

Ram Lal Bachai Ram vs Commissioner Of Income Tax, United And ... on 14 November, 1950

JUDGMENT

Bhargava, J.

1. The assessee in this case is a Hindu undivided family carrying on business under the name and style of Ram Lal Bachai Ram. The head office of the assessee with a cloth shop was situated at Samohi in the district of Jaunpore in British India and it also ran a branch cloth shop at Bhadohi in the erstwhile Banaras State during the year of account corresponding to the assessment year 1940-41. Cloth worth Rs. 77,469 was sent in the year of account from Bhadohi to Samohi and cash and cloth to the extent of Rs. 65,931 was sent from Samohi to Bhadohi. There was thus an excess remittance of Rs. 11,538 from Bhadohi to Samohi. It was an admitted fact that profits were available at Bhadohi for remittance to the place of residence of the assessee's family at Samohi in British India. In these circumstances, the Income-tax Appellate Tribunal, Allahabad Bench. held that this balance of Rs. 11,538 represented profits earned by the firm at Bhadohi outside British India and that, by these transactions entered into in the year of account, this amount had been received in British India by the firm. The assessee contended that this amount did not represent profits of the Bhadohi firm received in British India and was, therefore, not liable as such to income-tax. On these facts, the following question has been referred to us by the Income-tax Appellate Tribunal, Allahabad Bench:

Whether, in the circumstances of the case, when admittedly old unassessed profits were available for remittance to Samohi (in British India) from Bhadohi (outside British India), the excess remittance of stock in-trade from the latter shop (outside British India) to the former shop (in British India) over cash and goods sent from the Samohi shop to the Bhadohi shop was rightly treated as profit brought into British India and so rightly included in the assessee's total income of the year in question under Section 4 (1) (b) (iii) of the Indian Income-tax Act (after its amendment in 1939) ?

2. A very similar case of this firm relating to the assessment year 1938-39 came up before this Court and the opinion delivered by this Court in that case has been reported in *Ram Lal Bachai Ram v. Commissioner of Income-tax* [1946] 14 I.T.R. 1. In that case also it had been held that cloth worth Rs. 65,203-13-9 had been sent from the Bhadohi shop of this joint family firm to the Samohi shop whereas in the course of that year sums amounting to Rs. 59,175-13-0 only had been remitted to the Bhadohi branch by the Samohi shop. This left a credit balance of Rs. 6,028 in favour of Bhadohi shop in the Samohi books. This Court, when delivering its opinion, held that this balance of Rs. 6,028 could not be treated as a remittance of the profits of the Bhadohi branch brought into British India. In fact, the view of the Court was that this amount could not be treated as a remittance

at all. In that case, the invoice price of the cloth sent from the Bhadohi shop to the Samohi shop had been shown as Rs. 65,203-13-9 but this invoice price was not the cost price of the goods sent from the Bhadohi shop. It included a margin of profit equal to the profit that the Bhadohi shop would or might have derived from its customers in Bhadohi, had the cloth been actually sold to the customers in the Banaras State. It was held that, looking to the substance of the transaction, the Bhadohi shop and the Samohi shop could not be accepted as two different legal entities, one able to earn a profit from the other; nor could it be accepted that there was any legal liability on the part of the Samohi shop to pay the amount to its Bhadohi branch. In an open and current account kept for the facility of accounting between the two shops belonging to the same proprietor, it is a matter of chance as to what is the balance that may remain due at any given moment from one to the other. It may vary from time to time and from day to day, and it is always a matter within the discretion of the head office when, if at all, the balance shall be adjusted. It does not even follow that it will ever be adjusted since there can be no legal obligation on the Samohi branch ever to transmit money to its own Bhadohi branch. This was held on the view that it was impossible to hold that a man should make a profit out of himself. On this view held in that case, it must be held in the present case also that though the invoice price of the goods sent by the Bhadohi branch to the Samohi shop was Rs. 77,469, the actual remittance in value by the Bhadohi branch to the Samohi branch cannot be considered to be equal to this amount. The goods received by the Samohi shop were subsequently sold by that shop in British India and the profits accruing as a result of these sales have already been taxed by the Income-tax authorities. In working out these profits, the Income-tax authorities accepted the figure of Rs. 77,469 as the cost price of those goods so far as the Samohi shop was concerned and it was here that the error was committed by them. The correct procedure, as was explained in the previous case of the firm cited above, should have been to work out the cost price of those goods, for purposes of the Samohi firm, by taking the cost price of the same goods of the Bhadohi branch and adding to it the apportioned expenses incurred for warehousing them plus a certain amount for overhead charges at Bhadohi in proportion to the relation that those goods bore to the total turnover at Bhadohi. Since the cost price of the goods has to be worked out in this manner, it must be held that the actual cash value of the remittance by the Bhadohi branch to the Samohi shop was not Rs. 77,469 but something less than this amount. This is, therefore, a case where the difference of Rs. 11,538 cannot be treated as a remittance at all and, therefore, no question at all arises that this amount represents profits available at Bhadohi shop for remittance to the joint family at Samohi in British India. As explained in the previous case, the proper course for the Income-tax authorities would be to re-assess the profits earned by the Samohi shop on the cloth sent to it by the Bhadohi branch, which was shown as having the invoice price as Rs. 77,469, by re-evaluating the cost price of those goods to the Samohi shop in accordance with the principles mentioned above. This difference between the value of the remittances passing between the two branches of this shop cannot, in any case, be treated as a remittance of profits. We, therefore, answer the question in the negative. The assessee will be entitled to its costs which we assess at Rs. 200.