

## **Daulatram Rawatmull vs The C.I.T. (Central) Calcutta on 18 January, 1971**

**Equivalent citations: (1972)4SCC95, 1971(III)UJ259(SC), AIR ONLINE 1971 SC 7, 1972 (4) SCC 95**

**Author: A.N. Grover**

**Bench: J.C. Shah, A.N. Grover, K.S. Hegde**

### **JUDGMENT**

A.N. Grover, J.

1. This is an appeal by special leave from a judgment of the Calcutta High Court in two connected references made Under Section 66 of the Income tax Act, 1922, hereinafter called the "Act".
2. The appellant is a partnership firm duly registered under the Indian Partnership Act, 1932. It consisted of six partners whose names shares are given below :

(1) Nandlal Bhuwalka /3/-(2) Girdharilal Bhuwalka /3/-(3) Shyamlal Bhuwalka /2/-(4) Bajranglal Bhuwalka /2/-(5) Rawatmull Company /3/-(6) Rameshwarlal Company /3/-

The appellant carried on the business as dealers and commission agents in jute and other commodities. It also acted as procuring agents for rice and paddy for certain areas for the Government of Bengal for the procurement of which it was paid commission. It was originally assessed on March 30, 1948 for the assessment year 1946-47 the corresponding year of account being from September 27, 1944 to October 15, 1945. On February 19, 1955 the Income tax Officer issued a notice Under Section 34 of the Act stating that he had reason to believe that the appellant's income for the year in question had been under-assessed and the appellant was called upon to file a return of income for that year. After the return had been filed and after the Income tax Officer had examined the books of account etc. he made reassessment by an order dated February 20, 1956. By the said order the Income tax Officer, inter alia, added the sum Rs. 10,00,000/- to the income of the appellant as undisclosed income. This amount represented two deposits of Rs. 5,00,000/- each in the Central Bank of India, Ltd, Jamnagar Branch and which stood in the names of Raghu-nath Prasad Nopani alias Raghunath Prasad Agarwal and Bishwanath Bhuwalka alias Bishwanath Gupta who were respectively the sons of Rawatmull Agarwal and Bajranglal Agarwal partners of the appellant firm. The appellant had obtained an overdraft facility to the extent of Rs. 10 lakhs upon the security of these two fixed deposits receipts from the Calcutta branch of the Central Bank of

India. The Income-tax Officer, after investigation, was satisfied that these amounts deposited in the names of the sons of the two partners of the firm were secreted profits of the appellant firm itself. On appeal the Appellate Assistant Commissioner held that the appellant had been able to explain the source of Rs. 50,000/- only out of the fixed deposit of Rs. 5,00,000/- in the name of Bishwanath Gupta. He thus reduced the addition made by the Income-tax Officer by Rs. 50,000/- only. The appellant filed an appeal before the Income tax Appellate Tribunal which upheld the order of the Appellate Assistant Commissioner.

4. The Appellant filed a petition Under Section 66(1) of the Act for stating certain questions of law arising out of the order of the Appellate Tribunal. The Tribunal referred some questions but did not refer the following question which, on the High Court being moved Under Section 66(2), was directed to be referred :

Whether on the facts and in the circumstance of the case there was material before the Income-tax Appellate Tribunal to hold that the sum of Rs. 5,00,000/- standing in the name of Raghunath Prasad Company and sum of Rs. 4,50,000/- cut of the sum of Rs. 6,00,000/- in the name of Biswanath Bhuwarka representing the fixed deposits were the canceled income of the assessee firm for the relevant previous year for the assessment for the year 1946-47.

The High Court came to the conclusion that the materials on the record were not sufficient for holding that the amount of Rs. 4,50,000/- out of the deposit in the name of Biswanath Gupta belonged to the appellant. But so far as the other deposit of Rs. 5,00,000/- was concerned which stood in the name of Raghunath Prasad the High Court came to the contrary conclusion and the question was accordingly answered. We are concerned in the present appeal only with this part of the question referred to the High Court which has been answered against the assessee.

5. Now the High Court referred to the following facts which had been proved or established for arriving at the conclusion that the deposit of Rs. 5,00,000/- which stood in the name of Raghunath Prasad was the concealed income of the appellant : (1) The procedure which was adopted for opening the deposit account and obtaining overdraft facilities was of a peculiar nature. What had happened was that on November 22, 1944 an amount of Rs. 50,000/- in cash was tendered to the Bara Bazar branch of the Central Bank of India, Calcutta. The cash so tendered was transferred to the Bombay Head Office of the Bank and a demand draft for Rs. 5,00,000/- was issued through the Bombay Head Office of the Bank to its Jamnagar branch. With that amount a fixed deposit account was opened in the name of Raghunath Prasad Agarwal with the Jamnagar branch of Central Bank on November 8, 1944. The other deposit in the name of Biswanath Gupta followed a similar course though the dates were different. On December 2, 1944 a letter of guarantee and a letter of continuity were signed by Raghunath Prasad Agarwal and Biswanath Gupta at the Calcutta branch of the Central Bank along with pronotes signed by the appellant firm for keeping these two deposits under lien of the Bank against overdraft facilities. The overdraft account itself had been opened on or about November 24, 1944. (2) At first the assessee's overdraft facility was stated to be a clean overdraft without any security. It was, however, detected during investigation that the overdraft was against

the collateral security of the said two deposits. (3) The office of the appellant was in the same premises in which the Bara Bazar branch of the Central Bank was situated and from where the two remittances aggregating Rs. 10,00,000/-were made for opening deposit accounts at Jamnagar. (4) No consideration had been received by either of the holders of these two deposits for the accommodation that was extended to the appellant. (5) Raghunath Prasad in his individual assessment for the assessment year 1947-48 had explained the source of Rs. 5,00,000/-kept as fixed deposit with the Jamnagar branch of the Central Bank and had asserted that the said amount belonged to him. Biswanath also had claimed that the amount of fixed deposit was his own money and had given an explanation how he had acquired the sum of Rs. 5,00,000/-. The explanation of Raghunath Prasad in his personal assesment was accepted by the Income-tax Officer but in the assessment of the appellant firm the income tax authorities declined to accept the explanation given by Raghunath Prasad.

6. The High Court approached the matter thus. The onus lay on the department to show that the aforesaid deposits in the names of Raghunath Prasad and Biswanath belonged to the appellant. In case of the deposit in the name of Raghunath Prasad there were additional facts which went against the case of the appellant. Raghunath Prasad claimed that he had himself started the business in share brokerage and share dealings from February 17, 1944. His capital account on September 26, 1944 merely showed a balance of Rs. 563/-. The next assessment for 1946-47 for the period September 27, 1944 to October 15, 1945 showed that his capital account had a balance of only Rs. 29,664/-as on October 15, 1945. By that time Raghunath Prasad had already deposited the amount of Rs. 5,00,000/-in the manner mentioned before on November 2, 1944. But later on during the period ending October 15, 1946 his capital account was credited with an amount of Rs. 5,07,500/-. It was further established that the deposit account in the name of Raghunath Prasad was adjusted against the overdraft account of the appellant. Raghunath Prasad died on August 16, 1945. His fixed deposit matured on Dec. 19, 1945. The amount of the deposit was not paid to the heirs of Raghunath Prasad but was adjusted the overdraft of the firm. The amount due to the Bank was liquidated but the appellant's account books showed a credit of Rs. 5,00,000/-in the account of Raghunath Prasad. The sum of Rs. 7500/-which was received on account of interest was also paid to the appellant under a stamped receipt on December 19, 1945. According to the High Court two inferences were possible. (J) That the money belonged to the appellant otherwise it could not have been adjusted against its loan (2) that the money belonged to Raghunath Prasad and it was adjusted against the dues of the appellant because it was given as security by Raghunath Prasad. The Tribunal had drawn the first inference It was not possible, therefore, for the High Court not to accept the conclusion of the Tribunal. About the other amount of Rs. 4,50,000/-out of the deposit in the name of Biswanath the High Court did not find that the materials on the record were sufficient for holding that the money belonged to the appellant.

7. The sole argument that has been addressed on behalf of the appellant is that there was hardly any justification for the High Court making a distinction between the two deposits, namely, the one in the name of Biswanath and the other in the name of Raghunath. The deposits were made in the same manner and in similar circumstances and the overdraft facilities were obtained by the appellant on the basis of both the fixed deposits. In the individual assessments also of both these persons their explanation had been accepted by the respective income tax authorities about the

source of the funds from they made the deposits. It has also been emphasised that Raghunath was running his own business and that his explanation had been fully accepted in his individual assessment and the income tax authorities could not sit in appeal over the decision in his assessment which was final and in which a definite finding had been given that the money belonged to him. All these matters have been fully dealt with in the judgment under appeal and we are unable to accede to the Contention that no distinction could be made between the deposit which stood in the name of Biswanath and the amount which was deposited in the name of Raghunath.

8. In the above view of the matter the appeal fails and it is dismissed with costs.