

1ST Y. P. TRIVEDI GOVERNMENT LAW COLLEGE TAX MOOT COURT COMPETITION, 2017

(AN INITIATIVE OF THE CHAMBER OF TAX CONSULTANTS)

Mr. Khan

Appellant

V/s.

Assistant Commissioner of Income Tax

Respondent

MOOT PROPOSITION

In the year 2016, the Prime Minister of India had taken a very bold decision of demonetization whereby from 9th November, 2016, Rs. 500/- and Rs. 1000/- notes as existing then became an illegal tender. Subsequent to demonetization several changes were made in the Income Tax Act to punish the evaders of income tax act as part of fight against black money.

Several assessments were made on account of demonetization. A very high-pitched assessment was made in the case of one Mr. Khan i.e. the Appellant herein. Mr. Khan believes that he is an honest businessman and has been unnecessarily entangled in tax litigation on account of demonetization.

The income tax matter of Mr. Khan has reached the Hon'ble Bombay High Court. Considering the fact that several income tax matters essentially dealing with issues arisen on account of demonetization are pending before various appellate authorities, the division bench of Bombay High Court. Dealing with income tax cases has decided to admit the appeal of Mr. Khan on

substantial questions of law raised in the appeal and deciding the appeal finally at the admission stage.

The appeal of Mr. Khan has gained great significance, as 3 months down the line are the general elections where demonetization is one of the major political issues. If Mr. Khan succeeds it would imply that the revenue department has allegedly wrongly targeted honest businessman in the wake of demonetization. If Mr. Khan loses, it will vindicate the claims made by the government of its fight against black money.

I. Facts of the case:

1. The Appellant is the Proprietor of M/s Aishwarya Builders, engaged in the business of redevelopment and construction of buildings and structures.
2. The Respondent is the Assistant Commissioner of Income tax officer who has passed the assessment order u/s 143(3).
3. The Appellant being aggrieved by the order of the Tribunal, has approached Honourable High Court by way of this appeal, filed under section 260A of the Income tax Act, 1961 (hereinafter referred to as 'the Act') as the substantial questions of law arise from the order of the Tribunal.
4. The Appellant is the Proprietor of M/s Aishwarya Builders, engaged in the business of redevelopment and construction of buildings and structures.
5. The Appellant had two projects (one at Khar and other at Bandra) which were under construction. The Building at Khar was 100% complete. However for the Bandra project, the Appellant had entered into a redevelopment agreement with the society and was about to start the project. The old building was 95% vacated on 2nd November, 2016 and the Appellant was about to demolish the old building.

6. The Appellant maintained books of account and followed project completion method of accounting.
7. The Appellant had taken a loan on 1st May, 2016 of Rs.50 lacs from Mr. Om Sachdev for the purpose of his business.
8. On 8th November, 2016 the Government of India, vide a notification, declared that currency notes of Rs.500 and Rs.1000 ceased to be legal tender. The Government had given time upto 30th December, 2016, to deposit the Rs.500 and Rs.1000 notes in the bank account.
9. The cash balance as on 8th November, 2016 was 1.3 crores.
10. Aishwarya Builders deposited following cash in its bank account.
 - a. From 9th November, 2016 to 28th November, 2016 Rs. 3 crores
 - b. From 29th November, 2016 to 14th December, 2016 Rs. 2 crores
 - c. From 15th December, 2016 to 30th December, 2016 Rs. 1 crore
11. The Appellant purchased a raw material on 15th November, 2016 for Rs. 1 crore in cash in old notes, which was debited in the profit and loss account under the head direct expenses.
12. On 2nd January 2017, a survey was conducted in the premises of the Appellant. The AO found Rs. 50 lakhs in cash, which was comprised of demonetised currency notes, i.e. Rs.500 and Rs.1000 notes.
13. The Appellant filed return of income of Rs. 2.5 crores during the year, on project completion method of accounting, from Project in Khar.
14. The case was selected for scrutiny by the Respondent. Apart from various details asked during the course of assessment proceedings, the Respondent specifically directed the Appellant to provide the explanation of cash deposits made in the bank account from 8th

November, 2016 to 30th December, 2016 and a show cause as to why the deposits should not be taxed u/s 68.

15. In response the Appellant provided the following explanation and submitted that since sufficient explanation was provided, no addition could be made u/s 68 of the Act:
- a. Rs.1.30 lakhs was cash in hand as per the cash book as of 08-11-2016.
 - b. Rs. 20 lakhs was received on 9th November, 2016 in cash in old currency notes as advance receipt of consideration for the sale of scrap. The Appellant was to demolish the old building at Bandra, and had received advance from a scrap dealer to obtain the timber and furniture in the said building. However, the demolition did not start during the year as there was some dispute with one of the flat owner who did not vacate till 3rd May, 2017. The demolition started on 4th May, 2017. Thus though the cash was received during the year, scrap sale pertained to next assessment year.
 - c. Rs. 50 lakhs was received on 10th November, 2016 from Mr. Rana on the booking of flat in the proposed building at Bandra.
 - d. Rs. 1 crore was received on behalf of his Brother in law who was residing in Italy. The appellant submitted that brother in law had sold certain agricultural property near Agra to Mr. Bhatt. However Mr. Bhatt had paid only part money and the balance amount was outstanding since 3.5 years. When the demonetization was declared, Mr. Bhatt immediately made the payment in old currency notes. Since Appellant's brother in law was not in India, the appellant accepted the money on behalf of his brother in law and deposited in its bank account. The agreement for sale of agricultural land was not registered as amount was pending. This was also not reflected in Mr. Rana's return on the ground that there is no transfer as entire consideration was not received.
 - e. Rs. 1 crore was received on account of sale of flat from Ramesh.

- f. Rs. 1 crore was received on account of sale of flat from Suresh.
 - g. Rs. 1 crore was received on account of sale of flat from Mahesh.
 - h. Rs. 1 crore was received on account of sale of flat from Jayesh.
16. The Respondent issued summons to Ramesh, Suresh, Mahesh, and Jayesh to record their statement on oath. Mr. Ramesh and Suresh accepted that they had given cash to Mr. Khan towards purchase of flats. They were salaried employees and their average yearly income was only to the extent of 20 lacs per annum. They filed salary returns but did not file balance sheet or cash flow statement.
17. Mr. Mahesh stated that he has not given any cash to Mr. Khan. However he had purchased the flat in one of Khar project and entire money was paid in cheque. The stamp duty value amount was Rs. 80,00,000/-
18. Mr. Jayesh never attended the Respondent though summons were served to him.
19. Apart from above Mrs. Khan, deposited Rs. 50 lakhs in her bank account. Her explanation was that she had saved cash which was received during her marriage, birthdays etc, since number of years and had also sold some jewellery as she was getting higher value post demonetisation. Her return of income reflected Rs.2,00,000/- per year for last four years. No balance sheet was filed.
20. The respondent, summarily without considering the submission of the Appellant made various additions. The total income computed was Rs.11.3 crores (2.5 + 8.8) on the following reasons :-

Particulars	Amount
Income as per return	2.5 crores
<p><u>Cash deposited</u></p> <p>The assessee has not given any proof that the old notes deposited in the bank account were the same as reflected in the cash book</p>	30 lacs
<p><u>Disallowance of purchases</u></p> <p>The Appellant had made purchases in old notes which were not legal tender. As there is no consideration paid for the purchases, the purchase cost is zero. Further said expenses are not allowable in view of explanation to section 37, being illegal payments</p>	1 crore
<p><u>Gifts received</u></p> <p>The assessee has made above purchases without any consideration and hence it is taxable u/s 56(2)(vii).</p>	1 crore
<p><u>Cash found during survey</u></p> <p>Addition made as no explanation given during the assessment proceedings.</p>	50 lacs
<p><u>Loan from Mr. Om Sachdev</u></p> <p>The Appellant has not proved the loan taken from Mr. Om Sachdev. The Appellant did not produce any confirmation on the ground that he had died on 6th January, 2017.</p>	50 lacs
<p><u>Cash deposited in wife's account</u></p> <p>The return of income as reflected by the wife shows meagre income and the Assessee was not able to give any evidences that wife had received the money during marriage or jewellery was sold. The only source of income in the entire family was through construction which was run by Mr. Khan in the name and style of Aishwarya Builders. The wife is a benami holder of the said property and hence entire property needs to be confiscated. He further initiated prosecution proceedings based on this findings.</p>	50 lacs
<p><u>Amount on behalf of Brother in law.</u> There is no proof that an</p>	1 crore

agricultural land was sold to Mr. Bhatt and the balance was outstanding. During the course of assessment proceedings it was mentioned that till date there is sale agreement was not registered on the count that the transaction was cancelled between parties. The transaction is not genuine and is sham.	
<u>Amount received from Ramesh and Suresh.</u> Though Ramesh and suresh accepted that they have paid towards purchase of flat, they do not have any creditworthiness to make payment of such huge money. Hence the amount is treated as unexplained cash credit u/s 68	2 crores
<u>Amount received from Mahesh:</u> The Appellant had stated that Mahesh had purchased the flat and paid 1 crore. This was taken in sales and appellant also claimed expenditure against sales. The Appellant produced allotment letter issued to Mahesh towards purchase of flat. However, Mahesh has specifically stated that he has not made any cash payment to the Appellant. In fact he denied any such transaction. Further, the allotment letter is not been signed by Mahesh.	1 crore
<u>Amount received from Jayesh</u> Though other details were filed by the Appellant, Mr. Jayesh has not appeared in response to the summons issued. As identity is not proved, the amount is added as unexplained cash credit u/s 68.	1 crore

21. The respondent passed an order dt. 29th November, 2017 u/s 143(3) computing the total income at 11.3 crores as above. The Respondent relying on the Taxation Laws (Second Amendment) Act, 2016 applied tax @ 60% on the additions made u/s 68 r.w.s. 115BBE, plus surcharge of 25%
22. In the said assessment order the respondent had also initiated penalty u/s 271D r.w.s. 269SS on 70 lacs (i.e. 20 lacs on account of advance for scrap and 50 lacs on account of advance of flat)

23. The Appellant filed appeal before the Commissioner of Income tax (appeals) against the said order. The Commissioner of Income tax (appeals) [“hereinafter referred to as “CIT(A)”] vide order 5th January, 2018 confirmed the assessment order.
24. The Appellant filed further appeal before the Income Tax Appellate Tribunal against the CIT(A) order. The Tribunal vide order dt. 6th March, 2019 held that the Assessing officer has correctly made the additions and thus confirmed the CIT(A) order. The Tribunal further observed that, the appellant was given ample opportunities by the Government to come clean but he neither took any benefit of Income Disclosure scheme, 2016, nor of Pradhan Mantri Garib Kalyan Yojana 2016, and that the Appellant rather chose to litigate on frivolous grounds.

The Appellant believes that these observations of the Honourable Tribunal are uncalled for and further substantiates the statement of Mr. Khrupt Singh, Honourable Chief minister of Hopelessly Handled Pradesh, calling the Tribunal a “Kangaroo Court”.

25. Being aggrieved by order of the Tribunal dt. 6th March, 2019 and having all the remedies exhausted, the Appellant has filed an appeal before the Honourable Bombay High Court.
26. The Appellant has paid Court fees of Rs. 250/-.

II. Substantial Question of Law:

The following substantial questions of law have been taken in the appeal before the Honourable High Court.

- A. Whether the demonetization notification is constitutionally valid being arbitrary and contrary to Article 14 of Constitution of India?

- B. Whether on the facts and in circumstances of the case, the Tribunal erred confirming the disallowance of purchases on the ground that no legal payment was made for such purchases and hence the cost is NIL?
- C. Whether on the facts and in circumstances of the case, the Tribunal erred in confirming the addition of Rs. 1 crore u/s 56(2)(vii)?
- D. Whether on the facts and in circumstances of the case, the Tribunal erred in confirming the assessment order treating the amounts deposited in bank as cash credits u/s 68 of the Income-Tax Act 1961, on the ground that the parties were not credit worthy / or that the transactions were not genuine / or that the identity is not proved. ?
- E. Whether on the facts and in circumstances of the case, the Tribunal erred in confirming the assessment order levying tax at the rate of 60% as per section 115BBE on the loan taken from Mr. Om Sachdev?
- i. Without prejudice, whether on the facts and in circumstances of the case since the Taxation Laws (Second Amendment) Act, 2016 was placed before the Legislature on 29th November, 2016 and consequently the tax on the amounts deposited prior to the said date should be a maximum of 30% and not 60%?
 - ii. Without prejudice, whether on the facts and in circumstances of the case since the assent to the Taxation Laws (Second Amendment) Act, 2016 was given by the Hon'ble President on 15th December, 2016 and consequently the tax on the amounts deposited prior to the said date should be a maximum of 30% and not 60%?
- F. Whether on the facts and in circumstances of the case, the Tribunal erred in confirming the addition of Rs. 50 lacs being amount found on 2nd January, 2017 during the course of survey, without appreciating that the said amount was comprised of old demonetised currency notes, which were no longer valid legal tender?