COMMISSIONER OF INCOME-TAX, WEST BENGAL, CALCUTTA

v.

SMT. ANUSUYA DEVI

November 28, 1967

[J. C. SHAH AND V. RAMASWAMI, JJ.]

Income-tax Act (11 *of* 1922), *s.* 66(1), (2) *and* (4)—*Question not raised before Tribunal either in appeal or application to state a case—If High Court can direct reference on such question—If High Court must answer question referred—Power to reframe question and call for additional statement from Tribunal when to be exercised.*

The husband of the respondent died in October 1944. For the assessment year 1945-46, his estate was assessed to income-tax on a total income of Rs. 22,160. In January 1946, the respondent encashed 584 high denomination notes of the value of Rs. 5,84,000. There were proceedings for re-assessment of the total income of the assessee, wherein it was stated before the Income-tax Officer, on behalf of the respondent, that during the previous 30 years, her husband was giving gifts to the respondent and was also setting apart money exclusively for her and their children and, that the fund so accumulated amounting to Rs. 5,84,000 remained in a cupboard and was found after his death, and therefore, the amount was not liable to tax as the income of her husband in the previous year. The Income-tax Officer disbelieved her explanation and brought the amount of Rs. 5,84,000 to tax as tre income of the respondents' husband from an undisclosed source in the year of account 1944-45. The order was confirmed by the Appellate Assistant Commissioner who also referred to the respondent's declaration under the High Denomination Bank Notes (Demonetisation) Ordinance that the amount was made over by the deceased, some time before his death, to her for her benefit and that of her 8 minor sons. The Appellate Tribunal also upheld the order of the Income-tax Officer. The respondent then filed an application under s. 66 (1) to state a case to the High Court. In that application she asserted that 494 out of the 584 notes were received from a Bank in Calcutta in realisation of a cheque drawn for Rs. 4,94,000 in September 1945 by her eldest son. The Tribunal rejected the application. The High Court, under s. 66(2) directed the Tribunal to state a case on the question:—Whether the Tribunal erred in law by basing its decision on a part of the evidence ignoring the statement made as regards the withdrawal of Rs. 4,94,000 by 494 pieces of Rs. 1,000 notes from the bank. The Tribunal, while submitting the statement of case, pointed out that the statement in the petition under s. 66(1) was materially different from that made before the Income-tax Officer and that the Tribunal was not invited to consider, at the hearing of the appeal, the truth of that statement. The High Court, thereafter, heard the reference and decided in favour of the assessee, holding that: (1) the Tribunal ignored a part of the declaration made by the respondent that 494 high denomination notes were received from the bank in Calcutta in September 1945; (2) no opportunity was given by the Tribunal to the respondent to clear up the discrepancies in her statements made at the time of the disclosure of the high denomination notes and before the Income-tax Officer; and (3) it was not open to the Court hearing a reference under s. 66(2) to hold, contrary to the decision recorded at the time when the Tribunal was directed to state the case on a question, that the question did not arise out of the order of the Tribunal.

A In appeal to this Court,

HELD : (1) In the question which was directed to be referred it was assumed that the Tribunal had before it the statement about the receipt of 494 currency notes from the bank at Calcutta. But that evidence was not before the Tribunal. No such statement was made either before the Income-tax Officer, or before the Appellate Assistant Commissioner or in the appeal before the Tribunal. The statement was made for the first time
B in the petition under s. 66(1). Even in the application it was not suggested that the finding of the Tribunal was vitiated because some relevant evidence was ignored. The order of the Tribunal was not therefore open to the objection that the appeal before it was decided on a partial review of the evidence. [471 B, D-F]

(2) The plea of want of opportunity was not raised before the Tribunal, and therefore, the validity of the conclusion of the Tribunal on the
C evidence could not be assailed before the High Court on the ground that the departmental authorities had violated the basic rules of natural justice, without raising that question before the Tribunal. [472 H]

(3) The High Court was in error in holding that at the hearing of a reference pursuant to an order calling upon the Tribunal to state a case, the High Court must proceed to answer the question without considering whether it arises out of the order of the Tribunal or whether it is a ques-
D tion of law, or whether it is academic, unnecessary or irrelevant especially when by an erroneous order the High Court directed the Tribunal to state a case on a question which did not arise out of the order of the Tribunal. [472 D—E]

Observations contra in *Chainrup Sampatram* v. *Commissioner of Income-tax, West Bengal,* 20 I.T.R. 484, overruled.

E (4) When the Tribunal was not invited to state a case on a question of law alleged to arise out of its order, the High Court could not direct the Tribunal to state it on that question. [471 G—H]

Commissioner of Income-tax v. *Scindia Steam Navigation Co. Ltd.*, 24 I.T.R. 589 followed.

(5) The irregularities in the judgment of the High Court could not be
F cured by reframing the question referred to the High Court and calling for a supplementary statement from the Tribunal The power to reframe a question may be exercised only to clarify some obscurity in the question referred or to pinpoint the real issue between the tax payer and the department or for similar other reasons. It cannot be exercised for reopening an enquiry on questions of fact, which was closed by the order of the Tribunal. Similarly, a supplementary statement could be ordered only on a question arising out of the order of the Tribunal if the court is satisfied that
G the original statement is not sufficient to enable it to determine the question raised thereby, and, when directed the supplementary statement may be only on such material and evidence as may already be on record, but not included in the statement initially made. [473 B—D]

Keshav Mills Ltd. v. *Commissioner of Income-tax, Bombay North, Ahmedabad,* 56 I.T.R. 365 and *Narain Swadeshi Weaving Mills* v. *Commissioner of Excess Profits Tax,* 26 I.T.R. 765, referred to.

H (6) The Tribunal was not in error in failing to raise and state a case on the question whether the amount of Rs. 5,84,000 was taxable in the accounting year 1944-45. That question was considered by the Income-tax Officer and by the Appellate Assistant Commissioner and the explana-

tion of the respondent was rejected by them, and no argument was raised before the tribunal that the amount, though taxable, was not the income of the year of account 1944-45. Further, when the High Court did not direct the Tribunal to state a case on the question, it must be deemed to have rejected the application to refer that question, and the order of rejection having become final, this Court cannot set it aside without an appeal by the respondent. [474 B, E, H; 475 A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2457 of 1966.

Appeal from the judgment and order dated September 13, 1963 of the Calcutta High Court in Income-tax Reference No. 29 of 1959.

S. T. Desai, B. R. L. Iyengar and *R. N. Sachthey*, for the appellant.

A. K. Sen, R. M. Hazarnavis, and *K. L. Hathi*, for the respondent.

The Judgment of the Court was delivered by

Shah, J. One Amritlal died on October 18, 1944. For the assessment year 1945-46 his estate was assessed to tax on a total income of Rs. 22,160/- from salary and other sources. In January 1946, Anusuya Devi widow of Amritlal encashed high denomination notes of the value of Rs. 5,84,000/-, and made a declaration as required by the High Denomination Bank Notes (Demonetisation) Ordinance, 1946 that :

> "A sum of Rs. 5,84,000/- in notes were made over and/or directed to be made over by the declarant's deceased husband Amritlal Ojha at Rajkot in April, 1944, sometime before his death for the benefit of declarant and her 8 minor sons."

In a proceeding for reassessment of the income of Amritlal for the assessment year 1945-46 the attorney who appeared on behalf of Anusuya Devi stated that "Amritlal was from time to time, during the last 30 years of his life, giving gifts to his wife and also setting apart money exclusively for his wife and children and that the fund so accumulated which remained in a cupboard" was found after his death. The Income-tax Officer disbelieved the explanation furnished and brought the amount of Rs. 5,84,000/- to tax as income of Amritlal in the year of account 1944-45 from an undisclosed source, and with his decision the Appellate Assistant Commissioner agreed.

At the hearing of the appeal before the Income-tax Appellate Tribunal, Anusuya Devi—widow of Amritlal—filed an affidavit in which it was stated, *inter alia* :

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5. "From time to time during our married life, late Sri Amritlal Ojha used to make presents of cash moneys to me on occasion of birthday of myself and of my sons and daughter by him and also on the occasion of his own birthday and on the anniversary of our marriage."

B

6. "My husband late Sri Amritlal Ojha used to tell me that these presents of cash money that he made was to make provisions for me and my minor sons and daughter and also to meet the expenses of their education and marriage in the event of his death."

C

8. "The total amount of the money so paid by late Sri Amritlal Ojha was Rs. 5,84,000/-. This amount was my *stridhan* property and was all along in my posssession."

This affidavit was admitted in evidence by the Tribunal, but the
D Tribunal declined to admit an affidavit of Gunvantray one of the sons of Amritlal, because in their view an attempt was made to bring on record a large number of new facts which were not disclosed before the departmental authorities. The Tribunal declined to accept the case set up by Anusuya Devi. Beside pointing out the discrepancies in the statements made from time to time,
E which rendered her case unreliable, the Tribunal expressed the view that gifts made during a long period of "20 to 30 years" could not all have been made only in thousand rupee notes. The Tribunal accordingly upheld that order bringing to tax Rs. 5,84,000/- as income from an undisclosed source in the account year 1944-45.

F In her application for stating a case to the High Court on eleven questions set out therein Anusuya Devi asserted that in her declaration under s. 6 of the High Denomination Bank Notes (Demonetisation) Ordinance, 1946, she had given information pursuant to the queries as follows :

G "Reasons for keeping above in high denomination notes rather than in current account, fixed deposit or securities.	No bank account. The amount is held in trust for minors and as prices of securities very so for greater safety the amount is held in cash for the benifit of the defandent and in trust for the minors.
When and from what source did declarant come into possession of bank notes now tendered.	A sum of Rs. 5,84,000 in notes were made over and or directed to be made over by the declarant's deceased husband Amritlal Ojha at Rajkot in April 1944 sometime before his death for the benefit of the declarant and her eight minor sons. In the latter part of August and beginning

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> of September 1945, Rs. 4,94,000/- was deposited with the Bank of India Ltd. at its Bombay Branch and transferred by T.T. to their Calcutta Branch in the account of the declarant's major son Bhupatray Ojha who drew a self cheque for Rs. 4,94,000/- received payment by 494 pieces of 1,000/- notes (included in the list) and made them over to the declarant. . . ."

The Tribunal rejected the application. The High Court of Judicature at Calcutta however directed the Income-tax Appellate Tribunal to state a case on the following question :

> "Whether the Tribunal erred in law by basing their decision on part of the evidence ignoring the statement made as regards the withdrawal of Rs. 4,94,000/- by 494 pieces of Rs. 1,000/- notes from the bank?"

In compliance with the order, the Tribunal observed that the extract from the statement incorporated in the petition under s. 66(1) was materially different from the statement reproduced in the order of the Income-tax Officer and that the Tribunal was not invited to consider at the hearing of the appeal the truth or otherwise of the alleged copy of the declaration incorporated in the petition under s. 66(1) and that at the hearing of the appeal the original declaration had not been produced.

The learned Judges of the High Court who heard the reference were apparently of the view that the question referred did not arise out of the order of the Tribunal, but they felt bound by the view expressed in *Chainrup Sampatram* v. *Commissioner of Income-tax, West Bengal*(1) that it is not open to the Court hearing a reference under s. 66(2) to hold, contrary to the decision recorded at the time when the Tribunal was directed to state the case on a question, that the question did not arise out of the order of the Tribunal. Bijayesh Mukherji, J., who delivered the principal judgment of the Court observed that the Tribunal had apparently ignored a part of the declaration made by Anusuya Devi that 494 high denomination notes out of those encashed in January 1946 were received from a Bank in Calcutta in realization of a cheque for Rs. 4,94,000/- drawn in September 1945 by Bhupatray her eldest son; that there was reason to doubt that statements referred to in his order by the Appellate Assistant Commissioner were made by Anusuya Devi or her attorney; and that in any event opportunity to "clear up the discrepancies" between the statement made at the time of the disclosure of the high denomination notes and the statements said to have been made before the Income-tax Officer or before the Appellate Assistant Commissioner ought to have been given to her. Holding that the

(1) 20 I.T.R. 484.

A order of the Tribunal suffered from those infirmities the learned Judges of the High Court answered the question in the affirmative.

In our judgment the order of the High Court cannot be sustained. The statement that out of 584 high denomination notes disclosed by Anusuya Devi 494 notes were received in realization of a cheque drawn by Bhupatray at Rajkot was made for the first B time in a petition under s. 66(1): it did not find place in the statement before the Income-tax Officer, nor in the grounds of objection raised before the Appellate Assistant Commissioner, and not even in the affidavit filed before the Tribunal. The Tribunal was never apprised of that part of the case, and had no opportunity to test the correctness of that statement. On the state- C ments made before the Income-tax Officer and in the affidavit there can be no doubt that it was the case of Anusuya Devi that she had encashed high denomination notes which she had received from her husband. No fault can therefore be found with the observations of the Tribunal that it was "a peculiar fact that all the money stated to have been received and found in the cupboard D was all in high denomination notes and the entire amount had to be exchanged under the High Denomination Bank Notes (Demonetisation) Ordinance".

In the question which was referred under the direction of the High Court, it was assumed that the Tribunal had before it the statement about the receipt of 494 currency notes of Rs. 1,000/- E each from a Bank at Calcutta in realization of a cheque. But that evidence was not before the Tribunal, and the order of the Tribunal was not open to the objection that it had decided the appeal before it on a partial review of the evidence. Even in the application made to the Tribunal under s. 66(1) in the large number of questions which it was claimed arose out of the order of the F Tribunal, it was not suggested that the finding of the Tribunal was vitiated because some relevant evidence was ignored.

If the Tribunal refuses to state a case under sub-s. (1) of s. 66 on the ground that no question of law arises, and the High Court is not satisfied with the correctness of that decision, the High Court may in exercise of the power under s. 66(2) require the Tribunal G to state a case, and refer it. When the Tribunal is not invited to state a case on a question of law alleged to arise out of its order, the High Court cannot direct the Tribunal to state it on that question: see *Commissioner of Income-tax* v. *Scindia Steam Navigation Co. Ltd.*(1). The reason of the rule is clear: the High Court cannot hold that the decision of the Tribunal refusing to state a case on a particular question is incorrect if the Tribunal was not H asked to consider whether the question arose out of its order, and whether it was a question of law.

(1) 42 I.T.R. 589.

We find it difficult to uphold the view of the Calcutta High Court that if an order is passed by the High Court calling upon the Tribunal to state a case on a question which does not arise out of the order of the Tribunal, the High Court is bound to advise the Tribunal on that question even if the question does not arise out of the order of the Tribunal. The High Court may only answer a question referred to it by the Tribunal : the High Court is however not bound to answer a question merely because it is raised and referred. It is well-settled that the High Court may decline to answer a question of fact or a question of law which is purely academic, or has no bearing on the dispute between the parties or though referred by the Tribunal does not arise out of its order. The High Court may also decline to answer a question arising out of the order of the Tribunal, if it is unnecessary or irrelevant or is not calculated to dispose of the real issue between the tax-payer and the department. If the power of the High Court to refuse to answer questions other than those which are questions of law directly related to the dispute between the tax-payer and the department, and which when answered would determine *qua* that question the dispute, be granted, we fail to see any ground for restricting that power when by an erroneous order the High Court has directed the Tribunal to state a case on a question which did not arise out of the order of the Tribunal. We are unable therefore to hold that at the hearing of a reference pursuant to an order calling upon the Tribunal to state a case, the High Court must proceed to answer the question without considering whether it arises out of the order of the Tribunal, whether it is a question of law, or whether it is academic, unnecessary or irrelevant.

We are of the opinion that the very basis of the question on which the Tribunal was called upon to submit a statement of the case did not exist. The Tribunal cannot in this case be charged with recording its decision without considering all the evidence on the record : the decision of the Tribunal was clearly based on appreciation of evidence on the record before it, and the High Court was, in our view, incompetent to direct the Tribunal to state the case on the question which was directed to be referred and dealt with by the High Court. We are also unable to agree with the observation of the High Court that the explanation which the Assistant Commissioner says was made by Anusuya Devi was not made by her or by her attorney. No such plea was apparently raised before the Tribunal. There is also no ground for believing that Anusuya Devi was not given an opportunity to "clear up the discrepancies" between the statements made by her or on her behalf from time to time in connection with the encashment of the high denomination notes. That plea was not raised before the Tribunal, and the validity of the conclusion of the Tribunal on appreciation of evidence cannot be assailed before

A the High Court on the ground that departmental authorities had violated the basic rules of natural justice without raising that question before the Tribunal.

Counsel for Anusuya Devi requested that in any event the question which has been referred by the Tribunal in pursuance of the order of the High Court may be reframed and a supplementary statement may be ordered to be submitted by the Tribunal. But power to reframe a question may be exercised to clarify some obscurity in the question referred, or to pinpoint the real issue between the tax-payer and the department or for similar other reasons : it cannot be exercised for reopening an enquiry on questions of fact which is closed by the order of the Tribunal. Again, a supplementary statement may be ordered only on the question arising out of the order of the Tribunal, and if the Court is satisfied that the statements are not sufficient to enable the Court to determine the question raised thereby, and when directed may be only on such material and evidence as may already be on the record but which has not been included in the statement initially made : *Keshav Mills Ltd.* v. *Commissioner of Income-tax, Bombay North, Ahmedabad*(1). We do not think that the judgment of this Court in *Narain Swedeshi Weaving Mills* v. *Commissioner of Excess Profits Tax*(2) lays down any general proposition that the High Court hearing a reference is entitled to amend or reframe a question and call for a supplementary statement so as to enable a party to lead evidence which has not been led before the Tribunal or the departmental authorities. In *Narain Swadeshi Weaving Mills'* case(2) this Court merely reframed the question so as to bring out the real issue between the parties.

Finally counsel for Anusuya Devi submitted that the Tribunal was bound to state a case on the following question which was set out in the application under s. 66(1) :

> 6. "Whether there is any material before the Tribunal to hold that the said sum of Rs. 5,84,000/- representing the value of the encashed high denomination notes was the income of the deceased Amritlal Ojha of the period of the year 1944-45 prior to his death ?"

Counsel submitted that since the Tribunal had failed to raise and state a case on that question, and the High Court had also in directing that a statement of case be submitted, ignored that question, in the interest of justice and for a final and satisfactory disposal of the case this Court may order a statement on that question. Counsel said that merely because on the findings of

(1) 56 I.T.R. 365. (2) 26 I.T.R 765.

the Tribunal Amritlal was on April 30, 1944, possessed of a large sum of money it could not be assumed that the whole amount was earned after April 1, 1944, and was on that account taxable in its entirely in the year of assessment 1945-46.

The question whether the amount of—Rs. 5,84,000/- was taxable in the proceeding for assessment for the year 1945-46 was considered by the Income-tax Officer and by the Appellate Assistant Commissioner. The Income-tax Officer observed that by the explanation submitted on behalf of Anusuya Devi before him, contrary to what was stated at the time of encashment of the high denomination notes, it was attempted "as an afterthought, to spread over the amount over a number of years". The contention that the amount of Rs. 5,84,000/- was not taxable in the year of assessment 1945-46 was rejected. The Appellate Assistant Commissioner observed that on the statement made by Anusuya Devi that she had received the amount from her husband in the year of account 1944-45 and that it was unfortunate that there was no complete record of the "earnings and withdrawals" of Amritlal from the various businesses in which he was interested, and that in the absence of such a record all that was to be done was to examine whether the explanation was credible. He observed that "the accounting year was very favourable for all types of business, and in all probability the sum represented some income earned by the deceased in some ventures which were not known to the Department and therefore the sum could be treated as income of Amritlal from undisclosed sources". The Tribunal observed that they were unable to believe the version of Anusuya Devi that the amount was accumulated by her husband during a long period, and since the assessee and his legal representatives had failed to prove the source of the fund, it "must be considered as of income character". Apparently, no argument was raised before the Tribunal that the amount though taxable was not income of the year of account 1944-45 and could obviously not be referred.

The High Court may answer only those questions which are actually referred to it. New questions which have not been referred cannot be raised and answered by the High Court. If the Tribunal refuses to refer a case under s. 66(1) which arises out of its order, the proper course is for the aggrieved party to move the High Court to require the Tribunal under s. 66(2) to refer the same. The question whether Rs. 5,84,000/- represented income of the year of account 1944-45 was not submitted by the Tribunal to the High Court. Even if it be assumed that the High Court was moved to direct the Tribunal to state a case on the sixth question which was set out in the application filed before the Tribunal under s. 66(1), the application must be

A deemed to have been rejected, and the order of rejection has become final. We have no power, without an appeal by the assessee, to set aside that order of the High Court and to direct the Tribunal to state a case on that question.

The appeal must therefore be allowed, and the order passed by the High Court set aside. The answer to the question will be B in the negative.

This case discloses a very disturbing state of affairs prevailing in the Income-tax Department. It is a startling revelation that the entire record of an assessee's case both before the Income-tax Officer and the Appellate Assistant Commissioner was found C missing, and has not been traced thereafter. Even if collusion be ruled out, the persons concerned in looking after the safety of the important record of proceedings of assessment cannot escape a charge of gross negligence. In the circumstances of the case, we think there shall be no order as to costs in the High Court and in this Court.

D V.P.S. *Appeal allowed.*