

THE INDIAN LAW REPORTS

PUNJAB SERIES

INCOME-TAX CASE

Before Khosla and Harnam Singh, JJ.

1952

June, 2nd

THE COMMISSIONER OF INCOME-TAX, PUNJAB,
AMRITSAR—*Petitioner*

versus

THE COMMISSIONER OF INCOME-TAX, PUNJAB,
PEPSU, ETC., AT SIMLA,—*Respondent*.

Income-tax Case No. 18 of 1951

Indian Income-tax Act (XI of 1922)—Section 66—Right of assessee to apply to High Court for direction to Tribunal to state the case on points not raised before the Tribunal—Point of law arising in the case stated.

Held, that Rule 12 of the Appellate Tribunal Rules, 1946, has not been made applicable to applications under section 66 (1) of the Act. That being so, the Tribunal was right in not allowing the assessee to urge or be heard in support of questions Nos. 3 and 4. That being the law, the assessee cannot be permitted to urge in the High Court the questions of law which were not raised before the Tribunal. The assessee has, therefore, no right to apply to the High Court for direction to the Tribunal to state the case on points not raised before the Tribunal.

Held, that question No. 1 raises a question of law which is whether the security deposit received for the purpose of ensuring the return of empty bottles is assessable income under section 10 of the Act.

Withers (Inspector of Taxes) v. Nethersole (1), relied upon.

Petition under section 66 (2) of the Indian Income-tax Act, 1922, praying that this Hon'ble Court be pleased to entertain this petition under section 66 (2) of the Indian Income-tax Act, 1922, read with section 21 of the

(1) 1948 I.T.R. 92 at p. 95.

Excess Profits Tax Act, 1940, and be further pleased to require the Appellate Tribunal to state the case and to refer it to this Hon'ble Court on the points of law stated in the petition.

A. N. GROVER, for petitioner.

S. M. SIKRI, Advocate-General and H. R. MAHAJAN, for respondent.

ORDER.

Harnam Singh, HARNAM SINGH, J. This order disposes of
J. Income-tax Cases Nos. 18 to 22 of 1951.

By 66-Reference Applications Nos. 1141 to 1145 of 1950-51, the Punjab Distilling Industries Ltd., Khalsa, hereinafter referred to as the assessee, applied to the Income tax Appellate Tribunal under section 66 of the Indian Income-tax Act, 1922, hereinafter referred to as the Act, requiring the Appellate Tribunal to state and to refer the cases to the High Court on two questions of law. In the several applications the questions of law arising out of the orders of the Tribunal were stated to be as under:—

- (1) Whether, on the facts and circumstances of the case, the security deposit received for the purpose of ensuring the return of empty bottles was income assessable under section 10 of the Income-tax Act?
- (2) Whether, on the facts and circumstances of the case, cash lying with the assessee in the form of security deposit, could, on the return of bottles, be treated as stock-in-trade without the price of bottles being separately paid under the buy-back system?

In rejecting the applications the Tribunal found that out of the orders of the Tribunal in the several cases no question of law arose.

In these circumstances the assessee applies under section 66(2) of the Act for directions to

the Tribunal to state the case in each case and to refer it for decision to the High Court. In the applications made in this Court it is said that in addition to the two questions set out above questions of law specified hereunder also arise from the orders of the Tribunal:—

- (3) Whether, on the facts of the case, the sum of Rs. 66,250 represents in law security deposit or sale-proceeds?
- (4) Whether there is evidence for the finding that the nature of this sum is that of sale-proceeds and not that of security deposit?

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Considering that the points arising in the cases can be decided without referring to a long chain of facts which are narrated in the order passed by the Tribunal on the 28th of May, 1951, I do not think it necessary to burden this order with the recapitulation of those facts.

Mr. Sarv Mittar Sikri appearing for the Department argues that it is not open to the assessee to apply to this Court for directions to the Tribunal to state the case on the additional questions stated in the preceding paragraph.

Mr. Amar Nath Grover urges that as at the time of hearing of the Reference Applications the Tribunal was asked to make the reference on questions Nos. 3 and 4 set out above, the assessee can maintain applications under section 66(2) of the Act for statement of the cases *inter alia* on questions Nos. 3 and 4. I do not accept the view so presented for the reasons appearing hereunder.

Rule 12, the Appellate Tribunal Rules, 1946, reads:—

“The appellant shall not, except by leave of the Tribunal, urge or be heard in support of any ground not set forth in the memorandum of appeal; but the Tribunal, in deciding the appeal shall

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not be confined to the grounds set forth in the memorandum of appeal or taken by leave of the Tribunal under this rule :

Provided that the Tribunal shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of being heard on that ground.

Rule 36 of the Rules provides that rules 7, 8, 13, 20, 21, 22, 23, 26 and 33 shall apply, *mutatis mutandis*, to an application under subsection (2) of section 66. Clearly, rule 12 has not been made applicable to applications under section 66(1) of the Act. That being so, the Tribunal was right in not allowing the assessee to urge or be heard in support of questions Nos. 3 and 4. That being the law, the assessee cannot be permitted to urge in this Court the questions of law, if any, contained in questions Nos. 3 and 4.

Mr. Sarv Mittar Sikri then argues that question No. 2 which was before the Tribunal and is before this Court does not arise from the orders passed by the Tribunal in the five cases. On a perusal of the orders passed by the Tribunal I agree that the question of law contained in question No. 2 has nowhere been decided by the Tribunal. Clearly, question No. 2 does not arise from the orders passed by the Tribunal.

That question No. 1 raises a question of law is not open to serious challenge. In *Withers (Inspector of Taxes) v. Nethersole* (1) Lord Viscount Simon said:—

“The question of law is whether the facts set out in the case, and the documents annexed to it, establish that the amount paid to the respondent under the agreement of June 27, 1939, is ‘annual profits or gains’, falling under Case VI of Schedule D.”

In the present case the question is whether the security deposit received for the purpose of ensuring the return of empty bottles is assessable income under section 10 of the Act. In my opinion the judgment of the House of Lords in 1948 I.T.R. p. 92 governs the case.

For the foregoing reasons, I am not satisfied with the correctness of the decision of the Tribunal so far as question No. 1 is concerned. That being so, I would require the Tribunal to state the case in the several matters and refer for decision to this Court question No. 1 set out above.

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Costs to be costs in the cause.

KHOSLA, J.—I agree.

Khosla, J.

APPELLATE CRIMINAL.

Before Falshaw and Kapur, JJ.

THE STATE,—Appellant

versus

JITA RAM,—Respondent.

1952

June, 20th

Criminal Appeal No. 496 of 1950

*Indian Penal Code (Act XLV of 1860) —Section 411—
Explanation given by the accused, found to be reasonable—
Whether entitles the accused to acquittal—Indian Evidence
Act (I of 1872) Section 114 Illustration (a)—Presumption
under.*

A bicycle was stolen on 3rd November 1949. It was sold by the accused on 25th February, 1950. He was arrested and put on trial for an offence under section 411, Indian Penal Code. The accused admitted that he had sold the bicycle but pleaded that it had been given to him by his father. The father appeared as a witness and stated that he had purchased it from a co-villager for Rs. 150 eight months prior to the sale and had asked his son to sell it as he wanted money. The learned Magistrate found that there was no evidence to show that accused had committed the theft and as there was a gap of about three months and twenty-two days between the theft of the bicycle and the sale of it by the accused and as there was an explanation given by the father of the accused which the Magistrate