Commissioner Of Income-Tax, Madhya ... vs Lady Kanchanbai on 16 December, 1969

Equivalent citations: 1970 AIR 691, 1970 SCR (3) 323, AIR 1970 SUPREME COURT 691

Author: K.S. Hegde

Bench: K.S. Hegde, J.C. Shah

PETITIONER:
COMMISSIONER OF INCOME-TAX, MADHYA PRADESH

Vs.

RESPONDENT:
LADY KANCHANBAI

DATE OF JUDGMENT:
16/12/1969

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
SHAH, J.C.

CITATION:
1970 AIR 691 1970 SCR (3) 323
1970 SCC (1) 140

ACT:
Income-tax Act, 1922-S. 2(11)(i)(a) and proviso-Previous year relevant to assessment year 1950-51 in respect of sources of income outside "taxable" territory-Assessee', 'assessed', meaning of.

HEADNOTE:
Prior to the assessment year 1950-51 the assessee was assessed under the Indian Income-tax Act, 1922 in the status of a non-resident Hindu Undivided Family. The income received by the assessee in the former Indian State of Madhya Bharat was not subject to tax under the Act but was taken into consideration in computing its "world income" for the purpose of determining the 'rate. After the Constitution came into force the present definition of

"taxable territories" was incorporated into the Income-tax Act by the Finance Act, 1950 and the areas in which the assessee was carrying on business with which this appeal is concerned were included therein with the result that for the assessment year 195051 the assessee who was a resident of Madhya Bharat was deemed to be a resident in the "taxable territories" during the "previous year" and hence liable to be taxed in respect of its income received in Madhya Bharat. Prior to the assessment year 1950-51 the assessee had proceeded on the basis that its account year ended on Diwali day, but for the assessment year 1950-51, in respect of its income from business in Madhya Bharat it chose the financial year ending on March 31, 1950 as the "previous year". The Income Tax Officer as well as the Appellate Assistant Commissioner rejected the claim of the assessee that it could make such a choice. The Tribunal reversed the finding of the Income Tax Officer and the High Court on reference agreed with the tribunal. On the question whether under the circumstances of the case, having regard to s. 2(11)(i)(a) of the Income Tax Act, 1922, the assessee is entitled to take the year ended on 31-3-1950 as the "previous year" relevant to the assessment year 1950-51 in respect of his sources of income arising outside the "taxable territory",

HELD : The High Court was right in answering in favour of the asseme.

(1)It is clear from the provisions of s. 2(11)(i) (a) that in respect of any separate source of income, profits or gains unless the assessee has made a choice in accordance with the second part of s. 2(11)(i)(a) the 12 months ending on 31st day of March next the preceding year for which the assessment is made is the "previous year". The section does not refer to the income of the assessee generally but to his "separate sources of income, profits and gains". Hence it is possible for an assessee to have a different "previous year" for each "separate source of income, profits and gains" : and the business of the as-sessee in Madhya Bharat constituted a separate source of income. [326 C-G]

Commissioner of Income Tax v. Savumamurathy, [1946] I.T.R. 185; Rhodesia Metals Ltd. v. Commissioner of Taxes, (1941) I.T.R. Supp. 45, refeffed to.

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(2)For the purpose of finding out the total "world income" of the assessee, the income derived by the assessee from its businesses outside the "taxable territories" had been taken into consideration in the past; but that was done only for the purpose of determining the rate at which the assessee's income should be assessed. No tax was imposed on the income from those business. The expression that "where in respect of a particular source of income, profits and gains" in the proviso to S. 2(11)(i)(a) means the income from a particular source which has been brought to tax under the Act and not which has been taken into consideration for computing the total world income of the assessee. In the context the word

"assessee" in the proviso to s. 2(11)(i)(a) refers to the person whose income, profits or gains in respect of a particular source had been once assessed to tax. The word "assessed" in that proviso means subject to levy or imposition of tax not computed. [327 C-F]
Commissioner of Income Tax, Bombay v. Kemchand Ramdas, (1938) VI, I.T.R. 414 and Seth Badridas Daga and Anr. v. Commissioner of Income Tax Central and United Provinces (1.949)XVII I.T.R. 209, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 19 of 1969. Appeal from the judgment and order dated October 28, 1960 of the Madhya Pradesh High Court in Misc. Civil Case No. 291 of 1958.

S. T. Desai, S. K. Aiyar and B. D. Sharma, for the appellant.

M.C. Chagla, Rameshwar Nath, Mahinder Narain and Swaranjit Sodhi, for the respondents.

The Judgment of the Court was delivered by Hedge, J. In this appeal by certificate the question that arises for decision is whether under the circumstances of the case having regard to Section 2 (I I) (i) (a) of the Income Tax Act, 1922 (to be hereinafter referred to as the Act), the assessee is entitled to take the year ended on 31- 3-1950 as the "previous year" relevant to the assessment year 1950-51 in respect of his sources of income arising outside the "taxable territories". This question under S. 66(1) of the Act was answered in favour of the assessee by the High Court of Madhya-Pradesh. Aggrieved by that decision, the Commissioner of Income Tax, Madhya Pradesh has brought this appeal.

The assessee (the respondent) is a Hindu Undivided Family with its Head-office at Indore and branches at several places. It derives income from property, business in cotton and oil seeds, speculation, dividends, managing agency commissions, etc. Prior to the assessment year 1950-51, the assessed'was assessed under the Indian Income Tax Act, 1922 in the status of a nonresident Hindu Undivided Family. The income which accrued to or was received by the assessee in the former Indian States was not subject to tax under the Act but was taken into consideration in computing its "world income" for the purpose of determining the rate. After the Constitution came into force, the present definition of "taxable territories" was incorporated in the Income Tax Act by the Finance Act, 1950 and the areas in which the assessee was carrying on the businesses with which we are concerned in this appeal were included therein. The result of the amendment was that for the assessment year 1950-51, the assessee who was a resident of Madhya Bharat, was deemed to be a resident in the "taxable territories" during the "previous year" and hence liable to be taxed in respect of its income. that accrued or received in Madhya Bharat. For the purpose of its accounts the assessee was. adopting the year ending on Diwali day. In the returns submitted by the assessee, prior to the assessment year 1950-51, it had proceeded on the basis that its account year ended on Diwali day; but for the assessment year 1950-51, in respect of its income accrued from its businesses

in Madhya Bharat, it chose the financial year ending on March 31, 1950 as the "previous year". The Income Tax Officer as well as the Appellate Assistant Commissioner rejected the claim of the assessee that it could make: such a choice. The Income Tax Officer assessed the assessee on the. basis that the "previous year" in respect of the concerned source,,, ended on Diwali of 1949. That decision was affirmed by the Appellate Assistant Commissioner; but the Income Tax Appellate. Tribunal reversed the finding of. the Income Tax Officer and the Appellate Assistant Commissioner and agreed with the stand taken by the assessee. Thereafter a reference was made to the High Court of Madhya Pradesh under s. 66(1) of the Act at the instance of the Commissioner of Income Tax but the- High Court agreed with the view taken by the tribunal. Hence this, appeal.

The question for our consideration is whether the, view taken by the High Court is correct ? In order to decide that question, it is necessary to find out the true scope of s. 2(11)(i)(a) or the Act,which provision defines the term "previous year"

> thus " "Previous year" means-
>
> (ii) in respect of any separate source of income, profits and gains-
>
> (a)the twelve months ending on 31st day of March next preceding the year for which the assessment is to be made, or, if the accounts of the assessee have been made up to a date within the said twelve months in respect of a year ending on any date other than the said 31st day of March, then, at the option of Sup.Ct.(INP)/70-6 the assessee, the year ending on the date to which his accounts have-been so made up :
>
> Provided that where in respect of a particular source of income, profits and gains, an assessee has once been assessed..... he shall not, respect of that source or as the case may be, business, profession or vocation, exercise the option given by this Sub-Clause so as to vary the meaning of the expression " previous year" as then applicable to him except with the consent of the Income-Tax Officer and upon such conditions as the Income Tax Officer may think fit to impose."

(emphasis is ours).

From the above provision, it is- clear that in respect of any -separate source of income, profits or gains, unless the assessee had made a choice in accordance with 2nd part of s. 2 (1 1) (i) (a), the twelve months ending on 31st day of March next the preceding year for which the assessment is made is the "previous year".

Therefore all that we have to see is whether the assessee's income, profits or gains in respect of the businesses in Madhya Bharat had been assessed previously. If they had not been previously assessed then the assessee's case comes within. the first Part -of S. 2 (II) (i) (a). In that event his return was in accordance with law. Therefore we have first to see what is meant by "source of income" in s. 2(11)(i) (a) of the Act and then proceed to, consider whether those sources of income had "once been assessed". It is necessary to note that s. 2 (1 1) (i) (a) does not refer to the income of the assessee

Generally but to his "separate sources of income, profits and gains". Hence it is possible for an assessee to have a different "previous year" for each "separate source of income, profits and gains" as held by the Madras High Court in Commissioner of Income Tax v. Savumamurathy(1). In Rhodesia Metals Ltd. v. Commissioner of Taxes (2) the Judicial Committee -observed that "source" means not a legal concept but which a practical man would regard as a real source of income. There is hardly any room for doubt, nor was it contended otherwise that the business of the assessee in Madhya Bharat constituted a separate source or sources. Hence all that we have to see is whether the income accruing from those businesses had "once been assessed" under the Act. This takes us to the question what exactly is the meaning of

-the expressions "assessed" and "assessee" in the proviso to (1) (1946) I.T.R. 185.

(2) (1941) I.T.R. Sup. 45.

2(11)(i)(a). The words "assessed", "assessment" and 'assessee" have different meaning in different contexts. As observed by Judicial Committee in Commissioner of Income Tax, Bombay v. Kemchand Ramdas(l) the word "assessment" is used in the Act as meaning sometimes the computation of income, sometimes the determination of the amount of tax payable and sometimes the procedur laid down in the Act for imposing liability upon the tax payer. Similarly the word "assessee" connotes different meaning in different contexts- see Seth Badridas Daga and anr. v. Commissioner of Income Tax Central and United Provinces(').

It is true that for the purpose of finding out the total "world income" of the assessee, the income derived by the assessee from its businesses outside the taxable territories had been taken into consideration in the past. That was done only for the purpose of determining the rate at which the assessees income should be assessed. No tax was imposed on the income from those businesses. In other words, the income derived by the assessee from the businesses carried on by it in territories outside the "taxable territories"

> were not brought to tax under the Act. The expression that "where in respect of a particular source of income, profits and gains" in the proviso lo s. 2 (I 1) (i) (a) means the income from a particular source which has been brought to tax under the Act and not which has been taken into consideration for computing the total world income of the assessee. In the context the word "assessee" in the proviso to s. 2(11)(i)(a) refers to- the person whose income, profits or gains, in respect of a particular source had been once assessed to tax. The word "assessed' in that proviso means subject to levy or imposition of tax not compute. For the reasons mentioned above, we agree with the view taken by the High Court. In the result this appeal fails and the same is dismissed with costs.

R.K.P.S. Appeal dismissed.

(1) (1938) VI, I.T.R. 414.
(2) (1949) XVII I.T.R. 209.