1960

September 22

HOMI JEHANGIR GHEESTA

v.

THE COMMISSIONER OF INCOME-TAX, BOMBAY

(S. K. DAS, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Income tax—Assessment—Income from undisclosed source—Refusal by Appellate Tribunal to state a case—Summary refusal by High Court to direct a reference—Question of law, when can be said to arise from the order of the Tribunal—Indian Income-tax Act, 1922 (XI of 1922), s. 66(2).

The appellant encashed high denomination currency notes of the value of Rs. 87,500 and was called upon by the Income-tax Officer to submit a return for the relevant year. The appellant made three statements, discrepant in material particulars, at different stages as to how he received the amount. The Income-tax Officer held that the true nature of the receipt had not been disclosed, treated it as income from an undisclosed source and assessed him accordingly. The Assistant Commissioner of Income-tax upheld that order on appeal. On a further appeal, the Appellate Tribunal reviewed the facts, considered the discrepancies in the appellant's case and affirmed the order of assessment. An application for a reference to the High Court having been made under s. 66 of the Indian Income-tax Act, the Tribunal held that no question of law arose from its order and dismissed the same. The High Court thereafter summarily dismissed the application made by the appellant under s. 66(2) of the Act. Against that order of summary dismissal special leave to appeal was obtained from this court and the sole question for determination in the appeal was whether the order of the Tribunal on the face of it disclosed any question of law and if the High Court was right in summarily dismissing the application under s. 66(2) of the Act.

Held, that no question of law arose from the order of the Tribunal and the appeal must fail.

In order to decide whether the principles laid down by this court in *Dhirajlal Girdharilal* v. *Commissioner of Income-tax, Bombay*, (1954) 26 I.T.R. 736 and *Omar Salay Mohamed Sait* v. *Commissioner of Income-tax, Madras*, (1959) 37 I.T.R. 151, applied to a particular case, it was necessary to read the order of the Tribunal as a whole for determining whether or not it had properly considered the material facts and the evidence, for and against, in coming to its final conclusion and whether any irrelevant consideration or matter of prejudice had vitiated such conclusion. Those decisions do not require that the order of the Tribunal must be examined sentence by sentence so as to discover a minor lapse here or an incautious opinion there and rest a question of law thereon.

Dhirajlal Girdharilal v. *Commissioner of Income-tax, Bombay*, (1954) 26 I.T.R. 736 and *Omar Saley Mohamed Sait* v. *Commissioner of Income-tax, Madras*, (1959) 37 I.T.R. 151, explained.

Although a mere rejection of an explanation given by the assessee does not invariably establish the nature of a receipt, where the circumstances of the rejection are such as to properly raise the inference that the receipt is an income, the assessing authorities are entitled to draw that inference. Such an inference is one of fact and not of law.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 24 of 1958.

Appeal by special leave from the judgment and order dated October 4, 1956, of the former Bombay High Court in I.T.A. No. 49 of 1956.

R. J. Kolah, S. N. Andley, J. B. Dadachanji, Rameshwar Nath and *P. L. Vohra*, for the appellant.

K. N. Rajagopal Sastri and *D. Gupta*, for the respondent.

1960. September 22. The Judgment of the Court was delivered by

S. K. DAS J.—For the assessment year 1946-47 the appellant Homi Jehangir Gheesta was assessed to income-tax on a total income of Rs. 87,500 under s. 23(3) of the Indian Income-tax Act, 1922. The circumstances in which he was so assessed were the following.

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The appellant's case was that M. H. Sanjana, maternal grand father of the appellant, died on or about May 10, 1920. There was litigation between his widow Cursetbai and Bai Jerbanoo, Sanjana's daughter by his first wife, about the validity of a will left by Sanjana. Bai Jerbanoo was the appellant's mother. The litigation was compromised and the appellant's mother got one-third share in the estate left by Sanjana the total value of which estate was about Rs. 9,88,000. Bai Jerbanoo died in 1933, leaving her husband Jehangirji (appellant's father), her son Homi (appellant) and a daughter named Aloo. It was stated, though there was no evidence thereof, that Bai Jerbanoo left an estate worth about Rs. 2,10,000 when she died. The appellant was a minor at the time of

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his mother's death. He had two uncles then, Phirozeshaw and Kaikhusroo. Phirozeshaw was the eldest member of the family. On his mother's death the appellant's share of the estate was Rs. 70,000. Phirozeshaw took charge of it and made investments. He died on December 12, 1945. Kaikhusroo, younger brother of Phirozeshaw and one of the executors of his will, took charge of the estate of Phirozeshaw. When he opened a safe belonging to Phirozeshaw he found a packet with the name of the appellant on it. That packet contained high denomination currency notes of the value of Rs. 87,500. On January 24, 1946, the appellant tendered those notes for encashment and made a declaration which was then necessary and in the declaration he said :

" Legacy from my mother who died in 1933 when I was minor and money whereof was invested from time to time by my father and late uncle Phirozeshaw who recently died."

When the appellant received a notice from the Income-tax Officer to submit a return of his income for the relevant year, he submitted a return showing " nil " income. When asked about the high denomination notes which he had encashed, he said in a letter dated January 7, 1947, that his uncle Phirozeshaw who used to manage his estate during his minority handed over to him and his father the sum of Rs. 87,500 sometime before his (i. e., Phirozeshaw's) death in 1945. This was a story different from the one later given, about the opening of the safe by Kaikhusroo after Phirozeshaw's death and the finding of a packet there in the name of the appellant. The appellant also filed an affidavit before the Income-tax Officer on September 29, 1949, which also contained contradictory statements. On a consideration of all the materials before him, the Income-tax Officer did not accept the case of the appellant but came to the conclusion that the true nature of the receipt of Rs. 87,500 was not disclosed. He treated the amount as appellant's income from some source not disclosed and assessed him accordingly.

The appellant preferred an appeal to the Assistant

Commissioner of Income-tax. At the appellate stage the statements of the appellant's father and uncle were taken by the Income-tax Officer, D-II Ward, Bombay, and a further statement of the appellant's uncle Kaikhusroo was taken by the appellate authority. That authority came to the same conclusion as the Income-tax Officer had come to.

Then there was an appeal to the Income-tax Appellate Tribunal, which again reviewed the facts of the case. The Tribunal pointed out the following important discrepancies in the case sought to be made out by the appellant:

"(i) Declaration dated 24-1-1946 by the assessee says that mother's legacy was invested "by my father and my late uncle Phirozeshaw". His letter dated 7-1-1947 says that his uncle (i.e., Phirozeshaw) only managed his estate. The object of this variation is obviously to shield his father from inconvenient examination. The uncle had already departed for his eternal home.

(ii) Assessee's letter dated 7-1-1947 says that the uncle Phirozeshaw handed over money "to me and my father" before his death. The affidavit dated 29-9-1949 tells another story, viz., the executor Kaikhusroo handed over money to the assessee after Phirozeshaw's death. In another part of the said affidavit it is said that the said executor handed over money to assessee's father. The affidavit assures us that the declaration regarding high denomination notes was made on the information given him by his father. The assessee-son nowhere refers to any "packet". Indeed, the theory of "packet" was pronounced by the Executor Kaikhusroo only when he appeared before the Income-tax Officer on 22-2-1952.

(iii) In his statement dated 22-2-1952 Mr. Kaikhusroo says that he "found an envelope containing Rs. 87,500 I took charge of this money and handed over the money to Homi." Before the Appellate Assistant Commissioner H. Range, the same Mr. Kaikhusroo later on said:

"I handed over the packets as they were. I did

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not count the notes or verify the contents." Some of the answers given as to "receipts" and "inventory" by the executor Kaikhusroo show that he did not take even the reasonable precautions that an ordinary person would take, not to talk of an executor."

The Tribunal then expressed its conclusion thus:

"We have, in these circumstances, no hesitation whatever in holding that the assessee has miserably failed to explain satisfactorily the source of the sum of Rs. 87,500. It is properly taxed as income."

It dismissed the appeal by its Order dated October 7, 1955.

The appellant then moved the Tribunal to refer certain questions of law to the High Court, which questions according to the appellant arose out of the Tribunal's order. The Tribunal held that no question of law arose out of its order dated October 7, 1955, and by its order dated March 8, 1956, dismissed the application of the appellant for a reference under s. 66 of the Income-tax Act, 1922.

The appellant unsuccessfully moved the Bombay High Court by means of a petition under s. 66(2). This petition was summarily dismissed by the High Court on October 4, 1956. The appellant then filed a petition for special leave to appeal to this Court. By an order dated December 3, 1956, this Court granted Special Leave to Appeal to this Court from the order of the Bombay High Court dated October 4, 1956, but made no order at that stage on the petition for special leave to appeal from the orders of the Tribunal dated October 7, 1955, and March 8, 1956. The present appeal has been filed pursuant to the special leave granted by this Court.

The short point for consideration is this—was the High Court right in summarily rejecting the petition under s. 66 (2)? In other words, did the order of the Tribunal dated October 7, 1955, on the face of it raise any question of law? On behalf of the appellant it has been argued that the principles laid down by this Court in *Dhirajlal Girdharilal* v. *Commissioner of Income-tax, Bombay* (1) apply, because though the decision of the

(1) (1954) 26 I. T. R. 736.

Tribunal is final on a question of fact, an issue of law arises if the Tribunal arrives at its decision by considering material which is irrelevant to the enquiry, or by considering material which is partly relevant and partly irrelevant, or bases its decision partly on conjectures, surmises and suspicions. It is contended that on the face of it the decision of the Tribunal suffers from all the three defects mentioned above.

Learned Counsel for the appellant has made a grievance of that part of the order in which the Appellate Tribunal states: "We were also not told why the deceased uncle, if he took charge of the minor's money, did not hand it over to Bai Aloo when she became major in 1939 or even when she got married in 1944". It is contended that this was an irrelevant consideration, and Bai Aloo herself made a statement before the Income-tax Officer, D-II Ward, Bombay, on February 22, 1952, in which she indicated the circumstances how she also received a sum of Rs. 85,000 from her uncle Phirozeshaw before the latter's death. She further stated that she also submitted a return to the Income-tax Officer but was not subjected to any assessment on the sum received. The argument of learned Counsel for the appellant is that it was not a relevant consideration as to why Phirozeshaw did not hand over the money to Bai Aloo in 1939 or in 1944, and if Bai Aloo's statements were to be taken into consideration, they were in favour of the appellant in as much as no assessment was made on Bai Aloo in respect of the sum she had received. We do not consider that the circumstances referred to by the Tribunal in connection with Bai Aloo's statement were irrelevant. What the Tribunal had to consider was the correctness or otherwise of a story in which the mother was stated to have left Rs. 2,10,000 out of which the heirs got one third share each. The Tribunal had to consider each aspect of the story in order to judge of its probability and from that point of view it was a relevant consideration as to why Bai Aloo's money was not paid when she became major or when she got married. It was also a relevant consideration as to what the father of the appellant did with his

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share of the money and the Tribunal rightly pointed out that the father took cover under "mixing of investments". These were relevant considerations for judging the probability of the story. The Tribunal also rightly pointed out that the fact that Bai Aloo was not assessed did not make the story any more probable.

The Tribunal stated in its order that a summons was issued to the father by the Income-tax Officer to appear before the latter on June 23, 1950. The father failed to comply with the summons. This circumstance, it is argued, should not have been used against the appellant, because the record showed that the summons was served on the father on June 22, 1950, for attendance on the next day and the father wrote a letter stating that it was not possible for him to attend on the next day and, therefore, asked for another date. We do not think that this circumstance vitiates the order of the Tribunal which was based on grounds much more substantial than the failure of summons issued against him. The father was actually examined later and his statements were taken into consideration. One point made by the Tribunal was that no explanation was forthcoming as to why the uncle took charge of the share of the appellant and his sister when their father was alive and why the father allowed himself to be effaced in the matter of custody and management of the funds belonging to his children. We consider that this circumstance was also a relevant consideration, and if the father was in a position to give an explanation, he should have done so when he made his statement before the Income-tax Officer, D-II Ward, Bombay, on February 8, 1952.

The Tribunal states: "We were also told that the assessee was taking his education between 1943 and 1950 and as such he had no opportunity to earn any income. In a place like Bombay and particularly in the family of a businessman, a person may earn even when he learns." These observations of the Tribunal has been very seriously commented on by learned Counsel for the appellant. Learned Counsel has stated that certificates from the school, college and

university authorities were produced by the appellant right upto 1950 which showed that the appellant was a student till 1950 and after seeing the certificates the Tribunal should not have said—"We were also told etc." According to learned Counsel this showed that the finding of the Tribunal was coloured by prejudice. We are unable to agree. Even if it be taken that the appellant satisfactorily proved that he was a student till 1950, we do not think that it makes any real difference as to the main question at issue, which was whether the appellant received the sum of Rs. 70,000 from the estate of his mother, later increased by investments to Rs. 87,500 in 1945. The Tribunal rightly pointed out that no evidence was given of the value of the estate left by the mother, though there was some evidence of what the mother received from the estate of her father Sanjana; nor was there any evidence of the investments said to have been made which led to an addition to the original sum of Rs. 70,000. It has been argued that it was a mere surmise on the part of the Tribunal to say that in a place like Bombay a person may earn when he learns. Even if the Tribunal is wrong in this respect, we do not think that it is a matter of any consequence.

We must read the order of the Tribunal as a whole to determine whether every material fact, for and against the assessee, has been considered fairly and with the due care; whether the evidence pro and con has been considered in reaching the final conclusion; and whether the conclusion reached by the Tribunal has been coloured by irrelevant considerations or matters of prejudice. Learned Counsel for the appellant has taken us through the entire order of the Tribunal as also the relevant materials on which it is based. Having examined the order of the Tribunal and those materials, we are unable to agree with learned Counsel for the appellant that the order of the Tribunal is vitiated by any of the defects adverted to in *Dhirajlal Girdharilal* v. *Commissioner of Income-tax, Bombay* (1) or *Omar Salay Mohamed Sait* v. *Commissioner of Income-tax, Madras* (2). We must make

(1) (1954) 26 I.T.R. 736. (2) (1959) 37 I.T.R. 151.

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it clear that we do not think that those decisions require that the order of the Tribunal must be examined 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 view of the arguments advanced before us it is perhaps necessary to add that in considering probabilities properly arising from the facts alleged or proved, the Tribunal does not indulge in conjectures, surmises or suspicions.

It has also been argued before us that even if the explanation of the appellant as to the sum of Rs. 87,500 is not accepted, the Department did not prove by any direct evidence that the amount was income in the hands of the appellant. We do not think that in a case like the one before us the Department was required to prove by direct evidence that the sum of Rs. 87,500 was income in the hands of the appellant. Indeed, we agree that it is not in all cases that by mere rejection of the explanation of the assessee, the character of a particular receipt as income can be said to have been established; but where the circumstances of the rejection are such that the only proper inference is that the receipt must be treated as income in the hands of the assessee, there is no reason why the assessing authorities should not draw such an inference. Such an inference is an inference of fact and not of law.

For the reasons given above we are of the view that no question of law arose from the order of the Tribunal and we see no grounds for interference with the judgment and order of the Bombay High Court, dated October 4, 1956. The appeal accordingly fails and is dismissed with costs.

Appeal dismissed.