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mismanagement are synonymous terms for the purposes of the risk note."

The other cases which deal with the meaning of the word 'misconduct' do not appear to me to be very helpful since they deal, generally speaking, with cases of negligence in the actual handling of goods, and I would certainly agree that in some circumstances negligence in handling goods can amount to misconduct. I do not, however, consider that a mere clerical mistake by a clerk of the kind involved in the present case can be held to amount to misconduct, and I would accordingly dismiss these appeals but leave the parties to bear their own costs.

Kapur, J.

Kapur, J.—I agree.

APPELLATE CIVIL

Before Bhandari, C.J. and Falshaw, J.

MESSRS INDO EUROPEAN MACHINERY, CO., DELHI,—
Appellant

v.

THE COMMISSIONER OF INCOME-TAX, DELHI,—
Respondent

Civil Reference No. 8 of 1952.

1954

Oct. 14th

Firm—Credit entry in bank account of a partner—Burden of proof of nature of entry—on whom lies—Finding by Income-tax authorities that entry represented profit from undisclosed sources—Finding not based on material on record but on mere suspicion—Finding, validity of.

Held, that where there is a credit entry of an amount in the Bank account of one of the partners of a firm, there is a duty on the firm to explain the nature of the credit

entry, but the Income-tax authorities cannot come to a finding that the sum represented the firm's income from some undisclosed sources and deposited in the Bank in the name of one of the partners unless there is some material on record to come to such a finding. They cannot come to such a finding on mere suspicion.

Narayandas Kedarnath v. *Commissioner of Income-tax, Central* (1), relied upon.

Case referred by the Income-tax Appellate Tribunal, Industrial Assurance Building, Churchgate, Bombay, Delhi Bench, on the 2nd April, 1952, in the case of M/s. Indo-European Machinery Co., Delhi, drawn up by the Income-tax Appellate Tribunal, Delhi Bench, under section 66(1) of the Indian Income-tax Act, 1922 (Act XI of 1922), as amended by section 92 of the Income-tax (Amendment) Act, 1939 (Act VII of 1939), for the decision of the Hon'ble Judges of the High Court.

A. N. GROVER and C. J. JAIN, for Appellant.

A. N. KIRPAL and D. K. KAPUR, for Respondent.

JUDGMENT

Falshaw, J.—The following question has been stated for our consideration by the Income-tax Appellate Tribunal:— Falshaw, J.

> "Whether it lay upon the assessee firm to explain the nature of the credit of Rs. 30,500 on 17th January, 1944, appearing in the bank account of one of its partners and whether there was any material on record on which the Tribunal could find that this sum represented the firm's income from some undisclosed sources and deposited in

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the bank in the name of one of the partners ?"

The question arises out of the income-tax assessment of a firm which is known as Messrs Indo-European Machinery Company at Delhi for the year ending March, 1944, (assessment year 1944-45). The Income-tax Officer had added to the income disclosed in the account books of the firm certain items totalling Rs. 47,500. The result of the appeal to the Appellate Assistant Commissioner by the assessee firm was that he dismissed the appeal so far as it concerned Rs. 17,000 out of these items, but he accepted the appeal as regards the item now in dispute of Rs. 30,500 and deducted it. Both the assessee firm and the Income-tax Officer appealed to the Appellate Tribunal, which dismissed the appeal of the assessee firm and accepted the appeal of the Income-tax Officer, with the result that the sum of Rs. 30,500 was again added to the firm's taxable income. This was done after this matter had again been referred to the Income-tax Officer who had conducted a further investigation and submitted a report which was considered by the Tribunal.

The item in dispute was found to have been credited in the personal account of one of the partners of the firm named Seth Mohan Lal on the 17th of January, 1944 with the Chartered Bank of India, Australia and China. The explanation of Seth Mohan Lal of this deposit was that one Bijay Chand who was the son of an old friend of Seth Mohan Lal had come to him in January, 1944, with a sum of Rs. 31,000 which he wanted to invest in some business, the money having been raised partly from his mother in Bikaner State

and partly to the extent of Rs. 21,000 by means of a loan from a Calcutta firm Seth Chunna Mal-Bhanot Mal. Seth Mohan Lal took Rs. 30,500 of this from Bijay Chand and deposited it in his own name in the Chartered Bank. Bijay Chand then entered into a partnership at Lahore under the name of Messrs Hindson and Company and the records of the banks concerned show that on the 15th of March Rs. 20,000 were drawn out of the account in the Chartered Bank and on the 16th of March, Rs. 21,000 were paid into the account of Messrs. Hindson and Company, in the Frontier Bank Ltd., at Lahore. Again on the 30th of March, 1944, Rs. 4,500 were drawn and a sum of Rs. 4,000 was paid into the account of Messrs. Hindson and Company, at Lahore on the 4th of April. When the case was remanded for further enquiry by the Income-tax Officer some account books were produced which showed that on the 29th of March, 1944, a sum of Rs. 21,000 had been debited to Messrs. Hindson and Company, the entry being to the effect that the money had actually been advanced to Bijay Chand at Churu on Magh Badi 5 Sambat 2,001 which is a date early in January.

Even on the evidence which was available when the matter was under consideration by the Appellate Assistant Commissioner he was satisfied that in fact the money had been raised by Bijay Chand in the manner he alleged and deposited with Seth Mohan Lal, and he expressed the view that by no stretch of imagination could the sum of Rs. 30,500 be considered to be the income of the firm. The Income-tax Officer when he conducted further enquiries appears to have been impressed by the evidence produced before him and he has recorded that he also took the trouble to ascertain that sufficient funds were

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available at Churu to the persons who actually advanced the money to Bijay Chand. No evidence at all seems to have been produce on behalf of the income-tax authorities to rebut all this evidence, and it is quite clear from the order of the Appellate Tribunal that the considerations which led them to reverse the order of the Appellate Assistant Commissioner, and to reject the evidence produced on behalf of the assessee firm, were solely based on so-called probabilities.

It will be seen that the question as framed by the Appellate Tribunal falls into two parts, the first being "Whether it lay upon the assessee firm to explain the nature of the credit of Rs. 30,500 on 17th January, 1944, appearing in the bank account of one of the partners," and the second, "Whether there was any material on record on which the Tribunal could find that this sum represented the firm's income from some undisclosed sources and deposited in the bank in the name of one of the partners?". The learned counsel for the assessee firm did not seriously dispute the question that the assessee firm or the partner concerned was liable to be asked to furnish an explanation of the large sum found placed to his credit in a bank, though he has contended that the onus is not very heavy, and that in this particular case a full explanation has been given and satisfactorily proved. His main argument was that in this particular case there was no material on which the Tribunal could come to a finding that this sum represented concealed income or profits. He has cited the case *Narayandas Kedarnath* v. *Commissioner of Income-tax, Central* (1), a decision of the Bombay High Court delivered by Chagla, C.J., and Tendolkar, J. The facts of that case

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were that certain amounts were found in the accounts of the firm standing to the credit of some of the partners and these amounts were found to have been remitted to the partners in question from their native place Jaipur. The only explanation given by the partners was that they had brought these sums in order to meet losses, and they did not, or could not, explain how the money was available to them in their native place. The income-tax authorities and the Appellate Tribunal treated these credits as undisclosed profits of the firm, but it was held on a reference to the High Court that there was no material on which the Tribunal could come to the conclusion that the credits represented undisclosed profits of the firm, and that the assessee firm had discharged the burden which was upon it by explaining that the entries represented genuine remittances which had gone into the coffers of the firm. It would be for the Department to find that notwithstanding the fact that these moneys were actually brought in, they did not represent the moneys of the partners but they represented the undisclosed profits of the firm which left the firm earlier and returned through the intermediary of the partners. If the Department was not satisfied with the explanation given by the partners then it was legitimate for the Department to draw an inference that the amounts represented undisclosed profits of the partners and to assess them in their own individual assessment. In the course of his judgment Chagla, C.J., observed—

> "It is true that we are as anxious as the Department to see that there is no dishonest evasion of payment of income-tax, but I take it that there are at least some honest assessees in this State, and we have got also to think of these honest assessees. There may be a genuine case

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where a partner or a stranger may bring in moneys to the credit of the firm and the partner or the stranger may have come into those moneys by thoroughly dishonest means, but it is not for the firm which is being assessed to satisfy the Department that the moneys which it received from the partner or the stranger were moneys which the partner or the stranger obtained by honest means. In my opinion that would be throwing too heavy a burden upon the assessee."

In the present case it has been proved beyond all doubt that Bijay Chand entered into a partnership with a man named Gajinder Singh, who has also appeared as a witness, under the name of Messrs. Hindson and Co., at Lahore in January, 1944, and that the withdrawal of two substantial sums from the account standing in the name of Seth Mohan Lal in the Chartered Bank at Delhi was followed within a day or two by deposits of more or less similar amounts in the name of Hindson and Co., in the Frontier Bank at Lahore, and the evidence produced to show that Bijay Chand had taken advances amounting to Rs. 21,000 in January, at Churu which were debited in the account books kept at Calcutta to Messrs Hindson and Co. on the 29th of March appears to have been fully accepted by, and to have aroused no suspicion in the mind of the Income-tax Officer, when the matter was sent to him by the Appellate Tribunal for further enquiry. The Appellate Tribunal appears to have rejected the whole of this evidence as false simply on the ground that the story did not seem very probable. The learned

counsel for the Income-tax authorities tried to rely on the original assessment order of the Income-tax Officer as furnishing material on which the Appellate Tribunal could have come to its finding. He relied chiefly on the fact that some other items which were added as undisclosed profits also consisted of cash credits in the names of different partners of the firm. Each item, however, has to be considered separately and the fact that satisfactory explanations could not be furnished by the partners in question regarding other items does not in my opinion obviate the necessity for careful consideration of the explanation offered regarding this particular item and the evidence produced in support of it, and in fact it would seem from the judgment of the Appellate Tribunal that in dealing with this particular item it did not draw any adverse inference from other matters in dispute. In the circumstances I consider that the finding of the Tribunal on this matter is based almost entirely on mere suspicion and not based on any obvious defects in the evidence produced on behalf of the firm or on any facts proved to rebut any of this evidence.

I would accordingly answer the question framed for our consideration as follows. It certainly lay on the assessee firm to explain the nature of the credit of Rs. 30,500 in the bank account of one of the partners Seth Mohan Lal, but in this case the onus which lay on the firm has been discharged and there was no material on the record on which the Tribunal could find that the sum represented the firm's income from some undisclosed sources ond deposited in the Bank in the name of one of the partners. The assessee will have his costs counsel's fee Rs. 250.

BHANDARI, C.J.—I agree.

Bhandari, C.J.