Jethmal Parasram vs Commr. Of Income Tax, Delhi, East Punjab ... on 22 November, 1954

Equivalent citations: AIR1955ALL176, AIR 1955 ALLAHABAD 176

JUDGMENT

Malik, C.J.

1. This is a reference under Section 66(1) Income tax Act but in view of certain decisions of the Supreme Court it is not necessary for us to give our reasons at any length.

2. The assessee was assessed to income tax on his status of an individual and as a resident in British India. The assessee carried on business in cloth in Ajmer in British India which was the Head Office and at two branches at Kishangarh in an Indian State. These branches made purchases of cloth in British India for sale inside the State. The purchases made were of considerable amount. In the assessment year 1942-43 the total cloth purchased in British India was for Rs. 1,24,118/- and in the next year 1943-44 for Rs. 1,91,148/-. The Income-tax Officer considered that purchase of cloth in British India for sale outside amounted to part of the operations for making profits, being carried out in British India, and applying the provisions of Section 42 (3), Income-tax Act added 10 per cent, on the total value of the purchase in the first year and 121/2 per cent, in the subsequent year to assessable income of the assessee in the relevant years. The case ultimately came up to the Tribunal which reduced the rate to 7 per cent, and 9 per cent, but upheld the rest of the order.

3. At the suggestion of the assessee the following question was referred to us for decision:

> "Whether purchase of goods in British India for the purpose of sale outside British India can be rightly considered as one of the operations contemplated by section 42 (3) of the Indian Income-tax Act, 1922?"

4. On the strength of a decision of the Bombay High Court an argument was advanced before the Appellate Tribunal that the entire profits must be deemed to have accrued at the place where the goods were sold. This view was, however, not accepted by the Supreme Court in the --'Commr. of Income-tax, Bombay v. Ahmedbhai Umarbhai and Co., Bombay', AIR 1950 SC 134 (A). In the --Anglo-French Textile Company Ltd., v. Commr. of Income-tax, Madras', AIR 1953 SC 105 at p. 107 (B) the same view was re-affirmed. Their Lordships said-

> "In our judgment, the contention of the learned counsel for the appellant -- and on which his whole argument is founded-- that it is the act of sale alone from which the profits accrue or arise can no longer be sustained and has to be repelled in view of the decision of this Court in -- 'Commr. of Income-tax Bombay v. Ahmedbhai Umarbhi

and Co., Bombay (A)."

It must, therefore, be held that the 'entire profits did not accrue inside the Indian State where the cloth was sold and that a part of it must be deemed to have accrued in British India where the cloth was purchased.

5. Sri G. S. Pathak, on behalf of the assessee has, however, urged that the provisions" of Section 42(3) can apply, only if Section 42(1) is applicable. He has urged that if income is taxable under Section 42(1) then, how much of it is to be taxed when part of the income has resulted from operations carried on within the taxable territories and part of the income outside it, has to be worked out in accordance with the provisions of Section 42 (3). In -- 'Anglo-French Textile Co., Ltd., v. Commr. of Income-tax, Madras', AIR 1951 Mad 597 (C) a Bench of the Madras High Court had held that the profits which are liable to Indian Income-tax by reason of a foreign company having a business connection in British India by means of a regular agency, the income, profits and gains accruing or arising to the assessee abroad, must be attributable in some measure to its business connection in British India, and the profits liable to Indian Income-tax have to be apportioned in the manner prescribed by Section 42 (3) of the Act.

6. This view was affirmed by the Supreme Court in AIR 1953 SC 105 (B) and again in --'The Anglo French Textile Co., Ltd. v. Commr. of Income-tax, Madras', AIR 1954 SC 198 (D). Bhagwati J., pointed out that "Section 42 (3) ..... is a part of the scheme which is enacted in Section 42". When income, profits and gains can be deemed to nave accrued within the taxable territory under Section 42 (1) of the Act, and a part of the operations, which resulted in the income, profits and gains, was carried out outside it, but a part of the operations had been carried out within British India, how the profits are then to be apportioned is indicated in Section 42 (3). It provides that only such profits and gains as are reasonably attributable to that part of the operations which were carried out within the taxable territories, will be deemed to have accrued or arisen within those territories. Clause (3) of Section 42 cannot be read independently of Clause (1). While Clause (1) deals with the question when income should be deemed to have accrued or arisen within taxable territories Clause (3) provides how such income is to be apportioned when part of the operations, which resulted in the income, was carried out within the taxable territories and part outside.

7. Our answer to the first question, therefore, is that provided the income, profits and gains can be deemed to be taxable income under Section 42(1)1 the purchase of goods in British India for sale outside can be rightly considered as "one of the operations contemplated by Section 42 (3) of the Indian Income-tax Act, 1922."

8. There is a second question that has been referred which is as follows:

> "Where the sales of goods are made in an Indian State, whether any part of the sales moneys realised in British India can be said to include income which can be assessed under Section 4 (1) (a) of the Indian Income-tax Act, 1922?"

The assessee is a resident in British India. The price of some of the cloth that was sold in the

Indian State of Kishangarh was realised in British India by the head office at Ajmer. Profits were calculated on the amount thus realised and were added to the taxable income of the assessee.

9. Section 4 (1) (a) provides that the total income of any previous year of any person includes all income, profits and gains from whatever source derived which are deemed to be received in British India in such year by or on behalf of such person. The money was received in British India and learned counsel has not been able to give us any reason why Section 4 (1) (a) is not applicable to such income.

10. Our answer, therefore, to the second question is also in the affirmative.

11. As the assessee has partly won and partly lost we make no order as to costs. The fee pay able to the counsel for the Commissioner of Income-tax is Rs. 400/-.