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COMMISSIONER OF INCOME-TAX, ORISSA

v.

ORISSA CORPORATION (P) LTD.

MARCH 19, 1986

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[R.S. PATHAK AND SABYASACHI MUKHARJI, JJ.]

Income Tax Act 1961-ss.68 and 256(2) - Cash credits in books of assessee - Onus of proof about source of income.

High Court refusing to direct Tribunal to state case - When valid. C

Interference with findings of fact by the Tribunal - Permissible under what circumstances.

For the accounting year ending on 31st March, 1961, corresponding to the assessment year 1962-63, the Income-tax D Officer did not accept the assessee's accounts showing cash credit of Rs.1,50,000 said to have been received by way of loans from three individual creditors. He produced before the Income-tax Officer, discharged hundies and confirmation letters from these creditors who were income-tax assessees. The assessee made attempts to bring the creditors before the E Income-tax Officer by issue of notices under s.131 of the Income Tax Act, 1961 but failed, as these were returned with the endorsement 'left'. The assessee thereafter wanted further opportunity to find out the whereabouts of the lenders. The Income-tax Officer observed certain inconsistencies in the confirmation letters which did not inspire confidence, and F being of the view that the alleged creditors were not genuine bankers but were mere name lenders, treated the entire amount as unproved cash credit and added the same to the income of the assessee. The Assistant Appellate Commissioner dismissed the appeal of the assessee.

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In a separate proceeding under s.271(1)(c) of the Act on the basis of the assessment order the Inspecting Assistant Commissioner imposed a penalty of Rs.50,000.

The Tribunal came to the conclusion that the Revenue was

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not justified in drawing adverse inference against the assessee. It was of the view that if the assessee could not produce the persons alleged to be the creditors, it did not lead automatically to the adverse inference that the amount represented undisclosed income of the assessee. It found that the creditors were income-tax assessees and while being B assessed they had made statements before the respective Income-tax Officers admitting that they were allowing their names to be lent, without actually giving loans as creditors of different assessees. The Tribunal also could not sustain the imposition of penalty. The Revenue sought for statement of the case to the High Court on the aspect of addition of C unproved cash credit to the total income of the assessee, and also on the imposition of penalty but the same was refused. The High Court also refused to accede to the prayers of the Revenue in its application under s.256(2) of the Act.

In the appeals before this Court on behalf of the D Revenue it was contended that in view of the provisions of s.68 of the Act the onus in these types of cases was on the assessee, and in this case the assessee had not discharged that onus.

Dismissing the appeals, the Court,

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HELD : 1.(i) The High Court has no power under s.256(2) of the 1961 Act to call upon the Appellate Tribunal to state a case if there was some evidence to support the finding recorded by the Tribunal, even if it appears to the High Court that on a re-appreciation of the evidence, it might arrive at F a conclusion different from that of the Tribunal. [987 D-E]

(ii) The conclusion reached by the Tribunal in the instant case, that the assessee had discharged the burden that lay on him could not be said to be unreasonable, or perverse or based on no evidence. If the conclusion is based on some G evidence on which it could be arrived at, no question of law as such arises. [987 G-H]

(iii) The assessee had provided the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that they were income-tax assessees. Their index H numbers were in the files of the department. The Revenue apart

from issuing notices under s. 131 of the Act at the instance of the assessee, did not pursue the matter further. It did not examine the source of income of the alleged creditors to find out whether they were credit-worthy or were such who could advance the alleged loans. There was no effort made to pursue the so-called alleged creditors. The assessee, therefore, could not do any further. [987 E-G]

2. Section 68 of 1961 Act was introduced for the first time in the Act. There was no provision in 1922 Act corresponding to this section. It gives statutory recognition to the principle that cash credits which are not satisfactorily explained might be assessed as income. It enacts that if a sum is found credited in the books of an assessee maintained for any previous year, the cash credit might, in case where it is assessed as undisclosed income, be treated as the income of that previous year, and the financial year may not be taken as the previous year for such a cash credit even if the undisclosed income was not found to be from the assessee's regular business for which the books were maintained. The cash credit might be assessed either as business profit or as income from other sources. [984 G; 985 A-C]

Lalchand Bhagat Ambica Ram v. Commissioner of Income-tax, Bihar & Orissa, 37 I.T.R. 288; **Homi Jehangir Gheesta v. Commissioner of Income-tax, Bombay City,** 41 I.T.R. 135; **Sreelekha Banerjee & Ors. v. Commissioner of Income-tax, Bihar & Orissa,** 49 I.T.R. 112 and **Commissioner of Income-tax (Central), Calcutta v. Daulatram Rawatmull,** 53 I.T.R. 574 referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1379-1380 (NT) of 1974.

From the Judgment and Order dated 31st October, 1973 of the Orissa High Court in S.J.C. Nos. 85 and 116 of 1972.

S.C. Manchanda, K.C. Dua and Ms. A. Subhashini for the Appellants.

S.P. Mittal, S.N. Aggarwal and B.P. Maheshwari for the Respondents.

The Judgment of the Court was delivered by

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SABYASACHI MUKHARJI, J. These appeals by special leave arise from the decision of the Orissa High Court dated 31st October, 1973 refusing to direct the Tribunal to state a case under section 256(2) of the Indian Income Tax Act, 1961 (hereinafter called the Act) and to refer certain questions
B said to be questions of law arising out of the appellate order of the Income Tax Appellate Tribunal for determination of the High Court. The assessment year involved was 1962-63. There were proceedings - one appeal was related to an assessment order whereby additions were made to the quantum of income disclosed by the assessee and the other was in respect of
C imposition of penalty under section 271(1)(c) read with section 274(2) of the said Act.

The questions involved respectively in two applications before the High Court were as follows :

D **"S.J.C. No. 116 of 1972**

1. Whether in the absence of proving confirmation letters and Hundis by the assessee, the assessee has discharged his initial onus by producing merely the confirmation letters and Hundis to prove the
E nature of the transaction?

2. Whether in the facts and circumstances of the case the Tribunal was right in ordering deletion of Rs. 1,50,000 as assessee's income from undisclosed sources?

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3. Whether in the facts and circumstances of the case the cash credit is the assessee's income from undisclosed sources?

S.J.C. No. 85 of 1972.

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Whether in the facts and circumstances of the case the Tribunal was right in shifting the onus from the assessee to the Revenue in deleting the penalty?"

H The assessee at the relevant time was a private limited company and maintained accounts according to the calendar

year. For the accounting year ending on 31st December, 1961 corresponding to the assessment year 1962-63, the Income-tax Officer did not accept the assessee's accounts showing cash credit of Rs. 1,50,000. Three amounts were shown to have been received by way of loans from three individual creditors of Calcutta under Hundis. The assessee produced before the Income- tax Officer letters of confirmation, the discharged Hundis and particulars of the different creditors general index numbers were with the Income-tax Department. Attempts had been made to bring those creditors before the Income-tax Officer by issue of notices under section 131 of the Act, but the said notices were returned with the endorsement 'left'. The Income-tax Officer, therefore, treated the entire amount of Rs. 1,50,000 as unproved cash credit and added the same to the income of the assessee. The appeal of the assessee to the Assistant Appellate Commissioner was dismissed. Thereafter there was further appeal to the Tribunal.

In the meantime on the basis of assessment order proceeding was taken under section 271(1)(c) of the Act and the Inspecting Assistant Commissioner imposed a penalty of Rs. 50,000. An appeal against the imposition of penalty was also filed before the Tribunal. Both the appeals were disposed of by the Tribunal.

The Tribunal noted that the credit entries stood in the name of third parties in the account books of the assessee. The explanation was that the amounts represented loans to the assessee from the concerned persons. The assessee had produced discharged Hundis and confirmation letters from these alleged lenders. The Tribunal was of the view that if the assessee could not produce these persons alleged to be the creditors, it did not follow automatically that the adverse inference should be drawn that these amounts represented undisclosed income of the assessee. It was further noted that the creditors were income-tax assessees and while being assessed they had made statements before the respective Income-tax Officers admitting that they were allowing their names to be lent without really giving loans as creditors of different assessees. A list of the assessees had also been given but the name of the present assessee did not figure in that list. The Tribunal came to the conclusion that the Revenue was not justified in drawing adverse inference against the assessee and adding

these amounts to the assessment of the assessee. The Tribunal also, in those circumstances, could not sustain the imposition of the penalty and deleted such imposition. The Revenue sought for statement of case on both these aspects i.e. on the aspect of the addition of Rs. 1,50,000 to the total income of the assessee and also on the imposition of penalty. The questions sought for by the Revenue were to the effect noted before, The Tribunal refused to refer any statement of case to the High Court on those questions. The Revenue went up in an application under section 256(2) of the Act before the High Court. The High Court also refused to accede to the prayers of the Revenue. Hence these appeals.

Our attention was drawn to the statements in the assessment order where the Income-tax Officer had observed certain inconsistencies in the confirmation letters and observed further that the confirmation letters did not inspire confidence. It also observed that the assessee had stated that after making all possible attempts in their own way, had failed to produce the parties and thereupon requested the Income-tax Officer to issue summons under section 131 to all the alleged creditors and the notices under section 131 of the Act which had come back unserved with the remarks 'left'. The assessee thereafter wanted further opportunity to find out the present whereabouts of the alleged lenders. The Income-tax Officer observed further that the wide prevalence of Hundi racket was well-known and it had been established beyond doubt that most of the so-called Hundiwallas are not genuine bankers but mere name lenders.

It was argued that in view of the provisions of section 68 of the Act, the onus in these types of cases was on the assessee and in this case the assessee had not discharged that onus and in the premises questions of law as indicated above arose. Section 68 of 1961 Act was introduced for the first time in the Act. There was no provision in 1922 Act corresponding to this section. The section states that where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Income-tax Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year. The

section only gives statutory recognition to the principle that cash credits which are not satisfactorily explained might be assessed as income. The section enacts that if a sum is found credited in the books of an assessee maintained for any previous year (which might be different from the financial year), the cash credit might, in case where it is assessed as undisclosed income, be treated as the income of that previous year, and the financial year may not be taken as the previous year for such a cash credit even if the undisclosed income was not found to be from the assessee's regular business for which the books were maintained. The cash credit might be assessed either as business profits or as income from other sources.

Under the 1922 Act where a large amount of cash was found credited on the very first day of the accounting year, and considering the extent of the business, it was not possible that the assessee earned a profit of that amount in one day, the amount could not be assessed as the income of the year from that business on the first day of which it was credited in the books. Under this section, even in such a case the unexplained cash credit might be assessed as the income of the accounting year for which the books are maintained. See in this connection the observations of **Kanga and Palkhiwala's Income Tax,** Seventh Edition, Vol. I pages 609 and 610.

To what extent the assessee has obligation to discharge the burden of proving that these were genuine incomes has been considered by this Court in **Lalchand Bhagat Ambica Ram v. Commissioner of Income-tax, Bihar and Orissa,** 37 ITR 288. This Court was concerned there with the encashment of high denomination notes. In that case some unexplained high denomination notes were treated as the undisclosed income of the assessee. This Court held that when a court of fact arrives at its decision by considering material which is irrelevant to the enquiry, or act on material, partly relevant and partly irrelevant, and it is impossible to say to what extent the mind of the court was affected by the irrelevant material used by it in arriving at its decision, a question of law arises, whether the finding of the court is not vitiated by reason of its having relied upon conjectures, surmises and suspicions not supported by any evidence on record or partly upon evidence and partly upon inadmissible material. On no account whatever should the Tribunal base its findings on

A suspicions, conjectures or surmises, nor should it act on no evidence at all or on improper rejection of material and relevant evidence or partly on evidence and partly on suspicions, conjectures and surmises. In that case the so-called hundi racket in which the assessee was alleged to have been involved was not proved. That was only a suspicion B of the Revenue.

The question was again considered by this Court in **Homi Jehangir Gheesta v. Commissioner of Income-tax, Bombay City,** 41 ITR 135, when this Court reiterated that it was not in all cases that by mere rejection of the explanation of the C assessee, the character of a particular receipt as income could be said to have been established; but where the circumstances of the rejection were such that the only proper inference was that the receipt must be treated as income in the hands of the assessee, there was no reason why the assessing authority should not draw such an inference. Such an D inference was an inference of fact and not of law. It was further observed that in determining whether an order of the Appellate Tribunal would give rise to a question of law the court must read the order of the Tribunal as a whole to determine whether every material fact, for and against the assessee, had been considered fairly and with due care; E whether the evidence pro and con had been considered in reaching the final conclusion; and whether the conclusion reached by the Tribunal had been coloured by irrelevant considerations or matters of prejudice. It was further reiterated that the previous decisions of this Court did not require that the order of the Tribunal must be examined F sentence by sentence through a microscope as it were, so as to discover a minor lapse here or an incautious opinion there to be used as a peg on which to hang an issue of law. In considering probabilities properly arising from the facts alleged or proved, the Tribunal did not indulge in conjectures, surmises or suspicions.

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In **Sreelekha Banerjee and Others v. Commissioner of Income-tax, Bihar and Orissa,** 49 ITR 112, this Court held that if there was an entry in the account books of the assessee which showed the receipt of a sum on conversion of high denomination notes tendered for conversion by the assessee H himself, it is necessary for the assessee to establish, if

asked, what the source of that money was and to prove that it was not income. The department was not at that stage required to prove anything. It could ask the assessee to produce any books of account or other documents or evidence pertinent to the explanation if one was furnished, and examine the evidence and the explanation. If the explanation showed that the receipt was not of an income nature, the department could not act unreasonably and reject that explanation to hold that it was income. If, however, the evidence was unconvincing then such rejection could be made. The department cannot by merely rejecting unreasonably a good explanation, convert good proof into no proof.

In **Commissioner of Income-tax (Central), Calcutta v. Daulatram Rawatmull**, 53 ITR 574, the principles governing reference under section 66 of 1922 Act similar to section 256 of 1961 Act were discussed and it was held that the High Court has no power under section 66(2) of the Indian Income-tax Act, 1922 which is in pari-materia with section 256(2) of the Act, to call upon the Appellate Tribunal to state a case if there was some evidence to support the finding recorded by the Tribunal, even if it appears to the High Court that on a re-appreciation of the evidence, it might arrive at a conclusion different from that of the Tribunal.

In this case the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income-tax assessees. Their index number was in the file of the Revenue. The Revenue, apart from issuing notices under section 131 at the instance of the assessee, did not pursue the matter further. The Revenue did not examine the source of income of the said alleged creditors to find out whether they were credit-worthy or were such who could advance the alleged loans. There was no effort made to pursue the so called alleged creditors. In those circumstances, the assessee could not do any further. In the premises, if the Tribunal came to the conclusion that the assessee had discharged the burden that lay on him then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion is based on some evidence on which a conclusion could be arrived at, no question of law as such arises.

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It is common ground that the question on the penalty aspect depended on the quantum aspect.

In the premises it cannot be said that any question of law arose in these cases. The High Court was, therefore, B right in refusing to refer the questions sought for. The appeals, therefore, fail and are dismissed with costs.

P.S.S. Appeals dismissed.