

C. Vasantlal And Co. vs Commissioner Of Income-Tax, Bombay ... on 7 February, 1962

Equivalent citations: [1962]45ITR206(SC)

Bench: J.C. Shah, M. Hidayatullah

JUDGMENT

Shah, J.

1. The High Court of Judicature at Bombay answered in the affirmative the following two questions which were referred by the Income-tax Appellate Tribunal, Bombay, under sections 66(2) of the Income-tax Act :

"(1) Whether on the facts and in the circumstances of the case the Tribunal was justified in law in adding to the total income of the assessee the sum of Rs. 1,45,706 and/or Rs. 48,185 or any part thereof ?

(2) Whether there was any material on record to support the finding that Rs. 1,45,706 and/or 48,185 or any part thereof represent the income of the assessee ?"

2. With special leave the assesseees, Messrs. C. Vasantlal & Co., have appealed to this court.

3. The assesseees carried on business as commission agents and brokers and also in forward transactions in cotton, bullion and other commodities. In the course of proceedings for assessment of income-tax of the assesseees, for the assessment year 1947-48, two entries in the assesseees' books of accounts for Samvat 2002 (which was the previous year for the purpose of assessment) showing payments of Rs. 48,185 and Rs. 1,45,706 to Messrs. Meghaji Kapurchand and Messrs. Bhimaji Motiji respectively were noticed by the Income-tax Officer. A partner of the assesseees explained that these two parties were their constituents, and had entered into speculative transactions through them as brokers with Bhawanji Lakhmichand and Joitram Kedarnath and that the latter had suffered losses which aggregated to Rs. 12,303 and Rs. 1,81,587 respectively and that the payments to the assesseees by the said two persons "were passed on" to these two constituents. The Income-tax Officer was not satisfied with the explanation and examined Achaldas, a partner of Messrs. Meghaji Kapurchand, and Poonamchand, a partner of Messrs. Bhimaji Motiji. On a consideration of the material placed before him the Income-tax Officer held that the entries made in the relevant account books maintained by the assesseees were "fictitious", and in computing their income disallowed the assesseees' claim in respect of the amounts of Rs. 1,45,706 and Rs. 48,185. The assessee appealed against the order of assessment to the Appellate Assistant Commissioner, Bombay. It was urged before that officer that Achaldas and Poonamchand, partners of Messrs. Meghaji Kapurchand and

Messrs. Bhimaji Motiji, were examined by the Income-tax Officer in the absence of the assesseees and they had no opportunity of cross-examining them. The Appellate Assistant Commissioner summoned these two persons to appear before him and permitted the assesseees to cross examine them. The Appellate Assistant Commissioner held that the transaction in cotton which were entered in the books of accounts of the assesseees were not genuine but the assesseees had merely acted as brokers or "mediators", Joitram Kedarnath and Bhawanji Lakhmichand having directly "bought losses" from Messrs. Meghaji Kapurchand and Messrs. Bhimaji Motiji. He, therefore, directed that an amount of Rs. 1,94,890 be excluded in computing the assesseees' total income. The department appealed against the order of the Appellate Assistant Commissioner to the Income-tax Appellate Tribunal, Bombay. The Tribunal reversed the order passed by the Appellate Assistant Commissioner and restored the order passed by the Income-tax Officer. The Tribunal under the direction of the High Court of Bombay submitted a statement of the case and referred the two questions set out hereinbefore. The High Court after an exhaustive review of the evidence held that there was material on the record to support the findings of the Tribunal that the sums of Rs. 1,45,706 and Rs. 48,185 which were the subject-matter of the reference represented the income of the assesseees.

4. The Income-tax Appellate Tribunal on a review of the evidence recorded the following findings :

- (1) That the assesseees in the years previous to Samvat 2002 had no transactions with Messrs. Meghaji Kapurchand or with Messrs. Bhimaji Motiji and it was not possible to believe that transactions involving large sums of money would be put through by the assesseees in respect of new constituents without taking any deposit or security.
- (2) That the entries made in the books of accounts of the assesseees were suspicious and appeared to have been written not in the usual course of business.
- (3) That the transactions with Messrs. Meghaji Kapurchand and Messrs. Bhimaji Motiji always showed gains in their favour, there being not a single transactions were they had suffered loss. This in the opinion of the Appellate Tribunal was "unrealistic."
- (4) The partners of the two firms had stated before the Income-tax Officer that the transactions were "bogus transactions" and that they had "sold the profits with an ulterior motive."
- (5) Even in their statements before the Appellate Assistant Commissioner Achaldas and Poonamchand did not pretend that these transactions were genuine transactions. They merely asserted that the transactions were effected by persons "who were not available" at the time of the enquiry.
- (6) That Messrs. Meghaji Kapurchand and Messrs. Bhimaji Motiji had encashed the cheques issued by the assesseees and admitted that they had paid back the amounts thereof.

5. Before the Income-tax Officer they stated that the amounts of the cheques were returned by them to the assesseees but before the Appellate Assistant Commissioner they stated that they had returned those amounts to "unknown and unidentifiable parties."

6. In the light of these findings and the refusal of the assesseees to examine Joitram Kedarnath in support of their case that the latter had received payments from the assesseees as claimed, the Tribunal agreed with the view of the Income-tax Officer.

7. By the two questions referred, the High Court was called upon to advise the Tribunal whether there was any material on the record to support the finding that the amount of Rs. 1,45,706 and Rs. 48,185 represented the income of the assesseees.

8. Counsel for the assesseees in this appeal has contended that the statements of Achaldas and Poonamchand who were examined by the Income-tax Officer in the absence of the assesseees could not be regarded as evidence against the assesseees and that the only legal evidence on the record was the statement of these witnesses before the Appellate Assistant Commissioner and therein the witnesses absolved the assesseees from any complicity in the transactions.

9. We are unable to hold that the statements made by Achaldas and Poonamchand before the Income-tax Officer were not material on which the Tribunal could act. The case of the assesseees was that the transactions in respect of which they had maintained accounts were genuine transactions and that they had received payment from the parties who suffered losses, and had made it over to the parties who had earned profits. The income-tax authorities held that the transactions were not genuine transactions. Again the evidence of Achaldas and Poonamchand clearly showed that these amounts were repaid. In the statements made by these two persons before the Income-tax Officer it was asserted that the repayment of the amounts of the cheques was made to the assesseees. Before the Appellate Assistant Commissioner they stated that they handed over the moneys to some other persons whose presence could not be procured. There is nothing on the record to show that the Income-tax Officer had not disclosed to the assesseees the material he had collected by examining Achaldas and Poonamchand. In any event, the Appellate Assistant Commissioner in the interest of justice and fair play gave the assesseees an opportunity to cross-examine these two persons. The Income-tax Officer is not bound by any technical rules of the law of evidence. It is open to him to collect materials to facilitate assessment even by private enquiry. But if he desires to use the material so collected, the assessee must be informed of the material and must be given an adequate opportunity of explaining it. The statements made by Achaldas and Poonamchand before the Income-tax Officer were material on which the income-tax authorities could act provided that the material was disclosed and the assesseees had opportunity to render their explanation in that behalf. It was therefore open to the Tribunal in appreciating the evidence to rely upon the statements made by Achaldas and Poonamchand before the Income-tax Officer and to disbelieve the statements made by them before the Appellate Assistant Commissioner.

10. The jurisdiction of the High Court under section 66 of the Income-tax Act is merely advisory. The High Court does not sit in appeal over the judgment of the income-tax authorities; it is not concerned to decide whether the conclusion of the Tribunal on appreciation of evidence is correct.

There was apparently a mass of evidence on which the conclusion of the Appellate Tribunal could be founded and the question which fell to be determined by it was purely one of fact. It is true that a finding of fact which is not supported by any evidence or is unreasonable and perverse may be open to challenge on the ground that it is not supported by any material on the record, but, as we have already observed, there was material on which the Income-tax Tribunal could reasonably arrive at the conclusion which it did. The High Court was, therefore, right in recording the answers to the two questions submitted to it.

11. The appeal therefore fails and is dismissed with costs.

12. Appeal dismissed.