Shiva Narayan Sharma vs Commissioner Of Income-Tax on 3 May, 1950

Equivalent citations: AIR1950ALL591, [1950]18ITR844(ALL), AIR 1950 ALLAHABAD 591

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. Two questions have been referred to us under Section 66 (1), Income-tax Act by the Income-tax Appellate Tribunal, Allahabad Bench. The questions are:

> "(1) Whether on the fats and in the circumstances of this case, the applicant is a resident of British India under the provisions of Section 4A (a) Sub-clause (ii), Income-tax Act ?
>
> (2) Whether in the circumstances of the case, the income of the assessee can be said to have been received or deemed to have been received by him in British India within the meaning of Section 4 (1) (a) of the Act?"

2. The assessee was a resident of Agra but in the year 1927-28 he left Agra and went to settle in Gwalior. He became a military contractor and got certain contracts for the manufacture of clothes, out of material supplied by the Government Ordnance Clothing Factory at Agra. When the question of payment arose, the assessee-wanted that he should be paid at Gwalior but the Accounts Officer of the Ordnance Clothing: Factory, Agra, wrote to him a letter on 12th June 1944, which was as follows:

> "As no Government transaction is being carried out by the Gwalior Branch of the Imperial Bank of India, it is regretted that cheques in payment of your tailoring bills cannot be drawn upon that Bank. It may be stated for your information that no payment can also he made by demand draft in such cases. If is requested that arrangements may please be made with any Bank at Gwalior to cash the cheques drawn on the Imperial Bank of India, Agra."

After that letter was received, the cheques on the Imperial Bank of India at Agra in payment of the bills of the assessee were sent to him at Gwalior and he then sent those cheques to the Central Bank

of India at Agra to be credited in his account in the Bank at Agra. In the assessment year 1943-44 the question arose whether these payments made by the Ordnance Department were liable to income-tax. The Income-tax Officer took the view that the assessee was a resident in British India as defined in Section 4A (a) (ii) and held that the amount was, therefore, taxable. On appeal the Assistant Commissioner came to a different conclusion but ultimately the Appellate Tribunal held that the assessee was a resident in British India and was liable to pay income-tax. The assessee then applied that certain questions of law should be referred to this Court for opinion. The Appellate Tribunal thereupon made this reference. On the first question the Tribunal was of the opinion that the assessee was a resident in British India. Ordinarily, a question whether a person is or is not a resident in British India is a question of fact for the decision of the Appellate Tribunal but in referring the question we assume they intended to have our opinion on the point, whether, on the facts found by them, they could come to the conclusion that the assessee was a resident in British India as defined in Section 4A(a)(ii). The facts found by the Appallate Tribunal are as follows :

(1) That the assesses had purchased a land in Agra and built a house on it;

(2) that the major portion of this house had been let out to tenants but part of the house had not been let out;

(3) that in the portion that had been let out, his aunt, his elder brother's widow and his younger brother's son resided ;

(4) that all the expenses for the maintenance and upkeep of the house as well as the living expenses of the persons mentioned above were met by the income of the assessee from his property in Agra;

(5) that whenever the assessee went to Agra, he always stayed in this house ;

(6) that the assessee goes to Agra every year for purposes of purchasing goods;

(7) that the assessee is in the habit of going to Agra in connexion with his Karbar; and
(8) that the assessee has got his zamindari in the district of Agra.

On these facts the Tribunal came to the conclusion that the assessee does maintain for his use a dwelling place in British India.

3. Learned counsel for the assessee has urged that the house is maintained, for the purpose of residence of the relatives of the assessee and it is only because they are there that he goes and stays in that house whenever he happens to go to Agra. We do not suggest that that is not a possible explanation but when the assessee came into the witness-box, he never mentioned that whenever he stayed in that house, he stayed there as a guest of his relations who are living in it. On the other hand, his statement reads as if he goes and stays there as a matter of right. He stated that whenever he went to Agra, he stayed in that house and he used to go to Agra to make purchases of goods and in connexion with other business, and that, besides his trade interest, he had also zamindari

property and a house in Fatehpur-Sikri which had been let out. On the findings mentioned above, it cannot be said that there was no material on which the Tribunal could come to the conclusion that the house in Agra was being maintained by the assessee for his own use as a dwelling place in British India. From the facts and circumstances of the case, it is quite clear that though it might have been one of the objects of the assessee that his poor relations might live in Agra which was his ancestral place and might be supported out of the income of his property there, the main object was to maintain a dwelling place for himself in Agra which was his old place of residence. Our answer to the first question, therefore, is that, on the facts and circumstances of the case, the applicant is a resident of British India under the provisions of Section 4A (a) (ii), Income-tax Act.

4. The second question does not arise. The point was not raised before the Appellate Tribunal and we need not, therefore, consider the same.

5. The assessee shall pay the costs of the department which we fix at Rs. 400 only.