Bai Velbai vs Commissioner Of Income-Tax, Bombay ... on 23 January, 1963

Equivalent citations: [1963]49ITR130(SC)

JUDGMENT

S. K. DAS J. - This is an appeal by special leave. The appellant is the widow of one Kanji Jadhavji. Kanji Jadhavji had extensive business such as stevedoring, coal hauling, freight brokerage, clearing and forwarding of goods, loading and unloading of steamers, chartering of steamers, etc. These business the widow inherited on the death of her husband. For the assessment year 1947-48, the relevant accounting year being the calendar year 1946, the appellant was assessed on a total Income of Rs. 3,69,371 which was subsequently reduced to Rs. 2,99,471 by the Appellate Assistant Commissioner. While assessing the appellant, the Income-tax Officer concerned added a sum of Rs. 1,38,000 being the amount of certain high denomination notes encashed by the appellant, as income from undisclosed source. Being aggrieved by this addition, the appellant appealed to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner asked the Income-tax officer to prepare from the records in the possession of the department statements of the income returned and income assessed in the hand of the appellant for the years 1931 to 1945. These statements were duly prepared. The Income-tax Officer also prepared statements of the capital accounts in the different books of the appellant and the amounts withdrawn by her therefrom, for the assessment years 1936-1937 to 1946-1947. No books of account were, however, available for the year 1944-1945 and for the first four months of 1945-1946, some of these books, it was stated, were destroyed as a result of an explosion which took place in the Bombay docks on April 14, 1944. By the time the appeal was heard the Appellate Assistant Commissioner who had called for the aforesaid statement was transferred. His successor-in-office who dealt with the appeal held that the Income-tax Officer was justified in adding Rs. 1,38,000 as income from undisclosed sources. The appeal was accordingly dismissed. Then, there was an appeal to the Income-tax Appellate Tribunal, Bombay. By its order dated May 6, 1959, the Appellate Tribunal held that there was "no positive and tangible proof to correlate the encashment of high denomination notes worth Rs. 2,38,000 with any previous saving or withdrawals of the appellant." It, therefore, dismissed the appeal. It may be stated here that the appellant had encashed 246 high denomination currency notes of the total value of Rs. 2,46,000 at the time when the High denomination Notes (Demonetisation) Ordinance was promulgated in January, 1946. At that time the appellant made a declaration to the effect that the sources from which she had come into possession of the high denomination notes were (1) movable and immovable properties including cash left by her husband, (2) the profits which she was made from the business of her husband inherited by her, (3) rents and income from her landed propertied, (4) the moneys she had withdrawn from the said business from time to time and (5) three fixed deposits which the appellant had in three banks, these deposits having been withdrawn in 1942 when there was a panic arising out of the Second World War. Out of the aforesaid 246 notes the Income-tax Officer held that eight notes formed part of day-to-day cash balance of the business of the appellant. As regards the remaining 238 notes, the Income-tax Officer held that a sum of Rs. 1,00,000 could at most be treated as representing the saving of the appellant from all source;

therefore, he held that the remaining sum of Rs. 1,38,000 was the appellants income from undisclosed sources.

The appellant then moved the Tribunal for referring certain questions of law which according to her arose out of the Tribunals order dated May 6, 1959, to the High Court under section 66(1) of the Income-tax Act, 1922. In her true scope and effect the questions really were three in number : (1) whether there was any evidence or material to support the finding of the Tribunal that the Sum of Rs. 1,38,000 represented the appellants income from undisclosed sources; (2) whether the conclusion arrived at by the Tribunal that the sum of Rs. 1,38,000 was the appellants income from undisclosed sources was perverse in the sense that no reasonable man could come to it on the materials on record; and (3) whether the said conclusion was based on conjecture, surmise or suspicion and on a failure to consider relevant evidence in the record.

The Tribunal rejected the application holding that no question of law arose out of its order dated May 6, 1959. The appellant then moved the High Court under section 66(2) of the Act for an order directing the Tribunal to state a case on the questions of law which according to the appellant arose out of the Tribunals order. This application was summarily dismissed by the High Court on March 27, 1961. The appellant then moved this court for special leave to appeal from the order of the High Court dated March 27, 1961. This court granted special leave and the present appeal has been preferred in pursuance of the leave so granted.

We should like to make it clear at the very outset that the short question before us is the correctness or otherwise of the order of the High Court dated March 27, 1961. That again depends on whether any questions of law arise out of the order of the Tribunal dated May 6, 1959. If the order of the Tribunal raises no question of law, then clearly the High Court was right in dismissing the application for a reference under section 66 of the Act. If, on the contrary, the order of the Tribunal dated May 6, 1959, gave rise to the questions law which the appellant has raised, then the High Court was wrong in rejecting the application for a reference. It should be emphasised here that at this stage we are not answering any question of law. We are merely considering whether any questions of law arise out of the Tribunal order dated May 6, 1959, and, if so, what those questions are.

Prima facie, the question whether the amount of Rs. 1,38,000 came out of the savings or withdrawals made by the appellant from her several businesses or was income from undisclosed sources, would be a question of fact to be determined on a consideration of the facts and circumstances proved or admitted in the case. As this court observed in Sree Meenakshi Mills v. Commissioner of Income-tax, a finding of fact does not alter its character as one of fact merely because it is itself an inference from other basis facts; but a finding on a question of fact is open to attack under section 66 as erroneous in law when there is no evidence to support it or if it is perverse of has been reached without due consideration of the several relevant for such a determination.

Learned counsel for the appellant has argued that the present case comes under the second category aforesaid and the High Court was wrong in summarily rejecting the application for a reference. We

do not think that the assessment order in all its particulars can be said to come under the rule of "no evidence in support of the finding." Neither does learned counsel for the appellant so contend. What learned for the appellant contends is that the finding as to Rs. 1,38,000 being income from undisclosed sources is based on no evidence. The assessing authorities and the Tribunal referred to various circumstance proved or admitted in the case, such as the encashment of 246 high denomination notes in January, 1946, by the appellant, the reasons given at the time by her for such encashment, her letter dated November 19, 1957, explaining the sources of her income and withdrawals of cash made by her during the years 1932-1934 from her businesses, the withdrawals from fixed deposit accounts in three banks in 1942, and the investments made by her in September, 1942, and in 1943-1945. On a consideration of these circumstances, the Income-tax Officer posed two questions : (1) whether the appellant was the type of a person who would keep a large part of her savings at home uninvested, and (2) whether the high denomination notes encashed by her represented a part of her alleged accumulated saving from the year 1931. He answered those two questions against the appellant and then held that out of the sum of Rs. 2,38,000 of high denomination notes encashed by her, a sum of Rs. 1,00,000 could at most be treated as representing saving from all sources and, therefore, the balance of Rs. 1,38,000 was income from undisclosed sources. The Appellate Assistant Commissioner and the Tribunal also proceeded on the same lines. The Tribunal said :

> "Her husband died in 1931, and, under his will, she had admittedly to disburse legacies worth Rs. 2,50,000. These disbursements must have been spread over quit a long period.... But it is in evidence that in the late thirties she had two accounts in her name, viz., (1) Bai Velbai Kanji account and (2) Bai Velbai Kanji (personal) account. In the former account the cash withdrawals from 1934 to 1945 came to hardly less than two lakhs and on her own showing, this could have been utilised largely towards the payment of legacies. In the personal account dividend income, interest on securities and debentures and fixed deposit receipts were credited, and there were no appreciable withdrawals from the personal account. Besides property investments over five lakhs in the late thirties, she had three fixed deposit accounts in three banks worth Rs. 4,98,041. These fixed deposit amounts swelled by 1940-41 to Rs. 5,40,774 out of which, during the war panic she withdrew Rs. 4,00,220 in early 1942, but these moneys withdrawn were reinvested in September, 1942, and 1943. These investments comprised Rs. 2,53,980 in September, 1942, in the municipal bonds and Rs. 70,000 in 1943, in shares, followed by a further investment in 1945, in the municipal debentures. Therefore, in view of these reinvestments, the panicky withdrawals of 1942 cannot come as a plausible source to explain away any appreciable cash in her hand. There is thus no positive and tangible proof to correlate the encashment of high denomination notes worth Rs. 2,38,000 with any previous savings or withdrawals. Soon after the encashment of these notes Rs. 2,14,000 were reinvested in municipal debentures and Rs. 24,000 in Scindia shares. It is, therefore, obvious that she is a shrewd lady making judicious investments from year to year. It is impossible to believe that she could have kept this huge amount of about Rs. 2,50,000 in loose and idle cash or notes in her safe as an utterly unremunerative capital."

We are of the view that learned counsel for the appellant has prima facie given good grounds for his contention that the finding of the Tribunal as to the sum of Rs. 1,38,000 is based on no evidence; rather it is based on conjecture and surmise, and, furthermore, is vitiated by a failure to take into consideration several crucial matters bearing on the question.

We may first point out that the Tribunal has given to reasons of its own for making a distinction between the sum of Rs. 1,00,000 and the sum of Rs. 1,38,000 out of the sum of Rs. 2,38,000 received by the encashment of 238 high denomination currency notes. Assuming that the Tribunal adopted whatever reasons the Income-tax Officer had given in his assessment order, it prima facie appears to us that with regard to the sum of Rs. 1,38,000 the Income-tax Officer has not referred to any particular materials on which he made a distinction between Rs. 1,38,000 and Rs. 1,00,000. The Tribunal did indeed refer to the withdrawals which the appellant made from her fixed deposit amounts in the banks, the withdrawals amounting to about Rs. 4,00,220 early in 1942. The Tribunal then pointed out that the appellant invested Rs. 2,53,980 in September, 1942, in municipal bonds and Rs. 70,000 in shares in 1943. This was followed by a further investment in 1945 in the municipal debentures. This left a sum of a little over Rs. 76,000 with the appellant. The Tribunal referred to a further investment in municipal debentures of about Rs. 20,000. But the Tribunal did not consider the case of the appellant as regards her having the entire Rs. 76,000 and odd nor her explanation as to the source from which the municipal debentures were acquired. What, however, the Tribunal failed to consider was the withdrawals which the appellant had made in cash from the capital accounts in her different business from 1936-1937 to 1945-1946. The Income-tax Officer referred to these withdrawals and disposed of them on the short ground that the capital accounts were maintained more for the purpose of inter-departmental transfer of money than for her personal needs. Learned counsel for the appellant has referred us to these capital accounts and has pointed out that though transfer entries occurred in the accounts of 1936-1937 and 1937-1938, there were other entries in the books of the years 1939-1940 to 1945-1946 which showed that the appellant had withdrawn various amounts in cash from her businesses. These withdrawals do not appear to have been considered by the Tribunal at all. If these withdrawals are added to what the appellant had withdrawn from her fixed deposit amounts in the three banks, learned counsel for the appellant contends that the total amount would come to about Rs. 6,00,000 and would satisfactorily account for the large amount of cash in her hands. The Tribunal pointed out that the appellant had to disburse legacies worth Rs. 2,50,000 under the will left by her husband. The Tribunal opined that these disbursement must have been spread over quite a long period. The complaint of learned counsel for the appellant is that there is no evidence that the disbursements were spread over a long period and the finding of the Tribunal was based on a mere surmise. His further contention is that if the total amount of withdrawals from the business and the fixed deposit accounts were taken into consideration, the appellant would still be left with a large sum of money in her hands.

Learned counsel for the appellant has also made a grievance of the fact that in calculating the withdrawals made by the appellant from her businesses, the Income-tax Officer had first excluded withdrawals on account of household expenses, income-tax, etc; but later on he said that a portion of the case withdrawals together with the income from properties and the cash left by the appellants husband must have gone to pay the legacies, household expenses, etc. This again is said to be based on surmise rather than on any evidence on record.

We do not think that it is necessary or advisable to consider in detail the various contentions urged on behalf of the appellant. These contentions will require a detailed consideration when the question of law which arise out of the Tribunals order will for decision. It is sufficient for us to say at this stage that the three questions which the appellant has raised and to which we have made a reference earlier in this judgment are questions of law which do arise out of the Tribunals order dated May 6, 1959. In coming to this conclusion we have kept in mind the observations made by this court in Omar Salary Mahomed Sait v. Commissioner of Income-tax, and Homi Jehangir Gheesta v. Commissioner of Income-tax. We have read the order of the Tribunal as a whole and we are not unmindful of the observation made in the case of Homi Jehangir Gheesta that in considering probabilities properly arising from the facts alleged or proved, the Tribunal does not indulge in conjectures, surmises or suspicions. We may perhaps add that what we have said in this judgment is meant only to show that certain questions of law arise out of the Tribunals order and the High Court was wrong in summarily rejecting the application for a reference. As to how the questions of law should be answered will be a matter for the High Court to decide when on the statement of the case filed by the Tribunal the reference is dealt with by it.

For the reasons given above we allow this appeal and set aside the order of the High Court dated March 27, 1961, by which it summarily rejected the application for a reference under section 66 of the Act. We now direct the High Court to do what it should have done under section 66(2) of the Act, namely, to require the Appellate Tribunal to state a case on the three question of law earlier referred to in this judgment and refer them to the High Court for decision. The costs of his appeal will abide the decision on the reference, Appeal allowed.