Commissioner Of Income-Tax, Delhi And ... vs M/S. Bharat Carbon And Ribbon ... on 17 December, 1965

Equivalent citations: 1966 AIR 1561, 1966 SCR (3) 170, AIR 1966 SUPREME COURT 1561

Author: S.M. Sikri

Bench: S.M. Sikri, J.C. Shah

PETITIONER:
COMMISSIONER OF INCOME-TAX, DELHI AND RAJASTHAN

Vs.

RESPONDENT:
M/S. BHARAT CARBON AND RIBBON MANUFACTURING CO.

DATE OF JUDGMENT:
17/12/1965

BENCH:
SIKRI, S.M.
BENCH:
SIKRI, S.M.
SUBBARAO, K.
SHAH, J.C.

CITATION:
1966 AIR 1561 1966 SCR (3) 170

ACT:
Indian Independence Act (10 & 11 Geo Vic. 30), 18(3) and Income Tax Act (11 of 1922), s. 18A(1)-Advance tax-Adjusted by Pakistan Government-If could also be adjusted by Indian Government.

HEADNOTE:
Between June 1946 and March 1947 the assessee-company, which then had its head office at Lahore, paid advance tax to the Income-tax Officer, Lahore, under s. 18-A of the Indian Income-tax Act, 1922. For the assessment year 1947-48, the assessment was completed by the Pakistan Income-tax Officer on 28th January 1948 after adjusting the advance income-tax paid. The Income-tax Officer, New Delhi, assessed the tax for the same year 1947-48 in 1952. The assessee contended

that credit should be given to him of the advance tax paid by him in Lahore under s. 18-A(11). The claim was disallowed by the Appellate Assistant Commissioner but the Appellate Tribunal and the High Court on a reference,held in favour of the assessee.
In appeal to this Court,
HELD : The effect of s. 18(3) of the Indian Independence Act was to change the incidents of the advance tax paid. Previously it was to be adjusted towards a single regular assessment to be made by British India. After the Independence Act, the advance tax was liable to be adjusted against two regular assessments, one by India and one by Pakistan. In Pakistan, under s. 18A(11), the Pakistan Government was entitled to adjust the advance tax paid by the assessee against its demand. Similary, the Government of India was entitled to adjust the amount against its demand. It,follows that if the assessee had been given credit for' the advance tax, by the Pakistan Government, he cannot claim that credit should be given to him by the Indian income-tax authorities. [174 B-D] Dwarka Das v. Income-tax Officer, Kanpur, 29 I.T.R. 60 referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 106 of 1965. Appeal by special leave from the judgment and order, dated November 13, 1962 of the Punjab High Court (Circuit Bench) at Delhi in Income-tax Reference Case No. 3 of 1959. A. V. Viswanatha Sastri, Gopal Singh and R. N. Sachthey, for the appellant.

B. L. Khanna and K. K. fain, for the respondent. The Judgment of the Court was delivered by Sikri, J. This appeal by special leave is directed against the judgment of the High Court of Punjab at Chandigarh in a reference made to it under s. 66(1) of the Income Tax Act, 1922, hereinafter referred to as the Act. The questions which were referred were :

> (1) Whether the assesses was entitled to have an adjustment of the advance tax paid by it under Section 18-A of the Indian Income-tax Act in Lahore for the assessment year 1947-48 against the demand of tax raised by the Income-tax Officer 3rd Additional Business Circle, New Delhi for the assessment year 1947-48 ?
>
> (2) Whether the order of the Tribunal directing a refund to the assessee out of the advance tax paid by him in Lahore is legal and valid ?

As the High Court rightly observed, the answer to the second question depends on the answer to the first question, and it is the first question alone which requires consideration. The relevant facts are stated in paras 2 and 3 of the Statement of the Case, as follows :

> "2. The statement of case relates to the assessment year 1947-48, the accounting period being the calendar year ending 31st December, 1946.
>
> 3. The assessee is a public limited company dealing in the manufacture and sale of stationery goods. Before the partition of the Country the company's registered office as well as the head office was at Lahore. The assessment for the year 1947-48 was completed by the Pakistan Income-tax Officer on the 28th January, 1948 completely ignoring the agreement of the Avoidance of Double Taxation of Income between the Pakistan and the Indian Governments. The assessment for the year 1947-48 was also made by the Income-tax Officer 3rd Additional Business Circle, New Delhi on a figure of Rs. 38,916. It is common ground that the assessee had paid advance tax under Section 18-A of the Indian Income Tax Act to the tune of Rs. 36,783/6/- between June. 1946 and March, 1947. This tax was paid under the Indian Income-tax Act to the Income- tax Officer, Lahore."

The Income-tax Officer 111, Additional Business Circle, New Delhi, by his order, dated March. 1952, determined the total income of the respondent, M/s. Bharat Carbon & Ribon Manufac-

turing Co., hereinafter to as the assessee at Rs. 38,916 and directed that demand notice and chalan be issued. Before the Appellate Assistant Commissioner one of the points taken up by the assessee was that credit should be given to him of the-advance tax paid by him in Lahore, under s. 18A(11) which reads as follows "Any sum other than a penalty or interest paid by or recovered from an assessee in pursuance of the provisions of this section shall be treated as a payment of tax in respect of the income of the period which would be the previous year for an assessment for the financial year next following the year in which it was payable, and credit therefore shall be given to the assessee in the regular assessment."

The Appellate Assistant Commissioner disallowed the claim. He observed :

> "I, however, find that the amount under Section 18-A was paid by the assessee to Income-tax Officer, Lahore. The same Income- tax Officer made an assessment for this very year on 28th January, 1948 on a total income of Rs. 1,22,014 for Income tax and Rs. 52,780 for capital gains. He worked out the total tax payable by the assessee at Rs. 76,472/6. As a result of this assessment, even after setting off the tax paid under Section 18-A of Rs. 47,513 an amount of Rs. 20,000 was still due from this assessee. The amount under Section 18-A, has, therefore, been adjusted by the Pakistan authorities towards the. payment of tax and the assessee cannot take credit for this amount again. Under these circumstances, it must be held that there was no balance of tax paid under Section 18-A left to be adjusted by the Income-tax Officer for the Indian assessment."

The assessee filed an appeal before the Appellate Tribunal. The Tribunal allowed the claim on the ground that the language of s. 18A (11) was mandatory, and it was the duty of the Income. tax authorities to give credit for the amount paid by the assesses as advance tax in the regular

assessment made under the Indian Income Tax Act. It observed :

> "What the Income tax authorities would do or may have done to the advance tax paid to the Income-tax Officer, Lahore, is entirely immaterial."

At the instance of the Commissioner of Income Tax a refer- ence was made to the High Court. The High Court held that if the direction contained in s. 18A(11) had to be obeyed, credit had necessarily to be given to the assessee at the time of regular assessment. In reply to the argument of the learned counsel for the Commissioner of Income Tax that no adjustment was possible because the Pakistan authorities had already raised a demand against the assessee on January 28, 1948, and in part satisfaction of that demand wiped out the amount standing to the credit of the assessee, the High Court observed "It is, however, obvious that what may have been done by the Pakistan authorities in January, 1948, cannot be called a proceeding under the Indian Income Tax Act and the fact that the money paid by the assessee under the Indian Income Tax Act may have been seized by the Pakistan authorities or disposed of in some other manner, can in no way affect the right of the assessee under the Indian Income- tax Act."

In the result, the High Court answered both the questions in the affirmative.

Mr. A. V. Viswanatha Sastri, the learned counsel for the appellant, contends before us that by virtue of s. 18(3) of the Indian Independence Act, the Income Tax Act as it existed before the coming into force of the Indian Independence Act, applied both to the Dominion of Pakistan and the Dominion of India, and the result of this simultaneous application to both the Dominions was that the advance tax paid by the assessee was liable to be adjusted against the assessments made both in Pakistan and in India, and Pakistan having made the adjustment, there was no money left to be adjusted against the assessment in India. The learned counsel for the respondent relies on the reasoning of the High Court and on Dwarka Dass v. Income-tax Officer, Kanpur(1) and says that it was the obligation of the Government of India under s. 9 of the Indian Independence (Rights, Property and Liabilities) Order, 1947, either to refund the money paid as advance tax or to give credit in the assessment in India.

Section 18(3) of the Indian Independence Act reads as follows :

> "Save as otherwise expressly provided in this Act, the law of British India and of the several parts thereof (1) 29 I.T.R. 60.

existing immediately before the appointed day shall, so far as applicable and with the necessary adaptations, continue as the law of each of the new Dominions and the several parts thereof until other provision is made by laws of the Legislature of the Dominion in question or by any other Legislature or other authority having power in that behalf." in our opinion the effect of s. 18 (3) of the Indian Independence Act was to change the incidents of the advance tax paid. Previously the advance tax was to be adjusted towards a single regular assessment to be made by British India. After the Indian Independence Act the advance tax was liable to be adjusted against two regular assessments, one by India and one by Pakistan. In Pakistan, under s. 18A(11), the Pakistan

Government was entitled to adjust the advance tax paid by the assessee against its demand. Similarly, the Government of India was entitled to adjust the amount against its demand. It follows that if the assessee has been given credit for the advance tax by the Pakistan Government, he cannot claim that credit should be given to him by the Indian Income Tax authorities. The effect of the Indian Independence Act was not to double the advance money the assessee had paid. The amount of money he paid as advance tax remained the same. Having been given credit by the Pakistan Government he could not claim that there was any amount left on which s. 18 (A)11 could operate. Dwarka Dass's case(1) relied on by the learned counsel for the assessee is distinguishable because that case proceeded on the assumption that no regular assessments had been made in Pakistan for the relevant years and only some assessment proceedings were pending. It was also common ground that excess payments had been made by the petitioner in that case under s. 18A of the Indian Income Tax Act in Lahore in respect of the years 1946-47 and 1947- 48, and it was only these excess payments that the Allahabad High Court had directed should be set off against the assessments of the subsequent years. But the facts in the present case are different. Here the Pakistan authorities had made a regular assessment and had adjusted the advance tax paid by the assessee.

In this view it is not necessary to consider the interpretation of s. 9 of the Indian Independence (Rights, Property and Liabilities) Order, 1947. By virtue of the simultaneous application of the Indian Income Tax Act in both the Dominions, there was (1) 29 I.T.R. 60.

a statutory modification of the incidents of the advance tax paid by the assessee.

In the result we hold that the answer to the questions should be in the negative and against the assessee. The judgment of the High Court is accordingly set aside and the appeal accepted with costs here and in the High Court. Appeal allowed.