

Rai Bahadur Lala Jodha Mal Kuthiala (Kashmir) Ltd. Vs. Commissioner of Income-tax, Punjab.

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Court : Punjab and Haryana

Decided On : Nov-08-1967

Reported in : [1968]70ITR62(P& H)

Appeal No. : Income-tax Case No. 1 of 1963

Appellant : Rai Bahadur Lala Jodha Mal Kuthiala (Kashmir) Ltd.

Respondent : Commissioner of Income-tax, Punjab.

Judgement :

MEHAR SINGH C.J. - This will dispose of three applications (Income-tax Cases Nos. 1, 2 & 3 of 1963) by R. B. Lala Jodha Mal Kuthiala (Kashmir) Limited, Jammu Tawi, the assessee-company, under section 66(2) of the Indian Income-tax Act, 1922 (Act 11 of 1922), corresponding to section 256(2) of the Income-tax Act, 1961 (Act 43 of 1961), in regard to three assessment years 1950-51, 1951-52 and 1952-53.

The assessee-company worked leases of three forests, Lidder forest in Kashmir Province, and Udil and Khallor forest in Jammu Province of Jammu and Kashmir State. The leases worked for four years and the assessee-company prepared a consolidated profit and loss account for the period between May 6, 1947, and April 30, 1951, the profits having been apportioned over the years proportionately. The total extraction of timber in the case of Lidder forest was 3,15,333 cft., and the assessee-company accounted for 3,00,492 cft., with a balance loss of about 15,000 cft. in transport in the river, the loss working to about 5 per cent. of the extracted timber. This loss the Income-tax Officer found as normal and allowed it to the assessee-company. The dispute is with regard to the timber extracted from the other two forests. The total timber extracted from these two forests was 4,11,541 cft., with sales of 3,20,535 cft. thus leaving a shortage of 91,006 cft. The assessee-company explained the losses on three considerations: (a) because of abnormal conditions obtaining in the year 1947 due to raids, (b) because of loss due to floods, and (c) because of some of the timber having been washed down from Akhnoor to Wazirabad in Pakistan. The Income-tax Officer, after considering the material placed before him, in his order of February 23, 1960, came to the conclusion that the loss claimed was excessive and he disallowed a shortage of 29,000 Cft. in round figures, and added back the amount of Rs. 1,93,720 to the income of the assessee-company. On appeal by the assessee-company, the matter was considered by the Appellate Assistant Commissioner of Income-tax in his order of August 20, 1960, both the assessee-company, and the department having filed appeals to him against the order of the Income-tax Officer. The assessee-company urged that the addition of the amount of Rs. 1,93,720 for abnormal shortage in trading account was not justified and the department urged that the allowance made to the assessee-company was rather excessive. The Appellate Assistant

Commissioner, after considering the basis on which the assessee-company sought deduction in regard to the loss of timber, said in his order that 'it shows that the appellant (assessee-company) suffered some abnormal loss. However, the quantity of loss suffered cannot correctly be ascertained either from the report of the forest department or from the accounts-books themselves. The disallowance of the abnormal shortage at 29,000 cft. is excessive. I would reduce it to 15,000 cft. meaning thereby that the price of 14,000 cft, should be added. At Rs. 6.68. P. the price of 14,000 cft. amounting to Rs. 93,520 is to be added in place of Rs. 1,93,720. In other words, a sum of Rs. 1,00,200 will be deleted.' Against the order of the Appellate Assistant Commissioner there were appeals by the assessee-company and the department to the Income-tax Appellate Tribunal, New Delhi, and the Tribunal, by its order of November 2, 1961, dismissed both the appeals observing that 'there can be no manner of doubt that the losses during year 1947-48 were abnormally heavy as compared to the usual years. That there were floods in 1950 is also accepted by the Income-tax Officer. These factors must be responsible for more than the normal wastage. The wastage estimated by the Appellate Assistant Commissioner takes into account various factors which have been urged before us both on behalf of the assessee as well as the Income-tax Officer. The allowance made by him seems to be fair and his upheld.' On that the assessee-company made an application to the Income-tax Act, 1922, claiming reference of a number of questions considered by it to be questions of law to this court, and that application was dismissed by the Appellate Tribunal on July 21, 1962, observing that 'the determination of the figure added for excessive shortage is a finding of fact based on the material put before the Tribunal. No question of law in respect thereof arises.'

In these applications it is urged on behalf of the assessee-company that the finding of the Income-tax Appellate Tribunal is not based on any evidence. It merely follows what the Income-tax Appellate Assistant Commissioner has said in his order, which order itself is arbitrary and no material has been referred to by him for the reduction of the amount of timber lost to the assessee-company. In this respect the learned counsel relies on *Lalchand Bhagat Ambica Ram v. Commissioner of Income-tax* in which their Lordships held that 'the Income-tax Appellate Tribunal is a fact-finding Tribunal and, if it arrives at its own conclusions of fact after due consideration of the evidence before it the Supreme Court will not interfere. However, the finding of the court of fact should not be vitiated by reason of its having relied upon conjectures, surmises and suspicions not supported by any evidence on record or partly upon inadmissible material. Where the fact-finding authority acts without any evidence or upon a view of the facts which cannot reasonably be entertained or the facts found are such that no person acting judicially and properly instructed as to the relevant law could have found, the Supreme Court is entitled to interfere. On no account whatever should the Tribunal base its findings on suspicions, conjectures or surmises nor should it act on no evidence or partly on evidence and partly on suspicions, conjectures and surmises and if it does anything of the sort, its findings even though on questions of fact will be liable to be set aside by the Supreme Court.' What is urged by the learned counsel for the assessee-company is that the Income-tax Appellate Assistant Commissioner proceeded on mere conjectures in reducing the wastage of timber to be allowed to it, and the Income-tax Appellate Tribunal has done no more than merely to say that what he did was fair. The reply on behalf of the department by the learned counsel is that the Income-tax Officer has considered all the factors placed before him as also the material in support of the same, and the two appellate authorities have agreed with him. But the fact remains that the Appellate Assistant Commissioner of Income-tax has reduced the amount of wastage of timber

even from a figure allowed to the assessee-company by the Income-tax Officer and for that prima facie from his order no basis is available. In the circumstances, we consider that this is a fit case in which a mandamus should issue to the Income-tax Appellate Tribunal New Delhi, to refer this question to this court :

'Whether, on the facts and in the circumstances of the case, there was no material or evidence for the conclusion that the shortage claimed by the assessee-company is excessive or unwarranted and whether there was evidence to uphold the finding qua shortage arrived at by the Appellate Assistant Commissioner of Income-tax and confirmed by the Income-tax Appellate Tribunal ?'

The Income-tax Appellate Tribunal will now draw up the case and refer this question to this court at as early a date as possible. There is no order in regard to costs in these applications.

NARULA J. - I agree.

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