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but has not raised any specific question with regard to that assessment year, we think it necessary to raise a question which clearly arises from the order of the Tribunal and in respect of which all necessary facts are set out in the statement of the case. The question raised will be:—

"Whether the order of the Commissioner acting under s. 33B (1) setting aside the order of the Income-tax Officer while an appeal from that order was pending before the Appellate Assistant Commissioner was valid?"

and we answer that question in the negative. Question No. 2—It is unnecessary to answer this question. Question No. 3—"Whether on the facts and circumstances of the case, the orders passed by the Income-tax Officer, dated June 21, 1952, are bad in law, as fresh notices as required by ss. 22 and 23 of the Income-tax Act required by ss. 22 and 23 of the Income-tax Act were not given by the Income-tax Officer to the assessee?" In our opinion, it is unnecessary to decide this question because all proceedings taken by the Income-tax Officer pursuant to the orders passed by the Commissioner under s. 33-B must be bad inasmuch as we have held that the orders of the Commissioner are bad.

The Commissioner to pay the costs.

Attorneys for Commissioner: *N. K. Petigara.*

Attorneys for respondent: *Manilal Kher Ambalal and Co.*

Answer accordingly.

P. M. P.

INCOME-TAX REFERENCE

Before Mr. M. C. Chagla, Chief Justice, and Mr. Justice Tendolkar.

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Mar. 10

MESSRS. MEHTA PARIKH AND CO., AHMEDABAD, APPLICANTS *v.* THE COMMISSIONER OF INCOME-TAX, BOMBAY NORTH, KUTCH AND SAURASHTRA, BARODA.

Indian Income-tax Act (XI of 1922), s. 66 (1) and (2)—Reference to High Court—Limited power of High Court to interfere with finding of facts by Income-tax Appellate Tribunal—Circumstantial evidence—Inference drawn from such evidence when could be interfered with—No application to the Tribunal under s. 66 (1) on a particular point of law—Whether High Court has jurisdiction to require the Tribunal to state a case on such point.

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* Income-tax Reference No. 35 of 1952.

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There is only a limited class of cases in which High Court can interfere with the findings of facts by the Income-tax Appellate Tribunal; such as where the High Court is satisfied that there was no evidence —either direct or circumstantial—on which the Tribunal could have based its decision. It is open to the Tribunal to infer a fact from circumstances established before it and it would not be open to the High Court to interfere with the findings of the Tribunal merely because there was no direct evidence to justify the findings. Nor would it interfere with inference drawn by the Tribunal from the circumstances established unless the Court came to the conclusion that the inference was unreasonable, arbitrary or capricious or that it was impossible for any Tribunal to raise that particular inference from the circumstances established.

Sir Sri Nilkanth Narayan Singh v. *Commissioner of Income-tax, Bihar and Orissa,*(1) *Commissioner of Income-tax, Bombay* v. *The Bombay Trust Corporation,*(2) *Commissioner of Income-tax, Bombay* v. *Gokaldas Hukumchand*(3) and *Ganga Sahai Umrao Singh* v. *Commissioner of Excess Profits Tax, U. P. C. P. Berar,*(4) referred to.

When there is no application made to the Income-tax Appellate Tribunal under s. 66 (*1*) of the Indian Income-tax Act, 1921, to state a case on a particular point of law, the High Court has no jurisdiction to require the Tribunal to state a case on that point under s. 66 (2) of the Act.

Facts material to this report are fully set out in the judgment.

At the instance of the applicants, the High Court directed the Tribunal to refer the following questions to the High Court.

(1) Whether there is any material to justify the assessment of Rs. 30,000 (Rupees thirty thousand) from out of the sum of Rs. 61,000 (Rupees sixty-one thousand) (for Income-tax and Excess Profits Tax and Business Profits Tax purposes) representing the value of high denomination notes which were encashed on the eighteenth day of January one thousand nine hundred and forty six, and

(2) Whether in any event by reasons of the orders of the Revenue Authorities not having found that the alleged item was from alleged undisclosed business profits the assessment of Rs. 30,000 (Rupees thirty thousand) is in law justified for Excess Profits Tax and Business Profits Tax purposes?

The Income-tax Appellate Tribunal in their statement of the case pointed out that the question No. 2 was at no stage urged before the Tribunal in the form in which the High Court at the instance of the applicants directed the Tribunal to refer. The application to the Tribunal under

(1) [1951] 20 I. T. R. 8.
(2) [1936] 4 I. T. R. 322.
(3) [1943] 11 I. T. R. 462.
(4) [1950] 18 I. T. R. 988.

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s. 66 (*1*) of the Income-tax Act was only to refer question No. 1 to the High Court.

Reference was heard.

R. J. Kolah with *Sir Jamshedji B. Kanga,* for the applicants.

Sir Nusserwanji P. Engineer with *G. N. Goshi,* for the respondent.

Chagla C. J. Though Mr. Kolah has argued this reference with considerable heat and warmth, it raises a very short and simple question. The assessment year is 1947-48 and the accounting year is the calendar year 1946. It appears that on January 18, 1946, the assessee encashed high denomination notes of the face value of Rs. 61,000. The books of account of the assessee showed that there was an opening cash balance on that day of Rs. 72,863-13-3. On December 20, 1945, the opening cash balance was Rs. 14,318. On January 2. 1946, the opening cash balance was Rs. 18,395. On January 12, 1946, the cash balance was Rs. 69,891. The January 12, 1946, is an important date because that was the date on which the High Denomination Notes Ordinance came into force. What has been held by the taxing authorities is that the sum of Rs. 61,000 was the income of the assessee from undisclosed sources and the high denomination notes did not represent the business receipts of the assessee. The Tribunal has concurred in this decision to the extent of Rs. 30,000, and the question that arises before us is whether there was any material which jusified the Tribunal in coming to the conclusion that it did.

Now, prima facie, one would have thought that the decision of the Tribunal is a decision on a question of fact and this Court has no jurisdiction to interfere with the findings of fact arrived at by the Tribunal. There is only a limited class of cases in which this Court can interfere with the findings of fact arrived at by the Tribunal and those are cases where this Court is satisfied that there was no evidence on which the Tribunal could have based its decision. Evidence may be direct evidence or it may be circumstantial evidence. It would be open to the Tribunal to infer a fact from circumstances established before it and it would not be open to the Court to disagree with the finding of fact of the Tribunal merely because there was no direct evidence to justify that finding, and the Court would also not interfere with the inference drawn by the Tribunal from the circumstances established unless the Court came to the conclusion that the inference was unreasonable, arbitrary or capricious or that it was impossible for any Tribunal to raise that particular inference from the circumstances established.

In our opinion, the Tribunal has relied on circumstances which fully justified it in raising the inference that it has. In the order that it passed dismissing the appeal of the assessee, it has pointed out a very important circumstance and that circumstance is this that from December 20, 1945, to January 18, 1946, the assessee's total receipts amounted to about a lakh of rupees. During this very period he made payments of about Rs. 40,000. Therefore, over this period the assessee's receipts exceeded the payments by about Rs. 60,000 and the Tribunal points out that if the assessee's contention were to be accepted it would mean that practically every payment above Rs. 1,000 was received by him in high denomination notes and it stated that this fact cannot be accepted because according to it it was an impossible fact. Mr. Kolah has relied on the fact that the Tribunal accepts the cash balance of Rs. 72,863-13-3 on January 18, 1946, as correct cash balance, but we do not understand how that fact helps Mr. Kolah because what the Tribunal has held is that although the assessee did have cash on January 18, 1946, to the extent of Rs. 72,863-13-3, in that cash balance there were not and could not be high denomination notes of the value of Rs. 61,000, but these notes or part of them were substituted for the ordinary notes which came into the business in the course of its dealings. Therefore, the high denomination notes did not belong to the business, they did not come into the business in the ordinary course of dealings, but these high denomination notes represented the income of the assessee through other sources, and in order that the assessee should get them cashed he substituted these high denomination notes for the ordinary notes which he had received. Therefore, the fact of the balance being held to be genuine does not in any way affect the finding of the Tribunal as I have just pointed out. Then it is pointed out by Mr. Kolah that large cash balances were maintained by the assessee company in the past. The question that we have to consider is not what the balances that the assessee company maintained were, but what part of the balances was made up of high denomination notes. As far as the books of account of the assessee company are concerned, there is no internal

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evidence at all to show how these balances were made up. Some business men make entries in their cash book where they show notes of high denomination which come into the business. This particular assessee company does not adopt that practice. That is not against him, but it so happens that its books do not disclose what the high denomination notes were that came by way of cash receipts into the business. Therefore, as far as the books of account of the assessee are concerned, they do not disclose any evidence one way or the other as to whether there were high denomination notes at all in the business or what the principle of these high denomination notes were.

The assessee attempted to prove by positive evidence what high denomination notes were sent to the firm during the material period, and this evidence it led by means of affidavits of certain persons. It filed the affidavit of one Nivetia who stated that on January 6, 1946, he had sent Rs. 15,000 through his Munim in 15 currency notes. He also relied on the affidavit of Bai Maniben who deposed that on January 8, 1949, she had deposited Rs. 8,500 in high denomination notes and she also stated that this sum belonged to her deceased husband. The assessee firm also relied on the affidavit of one Shetty who stated that the firm of Shree Anand Textiles had paid to the assessee 20 high denomination notes on December 28, 1945. The Tribunal considered these affidavits. It rejected the affidavit of Nivetia on the ground that there was a discrepancy between the date mentioned in the affidavit when the payment was made, viz., January 6, and the entries in the assessee's books, viz., January 7. Whether the reason for not accepting the evidence of Nivetia was good or bad, in fact the Tribunal refused to accept the evidence of Nivetia. The effect of the evidence of these deponents was that a sum of Rs. 43,500 had been paid to the assessee during the material period in high denomination notes. The Tribunal by rejecting the evidence of Nivetia reduced that amount from Rs. 43,500 to Rs. 28,500. But the Tribunal accepted in round sum Rs. 31,000 as having been established by the assessee as representing high denomination notes which were part of the business receipts of the firm. Therefore, to the extent that there was positive evidence which was accepted by the Tribunal, the Tribunal has given relief to the assessee. To the extent that the positive evidence was rejected, no relief has been given to the assessee. Therefore, to analyse the situation, the position is that apart from

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circumstances which according to the Tribunal are against the assessee, the only definite positive evidence with regard to payments to the assessee by high denomination notes consists of affidavits filed by the assessee. One of the affidavits has not been accepted by the Tribunal and the others have been accepted. On this state of the record it is difficult to understand how it is possible to contend that there were no materials to justify the finding of fact by the Tribunal. We have already drawn attention to the important circumstances which weighed with the Tribunal. It is impossible to say that the inference drawn by the Tribunal from that circumstance is an unreasonable inference or an arbitrary and capricious inference or an inference which no judicial Tribunal could ever draw.

When we turn to the various authorities on which Mr. Kolah has strongly relied, and we briefly look at them, they do not really lay down any principle of law which has not always been accepted by all Courts dealing with Income-tax References, but they really apply well known and well accepted principles to the peculiar facts or the special facts that came up before them for their consideration. The first case relied on is the case of the Patna High Court reported in *Nilkantha Narayan Singh* v. *Commissioner of Income-tax.*[1] In that case the income-tax authorities had assessed the assessee to income-tax on a sum of Rs. 84,000 representing the value of encashed high denomination notes on the ground that it represented income from undisclosed sources, and the Patna High Court came to the conclusion that there was no material to justify that assessment, and at p. 23 Mr. Justice Ramaswami deals specifically with the three reasons that were given by the Appellate Tribunal in support of the inference that the sum of Rs. 84,000 was taxable. The learned Judge deals with each of these three reasons and comes to the conclusion that none of them is sustainable, and it was because of this that the learned Judge came to the conclusion that there were no materials to justify the Tribunal in coming to the conclusion that it did.

Reliance is then placed on the Privy Council case reported in *Commissioner of Income-tax* v. *Bombay Trust Corporations Ltd.*[2]. In that case the Bombay Company borrowed money in large sums from the Hong Kong Company at interest upon fixed deposit and the Bombay Company was

[1] (1951) 20 I. T. R. 8. [2] (1936) 4 I. T. R. 323.

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assessed to income-tax under s. 43 of the Act as agent of the Hong Kong Company in respect of the interest paid by it to the Hong Kong Company. In November 1926 all the fixed deposits were converted to call loan and paid to the Hong Kong Co. through a common banker. In 1927 entries were made in the accounts of the companies upon the footing that there was no longer any loan from the Hong Kong Co. The Bombay Co. borrowed a loan of 6½ crores from E. D. Sassoon Ltd. Shanghai Branch and paid interest thereon to this Company. The taxing authorities sought to assess the Bombay Co. on the interest so paid in 1927 also as being in effect interest paid to the Hong Kong Co. as all the companies were closely associated concerns and worked in concert.

The Privy Council held that in order that the assessment should be sustained there should be some evidence to show that in 1927 the loan from the Hong Kong Co. continued and that interest accrued or arose to that Company thereon, and the Privy Council was at pains to point out that all the entries in the books showed no payment to the Hong Kong Co. and that nothing was due to it and that the taxing authorities could not rely upon entries showing a loan of 6½ crores to some other company. Therefore, there we had a case of positive direct evidence in the books of account of the assessee company which books were accepted and the entries in which were considered to be genuine and in face of this evidence the taxing authorities on mere suspicion had come to a contrary conclusion.

Then reliance is placed on a decision of this Court reported in *Commissioner of Income-tax* v. *Gakaldas Hukumchand.*[1] The question that arose there was whether the assessee was a benamidar for his minor sons who were admitted as partners in a certain firm, and this Court held that there was no evidence to justify the Commissioner in coming to that conclusion, and Sir John Beaumont at page 469 points out various facts which undoubtedly give rise to a suspicion that the two minor sons were really nothing but nominees of the assessee, and the learned Chief Justice rightly poses the question: "The question really is whether those facts not only give rise to a suspicion, but justify the inference of fact drawn by the Income-tax Officer that the minors were mere

(1) [1943] 11 I. T. R. 462.

nominees of the assessee." Therefore, what the Court has got to keep before its mind is whether on the facts relied upon by the Tribunal or the circumstances relied upon by the Tribunal, it is possible to say that those facts or those circumstances merely give rise to a suspicion or whether it is possible to say that those facts and circumstances justify the inference drawn by the Tribunal. Whether the position is one or the other would always depend on the facts of each case, and it is difficult to understand how one authority can be of any help in deciding another case on entirely different facts.

The final authority relied on Mr. Kolah is the judgment of the Allahabad High Court in *Ganga Sahai v. Commissioner of E. P. Tax.*[1] There the Allahabad High Court laid down that the burden of proving that the assessee had done something, the main purpose of which was to evade payment of excess profits tax, lay upon the taxing authorities, and in the judgment it is pointed out that it is not always possible to get direct evidence, but it is the duty of the Excess Profits Tax Officer to look into facts and circumstances as would lead to a reasonable inference that the main purpose behind the transaction was to evade payment of excess profits tax. Therefore, what is emphasised in this judgment, to the extent that it is relevant, is that from the facts and circumstances, in the absence of direct evidence placed before the Tribunal, it must be possible to raise a reasonable inference and if a reasonable inference is raised then the High Court exercising advisory jurisdiction will not interfere with the reasonable inference raised by the Tribunal.

Therefore, in our opinion, it is not possible to say in this case that the facts and circumstances relied upon by the Tribunal merely gave rise to a suspicion and did not justify the inference raised by it, nor is it possible to say that the inference raised by the Tribunal was not a reasonable inference under the circumstances of the case.

The second question which has been raised is with regard to the liability of the assessee to pay excess profits tax and business profits tax on this sum of Rs. 30,000. What is contended by Mr. Kolah is that the only finding of the taxing

(1) [1950] 18 I. T. R. 950.

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authorities and the Tribunal is that this sum of Rs. 30,000 is income from undisclosed sources and Mr. Kolah says that unless this income is from a business, neither the excess profits tax nor the business profits tax would apply. In this particular case an application was made by the assessee to the Appellate Tribunal to state a case to this Court. That application was made under s. 66 (*1*). The Tribunal refused to refer a case as in its opinion no question of law arose. Then the assessee came to us under sub-s. (*2*) of s. 66 and we directed the Tribunal to raise both the questions which have now been raised by them and a statement of the case is submitted with regard to those two questions. With regard to the second question, the position is that when the assessee made an application to the Tribunal under s. 66 (*1*), the assessee only asked the Tribunal to raise the first question and did not make any requisition with regard to the second question. Therefore, it is clear that the assessee did not ask the Tribunal to refer the second question and, therefore, no question arose of the Tribunal refusing to raise that question and submit it for our decision.

Now, the jurisdiction of the High Court under s. 66 (*2*) only arises when on an application being made under sub-s. (*1*) the Appellate Tribunal refuses to state the case on the ground that no question of law arises. Therefore, there must be a refusal by the Tribunal to state the case and it is only when there is such a refusal that the assessee or the Commissioner may apply to this Court and if this Court is not satisfied with the correctness of the decision of the Appellate Tribunal then this Court can require the Tribunal to state the case and to decide it. But we have no jurisdiction to ask the Tribunal to state a case on a particular question of law when the assessee himself has never asked the Tribunal to refer such a question to the High Court. Mr. Kolah says that inasmuch as we have already directed the Tribunal to refer this question of law and to draw up a statement of the case with regard to it, our order has become final and we must proceed to express our opinion on the second question as well. Now, if this Court has no jurisdiction to require the Tribunal to state a case in matters where no application was made by the assessee under s. 66 (*1*), we cannot confer jurisdiction upon ourselves by requiring the Tribunal to state the case. There is no question of our order becoming final. The question is with regard to the jurisdiction of this Court and if the jurisdiction is absent, no order passed by the Court can confer jurisdiction upon it. Therefore, in our opinion, it is not open to us to answer the second question which has been raised by the Tribunal at our instance.

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The result, therefore, is that we must answer the first question in the affirmative. We do not answer question No. 2. Assessee must pay the costs.

Attorneys for applicants: *Rustomji & Ginwalla.*

Attorneys for Commissioner: *N. K. Petigara.*

Answer accordingly.

P. M. P.

APPELLATE CIVIL

Before Mr. Justice Rajadhyaksha and Mr. Justice Vyas.

RANCHHODLAL MANEKLAL VYAS (ORIGINAL PLAINTIFF), APPELLANT *v.* MANEKLAL PRANJIVANDAS SHAH (ORIGINAL DEFENDANT), RESPONDENT.*

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Aug. 14

Bombay Rents, Hotel and Lodging House Rates Control Act (LVII of 1947), ss. 28 (a) and 50 Proviso—Suit for possession of premises pending in the Court of Civil Judge, Senior Division—Whether the said Court has jurisdiction to try the suit after the Act came into force—Construction.

A suit for possession of premises instituted by a landlord against his tenant before the coming into operation of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, was pending in the Court of the Civil Judge, Senior Division, when the said Act came into operation. On the question whether the said Court had jurisdiction to try the suit,

Held, that under s. 28 (*aa*) and the proviso to s. 50 of the Act a suit for fixing or recovery of rent or for possession of premises pending in the Court of the Civil Judge, Senior Division, has to be transferred to the Court of Small Causes (where such Court is established) for it alone has jurisdiction to try the suit. The words in the proviso to s. 50, "or shall be continued in such Courts, as the case may be" do not validate the proceedings in the Court of the Civil Judge, Senior Division, which is not authorised to try the suits under the Act.

Nilkanth Ramchandra Chandole v. *Rasiklal Mulchand Gujar*,[1] referred to.

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* First Appeal No. 212 of 1949.

[1] (1948) 51 Bom. L. R. 280, F. B.