

Commissioner Of Income-Tax, Madras vs C.G. Krishnaswami Naidu on 25 November, 1963

Equivalent citations: [1964]51ITR876(SC)

Bench: A.K. Sarkar, J.C. Shah, M. Hidayatullah

JUDGMENT

Sarkar, J.

1. The respondent, the assessee, entered into financing agreements with one Krishna Ayyar and from those agreements an income of Rs. 1,24,004 became due and receivable by him in the accounting year ending January 31, 1946, which was the previous year for the assessment year 1946-47. These financing agreements were in respect of certain works of construction to be carried out by Krishna Ayyar under contracts with the Government of India in certain places within the Indian State of Mysore as it was then constituted. The assessee, who ordinarily, resided in British India, contended in his assessment for the year 1946-47 that the aforesaid income accrued and arose to him in the Indian State of Mysore but had not been remitted into British India and, accordingly, that it was exempt from income-tax under section 14 (2) (c) of the Income-tax Act as it then stood. The taxing authorities and the Tribunal held that the income had accrued in British India and was not, therefore, exempt. With the reasons for This view we shall not be concerned in this appeal.

2. At the request of the assessee the Appellate Tribunal referred the following question to the High Court of Madras under section 66 (1) of the Income-tax Act :

"Whether the aforesaid commission of Rs. 1,24,004 referred to in paragraph 7 supra is income that accrued or arose to the assessee in British India within the meaning of section 4 (1)(b)(i) of the Indian Income-tax Act ?"

3. The High Court answered the question in the negative holding that the right to receive the income accrued to the assessee in the Mysore State and not in British India. The present appeal is against this judgment.

4. The relevant portion of section 4 (1) of the Act is in these terms :

"Subject to the provisions of this Act, the total income of any previous year of any person includes all income, profits and gains from whatever source derived which -
.....

(b) if such person is resident in British India during such year, -

(i) accrue or arise or are deemed to accrue or arise to him in British India during such year, or

(ii) accrue or arise to him without British India during such year..."

5. It will be seen that under this section since the assessee is a resident of British India, income accruing to him outside the territories of British India would, subject to the other provisions of the Act, also be included in his total income and, therefore, be taxable under section 3 of the Act. The question as framed is confined to the point whether the income arose in British India. Such a question is clearly idle because under section 4 (1) (b) (ii), as already stated, in spite of the income not accruing in British India, the assessee might be liable in respect of it. The real question is, and on this point the parties are agreed, whether the income arose in the Indian State of Mysore as it was constituted at the relevant time and that is why the claim to exemption was, as has already been seen, actually made by the assessee under section 14 (2) (c) of the Act as it then stood. That provision was in these terms :

"The tax shall not be payable by an assessee -

(c) in respect of any income, profits or gains accruing or arising to him within an Indian State unless such income, profits or gains are received or deemed to be received in or brought into British India in the previous year by or on behalf of the assessee...."

6. The assessee would under this provision be entitled to exemption if it is found that the income arose in the State of Mysore. The High Court no doubt held that the income so arose. But that was not the question which had been referred to it and admittedly it had no power to decide a question not referred to it.

7. At the hearing before us the parties realised the difficulty that arose from the misconception of the real question that needed an answer. They, therefore, agreed that an order be passed by us setting aside the judgment of the High Court, framing the following questions and sending them back to the High Court for its decision :

"1. Whether the whole or any part of the assessee's income of Rs. 1,24,004 referred to in paragraph 7 of the Tribunal's statement of case accrued or arose to the assessee in the State of Mysore (as it was before 1950) and exempt from tax for the assessment year 1946-47 under section 14 (2) (c) of the Indian Income-tax Act, 1922 ?

2. If only part of such income accrued or arose to the assessee in the State of Mysore, what is the quantum thereof ?"

8. We agree that this is the best course to be adopted in the circumstances of the case and, therefore, by consent of the parties, we set aside the judgment of the High Court and remit the case back to it to decide the aforesaid questions. There will be no order as to the costs in this court for both parties

were at fault in not seeing that the question was framed properly.

9. Appeal allowed. Case remanded.