and after deducting therefrom Rs. 6,492 returned by the appellant as his profit, he added on the sovereign account Rs. 50,409 as income in the transactions in sovereigns in the Bombay branch. In an appeal against the order passed by the Income-tax Officer, the Appellate Assistant Commissioner, Calcutta, confirmed that order observing :

"It is stated by the appellant's representative that the Income-tax Officer wrongly rejected the profit in this account because out of the total number of sovereigns purchased, viz., 1,80,997 pieces, 1,66,188 pieces were sent to Karachi on commission and 500 were sent to Calcutta office at cost price and the balance, viz., 14,309, were sold to well-known bullion merchants of Bombay. It is also stated that the cash memos and vouchers for these purchases and sales transactions were not available because it was not the practice of maintaining them in Bombay. It is, however, noticed by me from the accounts books that the assessee did not record in the books of accounts the addresses of the parties with whom transactions were made and so they do not admit of any verification. The sales were also found to be mostly in cash. In view of this fact and also the fact that the rate of gross profit is very low, I consider that the Income-tax Officer was justified in not accepting the trading result shown. As regards the number of pieces stated to have been transacted, in the absence of supporting evidence regarding the number of sovereigns actually transacted upon, I do not think it is possible for me to accept the contention that the low margin of profit was fully explained by the above facts alone. The Income-tax Officers estimate of .5% as the rate of gross profit in the cases seems to be quite reasonable and he has given due consideration to the fact that the assessee had made considerable sales to Karachi office."

5. Against this order, an appeal was preferred to the Income-tax Appellate Tribunal. The Tribunal rejected the contention raised by the appellant observing in paragraph 8 of the judgment that "for the reasons given by the Appellate Assistant Commissioner with regard to the sovereign account in the Bombay branch, we find no reason to interfere in his decision." The appellant then applied to the Tribunal to refer certain questions arising out of the order to the High Court at Calcutta. Question No. 2 suggested by the appellant as arising out of the order of the Tribunal was as follows :

"Whether in the facts and circumstances of the case the tribunal should not have held that the turnover both in Calcutta and branches on which the flat rate is to be applied should be arrived at after deducting therefrom the sum of Rs. 1,47,98,413 admittedly found by the Income-tax Officer to have been transferred to Karachi from Calcutta and the various branches ?"

6. The Tribunal rejected the application. The appellant then applied to the High Court at Calcutta that the Tribunal be directed to submit a statement of the case on three questions. The question material to the sovereign account was framed as follows :

"Whether there was any material to hold that the Bombay branch of your petitioner sold 1,66,188 pieces of sovereign to the Karachi branch at market rates ?"

7. The High Court summarily rejected the application.

8. In the proceedings before the Income-tax authorities, the contention of the appellant does not appear to have been clearly appreciated, and the grounds set out in the memoranda of appeals filed before the Appellate Assistant Commissioner and the Appellate Tribunal contributed in no small degree in giving rise to that situation. The grounds submitted were somewhat verbose indicating a vague perception of the true contention raised by the appellant. The question submitted for reference to the Tribunal was different from the question on which the High Court was moved to order a statement of case. The question submitted to the Appellate Tribunal was much wider in scope than the question submitted to the High Court. Notwithstanding these infirmities in the proceedings and in the contentions raised by the appellant, we are of the view that a question of law does arise out of the order of the Tribunal.

9. The Income-tax Officer observed, as stated hereinbefore, that in the year of account, the appellant had sold 1,66,188 pieces of sovereigns to his Karachi branch and 14,309 pieces in the local market in Bombay, and he estimated the gross profit at the rate of 0.5% on an assumed total sale of Rs. 1,13,80,331. The appellant contended that he was the owner of the Bombay branch as well as of Karachi for sale and that such a dispatch did not amount to sale of sovereigns to the Karachi branch. The charge of 2 annas as commission per Rs. 100 for which a separate account was maintained by the appellant was, it was contended, not profit and that it was not included in Rs. 6,464-4-0 disclosed as the profit on sales in the Bombay branch. Accordingly to the appellant, this profit accrued to him on the local sales of 14,309 pieces. Counsel for the department submitted that even of the transactions of dispatch of sovereigns from Bombay to Karachi by the appellant to his own branch may not be regarded sales, the true effect of the order of the Income-tax Officer is to assess the profits earned by the appellant on the local transactions in Bombay. This, counsel contended, had to be done because the books of account of the Bombay branch were unreliable and the other evidence produced by the appellant regarding the prevailing rates was unsatisfactory. We are unable to accept this contention. The Income-tax Officer has calculated the gross profit at an overall rate on all the transactions in sovereigns in the Bombay branch including dispatches of sovereigns to Karachi and local sales in Bombay on the footing that they were sale transactions.

10. The order passed by the Income-tax Officer does not refer to any evidence in support of the assertion made by him that the Bombay branch of the appellant sold sovereigns to the Karachi branch. The Appellate Assistant Commissioner did not reject the plea raised by the appellant that the sovereigns purchased by the Bombay branch were sent to the Karachi branch on commission. The criticism of the Appellate Assistant Commissioner about the unsatisfactory character of the evidence has a bearing on the local sales and not on the dispatches to Karachi. The Tribunal merely

accepted the conclusion of the Appellate Assistant Commissioner; it gave no independent reasons in support of its order. The income-tax authorities did not find that on a comparison of the rates at which the sovereigns are debited in the Bombay branch and the rates at which they were credited in the Karachi branch, any profit was earned by the Bombay branch. The commission account is not incorporated in the printed paper book, but it is not even suggested that the commission was in the nature of profit and not service charges as submitted by counsel for the appellant. In our view, a question of law arises from the judgment of the Tribunal which confirmed the order of the Appellate Assistant Commissioner. We accordingly direct that the Tribunal do draw up and submit a statement of the case on the following questions which arises from the order of the Tribunal :

"Whether there was any material to hold that the Bombay branch of the assessee sold 1,66,188 pieces of sovereigns to the Karachi branch ?"

11. We are in this appeal not concerned with the correctness of the rate applied by the Income-tax Officer on the local sales of sovereigns in the Bombay market. We are only concerned with the question whether there was any material to hold that the Bombay branch of the appellant had sold 1,66,188 pieces of sovereigns to the Karachi branch.

12. On the view taken by us, we need pass no order in Appeal No. 407 of 1958. Appeal No. 408 of 1958 will be allowed with costs in this court.