Sm. Indermani Jatia vs Comr. Of Income-Tax on 14 November, 1950

Equivalent citations: AIR1951ALL652, [1951]19ITR342(ALL), AIR 1951 ALLAHABAD 652

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Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. This is a reference Under Section 66 (1), Income-tax Act by the Income-tax Appellate Tribunal, Allahabad Bench. The assessee, Rai Bahadur Seth Ganga Sagar Jatia, was assessed to Income-tax as an individual. The sources of income were from house property, dividends & business. The business was carried on in Khurja under the name & style of Ram Dayal Mahali Ram & at Khurja, Aligarh & Chistian, in Bhawalpur State, under the name and style of Lachhman Das Ganga Sagar. In the Khurja books of the assessee, which were the central set of account & in which incomes from all sources were incorporated, interest account showed credits of Rs. 17,132 for the assessment year 1943-44 & Rs. 47,029 for the assessment year 1944-45. The assessee was 'resident & ordinarily resident' in British India.

2. The case of the assessee was that the amount of interest mentioned in the books had not been remitted in cash from the Bhawalpur State to British India & the entries were merely book adjustments in the head office books.

3. The Dept., however, reld. on the fact that the system of accounting followed by the assessee was mercantile system & when the assessee had himself treated the amount as interest which had accrued due to the assessee & had not excluded them on the ground that they had not been received, they were liable to pay Income-tax on these sums.

4. The question framed by the Tribunal is as follows:

> "Whether in the circumstances of the case, the sums of Rs. 17,132 for the assessment year 1943-44 & Rs. 47,029 from the assessment year 1944-45 could be legally deemed to have been received in British India & were liable to tax Under Section 4 (1), Income-tax Act?"

The Tribunal's finding on the point is as follows:

> "The assessee's counsel does not dispute the contentions of the Dept. that the sum has been lent from British India, that the method followed for crediting & debiting interest is mercantile & that the creditors have the right to enforce the payment of interest in British India. It has also not been denied that the liability of the Chistian shop is extinguished to the extent of the interest paid by it to the head office. Interest in such cases should be deemed to have been received in British India, & it is clearly liable to tax Under Section 4 (1) (a), Income-tax Act. The amounts in dispute have been rightly added in the assessment."

5. On the admissions made by the learned counsel for the assessee there can be no doubt that the only conclusion that could be arrived at was that the sums could be legally deemed to have been received in British India.

6. Reliance is placed by the learned counsel for the assessee on a decision of their Lordships of the Judicial Committee in Comr. of Income-tax, Bombay Presidency and Aden v. Chunilal B. Mehta, 1938-6 I. T. R. 521, where their Lordships held that a person resident in British India carrying on business in British India & controlling transactions abroad is not liable to tax on the profits of such transactions unless such profits can be said to be accruing, arising or received in British India, or deemed to be such. The point for consideration is whether it can be said that the interest received was deemed to have been received in British India.

7. Reliance is also placed on a decision of the Bombay H. C. in Keshav Mills Co., Ltd. v. Comr. of Income-tax, Bombay Mofussil, 1950-18 I. T. R. 407. In that case the Co. which was a non-resident Co., was being assessed to pay Income-tax on various sums which had been realised from certain merchants at Ahmedabad & the amount utilised in paying off certain creditors of the assessee at the same place. It was urged that the amounts, which were actually realised by the assessee from various merchants at Ahmedabad, must be deemed to have been received at Baroda, outside British India, as the accounts were kept by the assessee on a mercantile basis & the amounts were entered in the books of account. This contention was repelled & the learned Chief Justice said:

> "the Legislature has in the Income-tax Act drawn a clear distinction between accrual or arising of income & the receipt of income, & I see no reason why when accounts are kept on mercantile basis it must be held that income does not merely accrue or arise when the necessary entries are made in the books of account but it must be held that the income is actually received or deemed to be received by the assessee."

In the case before us, however, it was not denied before the Tribunal that the liability of the Chistian shop was extinguished to the extent of the interest paid by it to the head office. As a matter of fact, as pointed out by the Income-tax Officer, from the account books at the head office at Khurja it is clear that Rs. 20,847 were remitted to British India by means of Hundis & cheques & a sum of Rs. 29,115 is entered in the books at Aligarh as having been received by means of Hundis or realised from the debtors of the Chistian shop. The Income-tax Officer was of the opinion that the amount had

actually been remitted. Be that as it may, when it appears from the books of the assessee that there were regular transfer entries made between Chistian & the business centres in British India, of both credit & debit, & it was after adjustment of the account only that the balance was consd. to be due & claimable, the amount credited must be deemed to have been received in British India by the assessee.

8. The second question is as follows :

> "Whether in the circumstances of the case, the expenditure of Rs. 7,512 incurred in connection with a criminal litigation was an admissible expenditure within the meaning of Section 10 (2) (xv), I.-T. Act?"

Section 10 (2) (xv), Income tax Act, is as follows :

> "Such profits or gains shall be computed after making the following allowances, namely :
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> (xv) any expenditure (not being in the nature of capital expenditure or personal expenses of the assessee) laid out or expanded wholly & exclusively for the purpose of such business, profession or vocation." The sum of Rs. 7,512 was claimed as expenses incurred in connection with a criminal litigation with one Har Govind Lal Madan Lal of Calcutta. Reliance is placed on a decision of the Bombay H. C. in J. B. Advani & Co., Ltd. v. Comr. of Income-tax & Excess Profits Tax, 1950-18 I. T. R. 557. In that case four Managing Directors of the Co. & its manager were prosecuted in Madras for offences under the Hoarding & Profiteering Prevention Ordinance, 1943. The learned Chief Justice said: "the charges which the managing directors & the salesman were called upon to meet both at Madras & at Karachi were incidental to the business that the Co. was carrying on. It was the business of the Co. to sell stationery & the Co. was charged with having sold it in one case contrary to the law & in the other case having refused to sell. Therefore, both the charges were directly in connection with the business of the Co. as a trader."

9. In the case before us all that the Tribunal said on the point, which is quoted in the statement of the case, was as follows :

> "On the facts as found by the Dept. & which have not been challenged by the assessee's counsel, we hold that the claim has been rightly disallowed as such ah expense is not incidental to the business."

No further facts have been placed before us, nor do we know what the Dept. had found, which finding it was said was not challenged by learned counsel for the assessee. In the absence of further information on the point, we have to accept the finding given by the Tribunal that the expense was not incidental to the business. In fact, the assessee, in order to claim this deduction as expenditure, had not only to prove that the expense was incidental to the business but to show that the expenses

were laid out or expanded wholly & exclusively for the purpose o£ the business. These words were interpreted by Lord Davey in Strong & Co., Ltd. v. Woodifield, (1906) 5 Tax Cas. 215, when he said, "It is not enough that the disbursement is made in the course of, or arises out of, or is connected with, the trade, or is made out of the profits of the trade. It must be made for the purpose of earning the profits. The expenses must be incurred for the purpose of enabling a person to carry on & earn profits in the trade."

This interpretation was further followed in Spofforth & Prince v. Golder, (1945) 26 Tax Cas. 310, where costs incurred by patnrs. of a firm in defence of a criminal case against them were held deductible as not being disbursements or expenses wholly & exclusively laid out or expended for the purpose of the patnrs.' profession. In the case before us, no material appears in the statement of the case by the Tribunal or in the other papers available to us which might lead to the inference that this expense of Rs. 7,512 was incurred wholly & exclusively for the purpose of the business of the assessee. The second question must, therefore, be answered in the negative.

10. Our answer, therefore, to the first question is in the affirmative & to the second in the negative. The Dept. will be entitled to its costs from the assessee which we fix at Rs. 300.