

For these reasons I am of the opinion that the petition ought to be dismissed with costs. I would order accordingly.

Union of India
v.
M/s. Ram Sukh
Dass and Bros.

B.R.T.

Bhandari, C. J.

INCOME-TAX CASE

Before Bhandari, C. J., and Mehar Singh, J.

COMMISSIONER OF INCOME-TAX,—*Petitioner*

versus

THE MOTOR & GENERAL FINANCE, LTD.,—*Respondent*

Income-tax Case No. 4-D of 1955

Indian Income-tax Act (XI of 1922)—Section 66(2)—Finding of fact by the Tribunal—How far binding on the superior Court—Question of law—When arises.

1959
Dec., 24th

Held, that the findings recorded by a Tribunal on a question of fact are binding on all concerned. If, therefore, there is any competent and legally sufficient evidence reasonably tending to support the finding of the Tribunal on a question of fact, the finding must be deemed to be a finding of fact and may not be disturbed even if the Court is of the opinion that it would have come to a contrary conclusion if it had occupied the place of the Tribunal. The evidence before the Tribunal must be accepted as true, unless inherently impossible or improbable, and must be construed most favourably in support of the finding. If, however, there is no evidence to support the finding of the Tribunal, or if it is not legally sufficient to support the finding, or if there is no competent and relevant material to support the finding, or if the evidence is so improbable as to be incredible and amounts to no evidences, or if the finding is based wholly or partly on conjectures, surmises and suspicions, a question of law arises. The legal effect of evidence is a question of law. If the Tribunal comes to the conclusion that the business structure or an entire activity or organisation of a company has disappeared and if there is an entire failure of evidence to

support the finding. the decision raises a question of law. The question whether a particular receipt is a revenue receipt or a capital receipt is also a question of law, for it is impossible to determine the nature of a receipt without construing the provisions of the Income-tax Act and without ascertaining the legal meaning of certain portions of the statute.

Petition under Section 66(2) of the Indian Income-Tax Act.

K. N. RAJ GOPAL SHASTRI, for Petitioner.

KIRPA RAM BAJAJ, for Respondent.

JUDGMENT

Bhandari, C. J. BHANDARI, C.J.—These two petitions under section 66(2) of the Indian Income-tax Act raise the question whether the Appellate Tribunal should be required to state a case and to refer to this Court certain questions of law which are said to have arisen out of its order, dated the 19th July, 1954.

The petitioner in these cases is the Commissioner of Income-tax while the respondent in one case is the Motor and General Finance Limited, Delhi, and the respondent in the other case is Messrs Goodwill Pictures Limited, Delhi. The first Company, as its name implies, finances motor and other businesses, while the second Company carries on the business of distribution and exhibition of cinema films.

The first Company commenced its business with the purchase and sale of motor vehicles on hire-purchase basis, but later extended it to the purchase and sale of land and to the acquisition of films on hire-purchase system. In the accounting

year 1945-46 the Company made the following addition to the Objects Clause of its Memorandum of Association :—

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“To carry on the business of film finance, whether by system of hire-purchase, co-partnership, profit sharing, royalty and/or on percentage commission or any other form ; and to act as producers, distributors, exhibitors of cinema films, and to carry on business of cinematograph trade and industry in all its branches.”

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On the 31st August, 1946, the first Company entered into an agreement with Kardar Productions of Bombay and acquired rights, in lieu of an advance of Rs. 36,00,000, to distribute throughout the world seven pictures, one of which was under production and six of which were to be produced in future. They were to receive 10 per cent on all realisations in respect of the seven pictures in addition to the commission that was to be paid to the territorial distributors appointed by them. On the 21st September, 1948, the two Companies entered into an agreement with each other whereby the first Company appointed the second Company as the sole distributing agents on commission basis for Delhi, United Provinces, and East Punjab in respect of pictures of Kardar Productions. The Producer delivered two pictures to the first Company in 1947 and two, namely, “Natak” and “Dard” in 1948. The first two were not very successful, but the last two turned to be box-office hits, yielding an income of about Rs. 40,00,000. The Producer failed to deliver the remaining pictures to the first Company and the latter were unable to perform their part of the contract with the second Company. The first Company later brought a suit for

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specific performance against the Producer which ended in the passing of a compromise decree on the 30th December, 1948. According to this decree the Producer was to pay to the first Company a sum of Rs. 5,43,812-5-6 in respect of the amounts of advances and other moneys due and payable and a sum of Rs. 3,50,000 in full satisfaction of the settled account of commission in respect of the pictures already delivered by the Producer to the first Company as well as in respect of the pictures not yet delivered and compensation for early termination of the agency agreement and damages, if any, which might be claimable by the second Company from the first Company or the Producer for non-delivery of "Dil-lagi" and for termination of the agency in respect of the pictures "Natak" and "Dard" for the East Punjab Circuit of the Indian Dominion.

On the 26th February, 1949, the first Company agreed to pay and the second Company to receive a sum of Rs. 75,000 as compensation for the early termination of their agency. After the first Company had paid a sum of Rs. 75,000 to the second Company out of a sum of Rs. 3,50,000 received by them from the Producer, the first Company credited a sum of Rs. 2,75,000 to the reserve account instead of profit and loss account. The Income-tax Officer came to the conclusion that the sum of Rs. 2,75,000 in the hands of the first Company and the sum of Rs. 75,000 in the hands of the second Company were regular trade receipts assessable to income-tax, and the conclusion of the Income-tax Officer was confirmed by the Assistant Commissioner in appeal. The Appellate Tribunal, however, came to a contrary conclusion. It held that the sum of Rs. 2,75,000 was in respect of the cessation of the first Company's activity as a distributor of films and that the sum of Rs. 75,000 was in respect of the cessation of the second Company's activity as

a sub-distributor of films and as such in the nature of a capital receipt. In the course of its order dated the 19th July, 1954, the Tribunal observed as follows :—

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“It is strenuously urged on behalf of the Department that the business of Messrs Motor and General Finance Limited was that of financing and it was in the course of the financing business that Kardar of Bombay received the finance for producing pictures from the assessee and the finance to Kardar of Bombay resulted in a receipt of net sum of Rs. 2,75,000 by the assessee. It seems to us that there is no force in the argument advanced on behalf of the Department. Even if the advances for production of pictures made to Kardar of Bombay were connected and were incidental to the business of financing the hire-purchase of motor-cars, the compensation received by the Motor and General Finance, Limited, was in respect of the cessation of the assessee’s activity as a distributor of films. By receiving the net sum of Rs. 2,75,000 the Motor and General Finance, Limited, divested itself of the right to distribute films produced by A. R. Kardar of Bombay and the Goodwill Pictures, Limited, in its turn divested itself of the right to sub-distribute the abovementioned productions. The result in each case was the disappearance of a business structure. It is a case of an entire activity or an entire organisation disappearing. In this view we conclude that the receipts of Rs. 2,75,000 in the hands of the Motor

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and General Finance, Limited, and Rs. 75,000 in the hands of the Goodwill Pictures, Limited, are receipts in the nature of capital receipts.”

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The Commissioner of Income-tax was dissatisfied with the decision of the Tribunal and required the Tribunal to refer the following questions of law to this Court under the provisions of section 66(1) of the Indian Income-tax Act, 1922, namely :—

- “(1) Whether on the facts and circumstances of the case the sum of Rs. 2,75,000 (net) received by the assessee (the Motor and General Finance, Limited) and the sum of Rs. 75,000 received by the assessee (The Goodwill Pictures, Limited) was a trading receipt or partook of the nature of a capital receipt ?
- (2) Whether there was material on which the Tribunal could find that the business structure or an entire activity or organisation of the assessee had disappeared ?”

The Tribunal dismissed both the applications by means of an order which was in the following terms :—

“The Tribunal upon the facts set out in the order of the Tribunal, arrived at the conclusion to the effect that in each case the assessee concerned was faced with the disappearance of a business structure. If the aforementioned finding is correct, there can be no dispute about the legal consequences flowing from

that finding since this matter is admittedly well settled. The finding itself is, in our opinion, a pure finding of fact. Being of the opinion that no question of law arises out of the Tribunal's order dated the 19th July, 1954, we dismiss both the applications."

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The Commissioner of Income-tax has come to this Court under section 66(2) of the Indian Income-tax Act, and the question for this Court is whether any question of law has arisen which ought to be referred to this Court.

The learned counsel for the Department contends that the findings of the Tribunal that the compensation received by the two Companies was in respect of the cessation of the assessee's activity as distributors of films and that it was a clear case of disappearance of a business structure or an entire organisation are completely unsupported by evidence. On the other hand, there is abundant material on the file to show that the two Companies are still carrying on business as before and that the structure and organisation of the Companies is wholly intact. Compensation received for breach of one of the several contracts entered into by a company while carrying on a business cannot be said to be a capital receipt.

The provisions of the Indian Income-tax Act make it quite clear that the findings recorded by a Tribunal on a question of fact are binding and conclusive on all concerned. If, therefore, there is any competent and legally sufficient evidence reasonably tending to support the finding of the Tribunal on a question of fact, the finding must be deemed to be a finding of fact and may not be disturbed even if the Court is of the opinion that it

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would have come to a contrary conclusion if it had occupied the place of the Tribunal. The evidence before the Tribunal must be accepted as true, unless inherently impossible or improbable, and must be construed most favourably in support of the finding. If, however, there is no evidence to support the finding of the Tribunal, or if it is not legally sufficient to support the finding, or if there is no competent and relevant material to support the finding, or if the evidence is so improbable as to be incredible and amounts to no evidence, or if the finding is based wholly or partly on conjectures, surmises and suspicions, a question of law arises. The legal effect of evidence is a question of law. It follows as a consequence that if the Tribunal comes to the conclusion that the business structure or an entire activity or organisation of a company has disappeared and if there is an entire failure of evidence to support the finding, the decision raises a question of law. The question whether a particular receipt is a revenue receipt or a capital receipt is also a question of law, for it is impossible to determine the nature of a receipt without construing the provisions of the Income-tax Act and without ascertaining the legal meaning of certain portions of the statute.

For these reasons I would accept both the petitions and require the Tribunal to state the case and to refer to this Court the two questions of law which have been propounded by the Commissioner of Income-tax.

The petitioner will be entitled to the costs of this Court which I assess at Rs. 150 in each case, but payment will abide the event.

Mehar Singh, J.

MEHAR SINGH, J.— I agree.

B.R.T.