

(1990) 11 CAL CK 0040

Calcutta High Court

Case No: IT Reference No. 41 of 1978

Commissioner of Income Tax

APPELLANT

Vs

T.C. Saboo

RESPONDENT

Date of Decision: Nov. 20, 1990

Acts Referred:

- Income Tax Act, 1922 - Section 22(3), 34, 66(2)

Citation: (1994) 72 TAXMAN 167

Hon'ble Judges: Bhagabati Prasad Banerjee, J; Ajit K. Sengupta, J

Bench: Division Bench

Judgement

Ajit K. Sengupta, J.

In this reference u/s 66(2) of the Indian income tax Act. 1922 at the instance of the revenue, the Tribunal has referred the following two questions for the opinion of this Court for the assessment year 1952-53:

1. Whether, on the facts and in the circumstances of the case in arriving at its finding that a fund called Birla Group Officers' Fund existed and that the assessee had a deposit with the said fund prior to 1-4-1949 the Tribunal misdirected itself in law in basing its conclusion on some evidence only but ignoring evidence on other essential matters ?

2. If the answer to Question No. 1 is in the affirmative, then whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the amount of Rs. 1,13,573 received by the assessee represented the repayments of the deposits made by the assessee with the Birla Group Officers prior to 1-4-1949 and was, therefore, not to be treated as the undisclosed income of the assessee ?

Shortly stated, the facts as found by the Tribunal are as under: The assessee is an individual. The original assessment of the assessee for the assessment year 1952-53 was completed u/s 22(3) of the Indian income tax Act, 1922. Subsequently, the ITO

reopened the assessment u/s 34 of the said Act. The reassessment proceedings were initiated based on the information that the assessee had received two several sums of Rs. 68,100 and Rs. 45,472-13-6 by two several cheques dated 21-6-1951 and 20-10-1951 on United Commercial Bank, Gwalior, from a fund called Birla Group Officers' Fund, Gwalior, and these receipts had not been shown in the original return. A notice u/s 34 was served on the assessee on 30-3-1961 and in response thereto the assessee filed a return on 22-9-1961 showing the income as originally assessed. Thereupon, the ITO asked the assessee to explain the nature and source of these receipts and to show cause why these should not be assessed as income in his hands. In reply dated 7-2-1962 while accepting the receipts of the amounts it was stated by the assessee that they represented the repayment of the deposits with the fund made prior to 31-3-1951 and was not any income of the assessee during the year and was not liable to tax. The ITO issued another letter dated 13-2-1962 to the assessee requiring him to produce evidence to prove that the amount represented refund of amount with Birla Officers' Fund and also sought information in regard to the constitution of the fund, the sponsors, etc. In reply to this a certificate from the accountant of the Birla Group Officers' Fund dated 20-2-1962 was filed by the assessee to the effect that a sum of Rs. 1,13,572-13-9 was lying as deposit with them in his name as on 31-3-1951, and had been refunded by means of the two cheques. The ITO, Calcutta, appeared to have entered into correspondence with the ITO, Gwalior, with a view to ascertain the true state of affairs regarding the fund. Two communications dated 27-2-1962 and 7-3-1963 were received by the ITO, Calcutta, from the ITO, Gwalior, in which the latter expressed doubts about the genuineness of the fund. The ITO, Calcutta, also recorded the statement of the assessee on 18-12-1964. The reassessment of the assessee was made on 23-12-1964 including the said amount of Rs. 1,13,573 treating it as income of the assessee from undisclosed sources. In the assessment order, the ITO extracted a portion of the observations of the ITO, Gwalior, in his letter dated 27-2-1962 and observed that the fund could produce books of account only for the period subsequent to 1-4-1949, wherein outstanding balances had been shown as brought forward. However, he proceeded to state that for obvious reasons" no books had been produced by the fund to substantiate the assessee's contention that the deposits were made earlier and, therefore, it was reasonable to draw a conclusion that the story of alleged deposits made earlier was only a fabrication. He also observed that the assessee was not able to produce evidence as to the source of the deposits or the period when they were made and in this view an enquiry into the fact whether it was out of the savings as contended by the assessee was redundant. He also referred to certain answers given by the assessee when his statement was recorded and observed that the assessee could not give details of the precise constitution of the fund or its sponsors. Thus, the assessment came to be made including the said amount.

2. The assessee appealed to the AAC, who, after setting out the material facts relating to the assessment, noticed that the assessment had been made on the basis of an interim reply given by the ITO, Gwalior. He observed that there were two other letters from the ITO, Gwalior, dated 16-9-1964 and 22-12-1964. In the letter dated 16-9-1964, the ITO had mentioned that the books of the fund from 1-4-1949 had been produced before him and the books prior to 1-4-1949 had not been preserved due to the fact that income-tax was not applicable to the Gwalior State, where the office of the fund was situate at the relevant time. He had also enclosed copies of account of the assessee and also of another person along with that letter. In his letter dated 22-12-1964 the ITO categorically stated that the amounts received by the assessee represented the amounts paid back to him out of the deposits made by him in earlier years. A copy of the balance sheet of the fund as on 1-4-1948 was also taken note of by the AAC. A copy of the assessment order of another assessee who had received a refund similarly and which had been accepted by the ITO was also filed before him. After considering several circumstances, the AAC was of opinion that for the non-availability of the books of account of the fund prior to 1-4-1949, there was a plausible reason that there was no income tax prior to 1949 in Gwalior, an erstwhile part "B" State. He proceeded to state:

All the same, balance sheet as on 1st April, 1949 and books after that date have been produced before the income tax Officer, Gwalior, and these have been verified by him and according to his report, the fund appears to be genuine and the alleged members and depositors had genuinely deposited their own money with the said fund. No deposit was made in the year under consideration. The assessee only received repayment of the deposits made by him in earlier years.

On the basis of the facts and circumstances noticed by him, the AAC came to a conclusion that there was no justification for assessing the amount as income of the assessee from undisclosed sources for the year under consideration. He, thus, allowed the appeal deleting the addition of Rs. 1,13,573.

3. Thereafter, the revenue came up in appeal before the Tribunal and urged that the receipt of the amount in the year of account was not in dispute and the question was whether there were deposits by the assessee as alleged in the earlier years and the receipt was by way of repayment. It was stressed that the books of account of the fund prior to 1-4-1949 were not produced and, therefore, it could not be said that the deposits were in the earlier period and the balance sheet figures as on 1-4-1949 could not be verified so as to say that the amounts were brought forward amounts. It was argued that there was no written constitution of the fund and the AAC was in error in proceeding on the basis that the fund was genuine. On behalf of the assessee, it was argued that the receipt of the amounts by means of cheques from the Birla Group Officers' Fund was admitted and this was the proximate and immediate source of the receipt and the money had come from the bank account maintained by the fund. It was stressed that the matter was being inquired into

after a lapse of more than 12 years and the fund had been started during the time of the second world war and the war itself ended in 1945 and in those circumstances the receipts, etc., in regard to the deposits had not been preserved. It was argued that under the Companies Act, 1956, books of account had to be preserved for 8 years and in the circumstances of the case, the books not being preserved for the years prior to April 1949 and their non-production after 1961 could not be taken as an adverse circumstance against the assessee. It was strongly urged that the assessee was a whole time employee of Birla Jute Mills since 1930 in Calcutta and was receiving substantial salary besides income from dividends, etc., and before the ITO several dates of hearing had been fixed and the assessee stated that he could establish his resources to make the deposits but the ITO did not pursue this aspect ultimately mentioning in his order that this aspect was redundant. It was argued that after a lapse of more than 10 years the assessee could not be placed on the rack and called upon to explain not merely the origin and source of his capital contribution but the origin of origin and source of source as well. A copy of the assessment order in regard to one Pannalal Kausik for 1952-53 who had also similarly received back from the fund amounts deposited by him and in which the plea had been accepted by the ITO and also a copy of a letter of D.P. Mandelia, Secretary of the Birla Group Officers' Fund dated 30-8-1961 to the ITO, Gwalior, had been filed on behalf of the assessee. It was argued that the appreciation of facts of circumstances in the case by the AAC was sound and there was no ground to interfere with his order.

4. The Tribunal considered the submissions made both on behalf of the revenue as well as the assessee and after appreciating the evidences on record, it upheld the order of the AAC. The Tribunal, inter alia, observed that the amount was admittedly received by the assessee in 1961 by means of two cheques issued by the Birla Group Officers' Fund. This is the immediate source of the receipt. It is clear that the said fund was having bank account. The Secretary of the Fund, D.P. Mandelia, had in his letter given the details of how the deposits came to be made. According to that letter, the fund was started for investing money on a collective basis and the objects and aim of the fund were to make investments. The copy of the balance sheet of the fund as on 1-4-1948 and the books maintained subsequent thereto had been produced before the ITO, Gwalior. The letter of the ITO, Gwalior, dated 22-12-1964 gives the information collected by him and in regard to the main aspects he had no adverse comment to make. In that letter he refers to the balance sheet as on 1-4-1949 and that the assets of the fund comprised mainly of shares and securities. The investment of the fund came to about Rs. 13.24 lakhs and the cash available for the fund with Bank, etc., was about Rs. 2,13,000. The letter of the ITO, Gwalior, mentions that the credit balance of the members or creditors of the fund had been given in the list and the amounts were paid back to the members on the dates shown in the list. The assessee was one of the depositors of the fund. It is, therefore, clear that at least as on 1-4-1949 the amount stood in the assessee's name to the

credit of the fund. The assessee also produced a certificate from the treasurer and accountant of the fund to the effect that the amount was lying in deposit in the fund in his name and was refunded by means of the two cheques. It was suggested before the Tribunal during the course of the arguments by the departmental representative that the signature in the certificate was not legible and the identity of the person signing it had not been established. The Tribunal observed that there was no substance in this submission. Except saying that it was on a plain paper, the ITO did not doubt the certificate or that it was made by anyone other than the person concerned. The letter of D.P. Mandelia to the ITO, Gwalior, made it clear that Shri T.D. Lakhotia was the accountant of the fund. His letter also shows that the books prior to 1949 had not been preserved. This does not mean that there were no accounts at all maintained prior to 1949. The reason given in that letter was that there was no need to preserve them. The enquiry started in 1961 and apparently the fund authorities had not thought of preserving them for so long. Prior to 1-4-1949, there was no tax in the Gwalior State and it appears that there were no further deposits in the fund thereafter. Accordingly, the Tribunal observed that the reason given by the AAC as an explanation for the books not being preserved is also a plausible one.

5. The assessee, even according to the departmental representative, was admittedly a top executive of the Birla Group. It was clear that he was having substantial income over a long period and his capacity to make the deposits is not open to doubt. In fact it appeared that the ITO did not appreciate this aspect of the matter and stated in his order that it was redundant. In the questions put to the assessee for which answers were recorded, there was no suggestion even that he had no capacity to make deposits. The emphasis laid by the ITO on the non-availability of the books of the fund prior to 1949 and non-production of documentary evidence in regard to the deposits and making these as the sole ground for holding that the fund was not genuine or the deposits were not proved, cannot be said to be sound and correct. From the facts and circumstances, it was clear, the Tribunal observed, that a fund called the Birla Group Officers' Fund existed and they had Bank Accounts and acquired shares and securities as on 1-4-1949. Long prior to the year relevant to the assessment year under consideration the assessee had a deposit with the fund. The same came to be returned in the year of account.

6. The Tribunal also referred to the following observations of the ITO towards end of his order:

It is quite probable that the receipt represented undisclosed bonus received by the assessee during the year of account.

Referring to this opinion of the ITO, the Tribunal observed that there was no basis for such assumption and the least that could be said was that it was a wild surmise. Having regard to all the facts and circumstances of this case, the Tribunal agreed with the conclusion of the AAC that the amount received aggregating to Rs. 1,13,573

represented the repayment of the deposits made by the assessee with the Birla Group Officers' Fund prior to 1-4-1949 and that there was no justification to treat the amount as undisclosed income of the assessee.

7. At the hearing, we have not been told which evidence has been ignored by the Tribunal or what are the essential matters overlooked by the Tribunal. It is now well-settled that the findings on pure fact arrived at by the Tribunal were not to be disturbed by the High Court on a reference unless it appeared that there was no evidence before the Tribunal upon which they, as reasonable men, could come to the conclusion to which they have come; and this was so, even though the High Court would on evidence have come to a conclusion entirely different from that of the Tribunal. In other words, such a finding could be reviewed on the ground that there was no evidence to support it or that it was perverse (See [Sir Shadi Lal Sugar and General Mills Ltd. and Another Vs. Commissioner of Income Tax, Delhi](#)). It is not the case of the revenue that there was no evidence justifying the conclusion of the Tribunal. Now we have been shown how the findings of the Tribunal are perverse. The conclusion of the Tribunal based on appreciation of a number of proved facts can be assailed as unsound by considering the weight given to a single fact in isolation. The Court has to assess the cumulative effect of all the facts in their setting as a whole. Mere repetition of the findings of the ITO by the revenue at the hearing cannot improve the case. In our view, the Tribunal was justified in holding that the ITO proceeded on assumption of facts not apparent from records in coming to his findings. We do not find that the Tribunal had acted on material which was irrelevant to the enquiry or considered material which was partly relevant or partly irrelevant or based on conjectures, surmises and suspicions. As observed in *Sir Shadi Lal Sugar & General Mills Ltd.*'s case (supra) that unless misappreciation of evidence amounted to non-appreciation, no question of law would arise. Change of perspective in viewing a thing does not transform a question of fact into a question of law.

For the reasons aforesaid, the first question is answered in the negative and in favour of the assessee. In view of our answer to the first question in the negative, the second question does not call for any answer. We, therefore, decline to answer the second question.

Banerjee, J.

I agree.