

(1994) 11 BOM CK 0067**Bombay High Court****Case No:** Income-tax Reference No. 405 of 1983

Commissioner of Income Tax

APPELLANT

Vs

Smt. Kamal C. Mehboobani

RESPONDENT

Date of Decision: Nov. 24, 1994**Acts Referred:**

- Income Tax (Appellate Tribunal) Rules, 1963 - Rule 29
- Income Tax Act, 1961 - Section 143(3)

Citation: (1995) 127 CTR 234 : (1995) 214 ITR 15 : (1995) 81 TAXMAN 311**Hon'ble Judges:** S.M. Jhunjhunwala, J; B.P. Saraf, J**Bench:** Division Bench**Advocate:** T.U. Khatri, for the Appellant;

Judgement

Dr. B.P. Saraf, J.

By this reference made u/s 256(1) of the Income Tax Act, 1961, at the instance of the Revenue, the Income Tax Appellate Tribunal has referred the following question of law for our opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in declining to entertain additional evidence at the time of hearing of the appeal as per rule 29 of the Appellate Tribunal Rules ?"

2. The assessee is an individual. She was assessed by the Income Tax Officer for the assessment year 1978-79 u/s 143(3) of the Income Tax Act, 1961 ("the Act"). During the previous year relevant to the assessment year 1978-79, the assessee declared 21 high denomination notes of Rs. 1,000 each totalling Rs. 21,000. It was contended by the assessee before the Income Tax Officer that she withdrew the amount from her account with the Dena Bank from time to time and exchanged smaller notes into high denomination notes through her family friend, Shri Prem Harchandrai, Bombay, whose address was given to the Income Tax Officer at the time of hearing. The Income Tax Officer scrutinised the pass book of the assessee which disclosed

that she had withdrawn the amounts but he did not accept the contention of the assessee that she has withdrawn the amount from the Dena Bank and kept at home and got it converted into high denomination nation notes. He, therefore, treated the amount of Rs. 21,000 as income of the assessee from undisclosed sources and completed the assessment accordingly.

3. The assessee challenged the addition of Rs. 21,000 to her income as income from undisclosed sources before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner considered the bank account of the assessee and held that Rs. 21,000 received on encashment of high denomination notes was available to her. He further observed that the assessee had furnished the address of Shri Prem Harchandrai through whom the notes were exchanged and that the Income Tax Officer's order contained no material to throw any adverse light on that position. Accordingly, the Appellate Assistant Commissioner held that the addition of Rs. 21,000 as income from undisclosed sources was without any basis and deleted the same. Against this order, the Revenue appealed to the Tribunal. Before the Tribunal, the Revenue wanted to produce by way of additional evidence a letter dated April 3, 1979. The above request of the Revenue was opposed by the assessee. The Tribunal did not accept the additional evidence sought to be produced by the Revenue at the time of hearing of the appeal before it on the ground that it required investigation into facts and giving of further opportunity to the assessee. The Tribunal, therefore, refused to admit the additional evidence produced by the Revenue at that stage and considered the appeal of the Revenue on the merits and upheld the order of the Appellate Assistant Commissioner and rejected the appeal of the Revenue.

4. Aggrieved by the refusal of the Tribunal to admit the additional evidence sought to be produced by the Revenue at the stage of hearing of the appeal, the Revenue has come to us by way of reference of the question of law set out above for our opinion.

5. Rule 29 of the Income Tax Appellate Tribunal deals with production of additional evidence before the Tribunal. It reads :

"29. Production of additional evidence before the Tribunal. - The parties to the appeal shall not be entitled to produce additional evidence either oral or documentary before the Tribunal, but if the Tribunal requires any documents to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, or if the Income Tax Officer has decided the case without giving sufficient opportunity to the assessee to adduce evidence either on points specified by them or not specified by them, the Tribunal (for reasons to be recorded) may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be adduced."

6. This rule is couched in negative language so far as the rights of the parties to produce additional evidence before the Tribunal is concerned. It clearly says that the

parties to the appeal shall not be entitled to produce additional evidence either oral or documentary. In that view of the matter, the question of a party claiming a right to adduce additional evidence cannot arise. The Tribunal has, however, been given power to require any document to be produced or any witness to be examined or any affidavit to be filed to enable it to pass order or for any other sufficient cause. For this purpose also, the Tribunal has to record reasons. It is evident that in the present case the Tribunal did not think it necessary to require the production of any other document at the stage of final hearing, as in its opinion, orders could be passed in the case before it on the basis of the material on record. In such a situation, no fault can be found with the order of the Tribunal refusing to admit the additional evidence sought to be produced by the Revenue before it at the time of hearing of the appeal.

7. Learned counsel for the Revenue submits that if a party wants to produce additional evidence, the Tribunal should not refuse to admit the same. According to learned counsel, discretion is vested with the Tribunal in the matter, which should be exercised judiciously.

8. We have considered the above submission. We, however, find it difficult to accept the same because, as observed earlier, we are of the opinion that rule 29 does not confer any right on the parties as such to produce any additional evidence either oral or documentary before the Tribunal. On the other hand, such a right has specifically been taken away by prohibiting the production of the additional evidence by the parties. The power has been vested only in the Tribunal to require production of any document or evidence if it is of the opinion that it is necessary to do so to enable it to pass orders or for any other substantial cause. For doing this also, the Tribunal has to record reasons. In the present case, the Tribunal has not issued any such direction. On the other hand, it has stated that it is not satisfied that any such direction should be issued. In that view of the matter, we do not find any infirmity in the order of the Tribunal refusing to entertain the additional evidence sought to be produced by the Revenue at the time of hearing of the appeal.

9. In view of the above, we answer the question referred to us in the affirmative and against the Revenue.

10. In the facts and circumstances of the case, we make no order as to costs.