

INCOME TAX REFERENCE.

Before D. K. Mahajan and Bal Raj Tuli, JJ.

M/s. CHIRANJI LAL STEEL ROLLING MILLS, PATIALA,—
Applicant

versus

THE COMMISSIONER OF INCOME-TAX, PUNJAB, HARYANA, JAMMU
& KASHMIR AND HIMACHAL PRADESH, PATIALA,—
Respondent.

Income Tax Reference No. 8 of 1969

November 12, 1970.

Indian Income-Tax Act (XI of 1922)—Section 23—Assessment proceedings—Determination of admissibility or legality of a piece of evidence—Provisions of Indian Evidence Act—Whether can be resorted to—Legal and admissible evidence—Meaning of—Income-Tax Officer—Whether entitled to collect evidence from any source—Such evidence—Whether has to be put to the assessee before making it the basis of assessment—Information without verifying its truthfulness—Whether can be acted upon.

Held, that the provisions of the Indian Evidence Act cannot be resorted to to judge the admissibility or legality of a particular piece of evidence on which the Income-Tax Officer relies for the purpose of assessment. Legal and admissible evidence means evidence on which a judicial mind can act by forming a belief that it is true although the assessee denies it. The Income-Tax Officer has the power to collect evidence from any source but it is his duty to put it to the assessee before making it the basis of his assessment. If the assessee denies the information collected by the Income-Tax Officer, it is the duty of the Income-Tax Officer to satisfy himself by making independent enquiry from sources considered reliable by him so as to decide whether the information passed on to him is true or not. If as a result of his own independent enquiry he comes to the conclusion that the information received by him is true, he is at liberty to act thereupon after disclosing it to the assessee and affording him a reasonable opportunity of rebutting it. He has, however, no right to act on a vague information given to him without himself verifying its truthfulness or reliability.

(Para 2)

Reference made under Section 66(2) of the Indian Income-tax Act, 1922 by the Income-Tax Appellate Tribunal (Delhi Bench 'B' New Delhi) dated 22nd November, 1967, in compliance with the order of this Hon'ble Court in Income Tax Case No. 2 of 1964 for opinion of this Court on the following question of law arising out of Income Tax Appeal No. 8777 of 1961-62 re : Assessment year 1956-57 :—

"Whether on the facts and in the circumstances of this case, there was legal and admissible evidence to support the finding of the Delhi Bench 'B' of the Income-tax Appellate Tribunal contained in its

order dated August 30, 1962, in respect of the assessment of income-tax on the assessee for the assessment year 1956-57 restoring the addition of Rs. 13,955 as income of the assessee from undisclosed sources?"

D. S. NEHRA, ADVOCATE, for the applicant.

D. N. AWASTHY AND B. S. GUPTA, ADVOCATES, for the respondent.

JUDGMENT

The judgment of this Court was delivered by :—

TULI, J.—The assessee-firm is a registered stock holder of iron goods manufactured by the Tatas. It also purchases scrap iron for re-rolling it into bars and scraps. It had business transactions with M/s. Goel Iron Stores, Gobindgarh. In connection with the assessment of M/s. Goel Iron Stores to sales tax, the Sales Tax authorities found a book called 'Uchanti Bahi' which purported to record transactions of M/s. Goel Iron Stores which had not been accounted for by them in their regular books of account produced before the Sales Tax authorities. While scrutinising the Uchanti Bahi of M/s. Goel Iron Stores, the following entries pertaining to the assessee were found:—

Debit			Credit		
	Rs.	A. P.		Rs.	A. P.
1-11-1955	15,388	3 0	3-11-1955	19,388	0 0
9-11-1955	800	0 0	3-11-1955	2,000	0 0
5-12-1955	400	0 0	23-11-1955	4,137	10 9
6-12-1955	700	0 0	3-11-1955	3,000	0 0
9-12-1955	300	0 0	6-12-1955	11,156	0 0
10-12-1955	4,000	0 0	21-12-1955	579	5 0
12-12-1955	1,800	0 0			
13-12-1955	2,036	3 0		40,260	15 9
	25,424	6 0			

The Income Tax Officer found that in the books of account produced before him, the assessee had accounted for items aggregating Rs. 26,306 as against the sum of Rs. 40,261 for which credit was given to the assessee in Uchanti Bahi of M/s. Goel Iron Stores. Similarly, it was found that as against the total sum of Rs. 25,424 debited to

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the assessee in the Uchanti Bahi of M/s. Goel Iron Stores, the assessee's books showed credits corresponding to Rs. 15,388 only on November 1, 1955. The Income-Tax Officer formed the opinion that all the transactions which were recorded in the Uchanti Bahi of M/s. Goel Iron Stores as pertaining to the assessee in fact pertained to it, as some of the entries in the Uchanti Bahi were also recorded in the assessee's books. On that plea, the Income Tax Officer held that the sum of Rs. 13,955, representing the difference between Rs. 40,261 and Rs. 26,306, represented the amount given by the assessee to M/s. Goel Iron Stores which was not recorded in the assessee's books. This amount was accordingly treated as the assessee's income from undisclosed sources by the Income-Tax Officer and included in its income for the assessment year 1956-57. The matter was taken up before the Appellate Assistant Commissioner in appeal by the assessee. The Appellate Assistant Commissioner accepted the appeal and in support of his order, dated October 27, 1961, gave the following reasons:—

“M/s. Goel Iron Stores of Gobindgarh was a regular customer of the appellant for purchase of sheets. For purposes of sales tax assessment of this concern, it is said that a duplicate cash book called the Uchanti Bahi was discovered, which showed that all the transactions entered in the Uchanti Bahi were not entered in their cash book. Goel Iron Stores was, therefore, assessed to sales tax amounting to Rs. 18,000. That firm was dissolved on 31st March, 1956 and it was only Shri Sagar Mal, partner, who was attending to the sales tax proceedings. Shri Sagar Mal filed an appeal and the Deputy Excise and Taxation Commissioner compromised the case for Rs. 3,100, to which Shri Sagar Mal agreed, because (a) of the huge reduction offered, (b) no other partner was taking interest and it was he alone, who was being pursued by the sales tax authorities for payment of demand and attending the innumerable proceedings. I am told that Shri Sagar Mal had vehemently denied maintaining any Uchanti Bahi and the said book shown to him by the Sales Tax authorities was denied by him to belong to his firm, but in order to finish the case, he admitted, as one of the terms of compromise, that the Uchanti Book belonged to him. Later

on, the Income Tax Officer came to know of the Uchanti Book through the Sales Tax authorities and obtained abstracts therefrom. The Uchanti Book also contained transactions done with the appellant and the Income Tax Officer found that as far as the appellant was concerned, the Uchanti Book of M/s. Goel Iron Stores showed a total debit of Rs. 25,424 for cash payment to the appellant and a credit of Rs. 40,261 for supplies and cash advanced by the appellant. The appellant, in his own books, showed the supplies worth Rs. 31,156 to M/s. Goel Iron Stores. The credit of Rs. 40,261 included two items of Rs. 11,156 on 6th December, 1955 and Rs. 19,388 on 3rd November, 1955 in respect of G.I. Sheets supplied by the appellant. The appellant in his own books, however, showed supplies of Rs. 9,927 on 6th December, 1955 and Rs. 16,378 on 3rd November, 1955, the weight being 354 maunds and 584 maunds, respectively. Thus, the amount of sales shown by the appellant on these two dates is lower than what was recorded in the Uchanti Book of M/s. Goel Iron Stores. The appellant, however, tells me that the weight of the material supplied has been entered at the correct figure in the Uchanti Book of M/s. Goel Iron Stores and, therefore, if the Uchanti Book is a correct book belonging to them, then they must have inflated the price. The Income Tax Officer did not accept the appellant's different explanation and held that against the total credits of Rs. 40,261 shown in the Uchanti Book, the appellant had accounted for only Rs. 26,306 and, therefore, the difference of Rs. 13,955 was treated by him as income from undisclosed sources. Shri Sagar Mal, in clear terms admitted before the Income Tax Officer that the said Uchanti Book did not belong to him. He also said that all the transactions with the appellant were duly entered in his cash book and ledger and there was not a single transaction of any Uchanti nature or otherwise which was not entered in the books. My predecessor, who originally heard the appeal, remanded the case to the Income Tax Officer, by his order, dated 27th June, 1958, directing the Income Tax Officer to produce the original Uchanti Book before him. The Income Tax Officer has expressed his inability to obtain the original Uchanti Book from the Sales Tax Department on the ground that the

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same is not traceable. He has, however, filed a duplicate copy of the said Uchanti Book in two volumes for the period 1st December, 1955 to 30th December, 1955. He also mentioned in his remand report that pages for the period 1st November, 1955 to 30th November, 1955 appear to have been removed. This duplicate copy of the Uchanti Book was received by him from the Sales Tax authorities and there is absolutely no explanation as to why the original was not available and why they sent a duplicate copy to the Income Tax Officer and in that too, the relevant pages are missing. The appellant tells me that a Sales Tax Inspector had fallen out with Shri Sagar Mal and, therefore, the Inspector in league with one of Shri Sagar Mal's ex-employees fabricated an Uchanti Bahi only to harm Shri Sagar Mal. Whatever may be the true facts, one thing is clear that the case against the appellant is certainly not proved. Shri Sagar Mal has admitted in clear terms before the Income Tax Officer in his statement on oath, dated 10th March, 1958 that there was not a single transaction with the appellant which was not entered in his books and the Income Tax Officer has also not found any discrepancy in comparing the appellant's account as standing in the books of M/s. Goel Iron Stores with the accounts of the latter as standing in the books of the appellant. The only discrepancy is in respect of the account in the Uchanti Bahi, but there is absolutely no evidence to prove that this Uchanti Bahi really belonged to M/s. Goel Iron Stores or that the entries, relating to the appellant in those books were true entries. The disappearance of the original Uchanti Book from the Sales Tax Department and the removal of some relevant pages from the duplicate copy thereof are highly suspicious. A duplicate copy, which is uncertified cannot replace the original. The Income Tax Officer was, therefore, not justified in laying undue weight on this Uchanti Book said to be belonging to M/s. Goel Iron Stores for the purpose of framing the assessment of the appellant. The addition of Rs. 13,955 is, therefore, deleted."

The Income Tax Officer filed an appeal before the Income Tax Appellate Tribunal which was accepted on August 13, 1962, and the addition of Rs. 13,955 deleted by the Appellate Assistant Commissioner was restored. The assessee-firm then applied for reference to this Court under section 66(1) of the Income Tax Act, 1922 (hereinafter called the Act), which was declined by the Appellate Tribunal. The assessee then filed an application under section 66(2) of the Act in this Court which was allowed and the Income Tax Appellate Tribunal was directed to draw up the statement of the case and refer the following question of law for opinion to this Court:—

“Whether on the facts and in the circumstances of this case, there was legal and admissible evidence to support the finding of the Delhi Bench ‘B’ of the Income Tax Appellate Tribunal contained in its order, dated August 30, 1962, in respect of the assessment of income-tax on the assessee for the assessment year 1956-57 restoring the addition of Rs. 13,955 as income of the assessee from undisclosed sources ?”

(2) The only material before the Income Tax Officer on the basis of which the addition of Rs. 13,955 was made to the income of the assessee-firm was a certified copy of the Uchanti Bahi of M/s. Goel Iron Stores received from the Sales Tax Department. The original Uchanti Bahi was not to be found in the records of the Sales Tax Department and so could not be produced or shown to the assessee-firm. It was also not shown who made the copy and under whose advice and after making the copy where did the Uchanti Bahi disappear. Shri Sagar Mal, a partner of M/s. Goel Iron Stores, was examined under section 37 of the Act and he denied that the Uchanti Bahi related to his firm. His statement was as under:—

“I state on S.A., that I was the partner of the firm styled as M/s. Goel Iron Stores, Gobindgarh. This firm stopped its business on 31st March, 1956. I remained a share-holder in this firm till its closure. This firm used to transact business with M/s. Chiranji Lal Steel Re-rolling Mills, Patiala. We used to purchase from this firm Jisti Chadar, Saria and Patti, etc., of Tata material and we used to stand as brokers in some of the transactions and sometime we used to carry goods to Gobindgarh. This I do not remember as to whether we used to sell any material to

the said firm or not. If at all any material might have been sold, it would have been very little. The material might have been exchanged with other goods. The transactions that we used to do with the said firm are duly entered in our books of accounts which have been produced in the Income Tax Office. Excepting the said business, we have done no other transactions with the said firm. We have not received any Uchanti money and similarly we have never purchased or sold any Uchanti material. We have not received price of material as Uchanti nor have paid any money as Uchanti.

Once, one Uchanti Bahi was shown to us by the Sales Tax Department. This pertained to the year 1955-56. At that time, our firm had been closed. That book as a matter of fact did not belong to our firm. Possibly it was written by some body else who was in collusion with the Inspector of Sales Tax. The Sales Tax Department ascribed that Bahi to belong to our firm and imposed sales-tax. We preferred an appeal and we were told that now Pepsu is about to merge in Punjab and the Department was prepared to decide our case. I, being often ill, every day to attend the department was very difficult. In the beginning the department imposed sales tax amounting to Rs. 18,000. After that it was reduced to Rs. 3,100. The record available for the Uchanti Book was entirely wrong. We had neither transacted any business outside the books that have been produced in the Income Tax Office nor we had earned any income excepting the one shown in those books of accounts.

- Q. If that Bahi did not belong to you, why did you pay the sum of Rs. 3,100 by your sales tax extra ?
- R. I am often ill and it is difficult to attend days of hearing, besides the firm itself has come to a close and the other partners are not taking interest in the business of the firm.
- Q. Whether that Uchanti Book is still in your possession ?
- R. No. It is neither in our possession nor before this".

It is evident from his statement that Sagar Mal did not support the entries in the Uchanti Bahi and no other material was brought on the record to connect the entries in the Uchanti Bahi with any transaction between the assessee-firm and M/s. Goel Iron Stores. In our opinion, the mere copy of the Uchanti Bahi supplied by the Sales Tax Department, in the circumstances of this case, was not a legal or admissible evidence on the basis of which the addition of Rs. 13,955 could be made to the income of the assessee-firm from undisclosed sources. Legal and admissible evidence means evidence on which a judicial mind can act by forming a belief that it is true although the assessee denies it. We agree with the learned counsel for the Revenue that the provisions of the Indian Evidence Act cannot be resorted to judge the admissibility or legality of a particular piece of evidence on which the Income Tax Officer relies for the purpose of assessment. The Income Tax Officer has the power to collect evidence from any source but it is his duty to put it to the assessee before making it the basis of his assessment. If the assessee denies the information collected by the Income Tax Officer, it is the duty of the Income Tax Officer to satisfy himself by making independent enquiry from sources considered reliable by him so as to decide whether the information passed on to him is true or not. If as a result of his own independent enquiry he comes to the conclusion that the information received by him is true, he is at liberty to act thereupon after disclosing it to the assessee and affording him a reasonable opportunity of rebutting it. But he has no right to burden the assessee with an extra amount of tax on a vague information given to him without himself verifying its truthfulness or reliability. In the present case, the Income Tax Officer made no independent enquiries and merely relied on the copy supplied by the Sales Tax Department. In the earlier part of this judgment, the entries from the Uchanti Bahi communicated to the Income Tax Officer have been set out and these entries show that no particulars have been given as to the transactions to which those entries related. The nature of the transactions between the parties was also to be investigated in order to find out whether the assessee had any occasion to pass on cash to M/s. Goel Iron Stores when the case of the assessee was that they used to sell iron and steel goods manufactured by Tatas. There was no material on the record for the Income Tax Officer to reach the conclusion that the sum of Rs. 13,955 had been passed on by the assessee-firm in cash to M/s. Goel Iron Stores. The Income Tax Officer also did not have the advantage of seeing the

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Uchanti Bahi, entries from which had been supplied to him, in order to find out whether that Bahi was a reliable document. He had admittedly not recovered it from M/s. Goel Iron Stores nor is it shown on this record as to who recovered it from that firm. No official of the Sales Tax Department was examined to know about this fact. It is also significant that in appeal the Appellate Authority under the Sales Tax Act agreed to accept from Shri Sagar Mal the sum of Rs. 3,100 instead of Rs. 18,000 which had been imposed by way of sales tax on the basis of that Uchanti Bahi, which clearly shows that even the Appellate Authority was not convinced that the Uchanti Bahi was a genuine book which could be explicitly relied upon. Under the circumstances, greater responsibility lay on the Income Tax Officer to satisfy himself about the entries enumerated in the copy supplied to him, more particularly because Shri Sagar Mal, who was produced as a witness before him, categorically denied that that Uchanti Bahi was recovered from his firm or belonged to his firm. He also denied the entries mentioned in the copy. The Appellate Assistant Commissioner of Income Tax rightly rejected that document by giving cogent reasons in support of his conclusion and that is why we have given an extensive quotation from his order bearing on this point instead of repeating those reasons. In view of the denial by Shri Sagar Mal about the Uchanti Bahi, it had to be proved by independent evidence that the entries shown in the copy supplied to the Income Tax Officer by the Sales Tax Department in fact related to transactions between the two firms which fact was never proved by any evidence whatsoever. If the Uchanti Bahi was considered to be a genuine document, it must have contained entries with regard to the dealings of M/s. Goel Iron Stores with other parties so that the reliability or unreliability of the Bahi could be ascertained by reference to the other parties. But this way of proving the reliability or unreliability of that Bahi was shut out by the secreting away of that book from the Sales Tax Department. The Sales Tax Department also did not notify to the Income Tax Officer that on the basis of that Bahi they had made enquiries from other parties with whom M/s. Goel Iron Stores had dealings and which were mentioned in that Bahi. If only the transactions relating to the assessee were mentioned in that Bahi, then on the face of it it was unreliable. The Income Tax Officer gravely erred in relying on the entries from the Uchanti Bahi without ascertaining their

correctness from any other source and acted on a mere suspicion which was not justified. For these reasons we hold that the copy of entries from the Uchanti Bahi supplied to the Income Tax Officer by the Sales Tax Department was not legal and admissible evidence on which the Income Tax Officer could act for imposing extra burden of income tax on the assessee. We are further of the opinion that the Appellate Assistant Commissioner took the correct view of the matter and rightly deleted the addition of Rs. 13,955 which had been made by the Income Tax Officer to the income of the assessee. The Income Tax Appellate Tribunal erred in law in restoring that deletion merely on the basis of the copy of the Uchanti Bahi of M/s. Goel Iron Stores supplied by the Sales Tax Department to the Income Tax Officer, which could not be relied upon for the reasons already stated.

(3) We accordingly answer the question, referred to us, in the negative, that is, in favour of the assessee. The assessee will have his costs which are assessed at Rs. 200.

B. S. G.

INCOME TAX REFERENCE.

Before D. K. Mahajan and Bal Raj Tuli, JJ.

THE COMMISSIONER OF INCOME-TAX, PUNJAB, PATIALA,—
Applicant.

versus

M/s. KHALSA NIRBHAI TRANSPORT, CO., (P.), LTD.—
Respondent.

Income Tax Reference No. 28 of 1969

November 17, 1970.

Income-tax Act (XI of 1922)—Sections 10(2)(v) and 10(2)(xv)—Transfer of assessee's income-tax case from one place to another—Order of transfer challenged in the High Court by way of writ petition—Fee paid to advocate for conducting the petition—Whether business expenditure allowable under section 10(2)(xv)—Assessee, a transport Company, replacing petrol engines by diesel engines in its buses—Cost of such replacement—Whether revenue expenditure allowable under section 10(2)(v).