# Hukam Chand Mills Ltd. Indore vs Commissioner Of Income Tax, Bombay on 19 March, 1976

## Equivalent citations: 1976 AIR 2078, 1976 SCR (3) 712, AIR 1976 SUPREME COURT 2078, 1976 3 SCC 10, 1976 TAX. L. R. 518, 1976 3 SCR 712, 1976 2 ITJ 1, 1976 SCC (TAX) 241, 1976 UPTC 391, 1976 2 SCJ 54, 1976 (103) ITR 548, 103 I T R 548, 1976 43 TAXATION 87, 1976 UJ (SC) 357

## Author: Hans Raj Khanna

## Bench: Hans Raj Khanna, P.K. Goswami

PETITIONER:
HUKAM CHAND MILLS LTD. INDORE

Vs.

RESPONDENT:
COMMISSIONER OF INCOME TAX, BOMBAY

DATE OF JUDGMENT19/03/1976

BENCH:
KHANNA, HANS RAJ
BENCH:
KHANNA, HANS RAJ
GOSWAMI, P.K.

CITATION:
1976 AIR 2078 1976 SCR (3) 712
1976 SCC (3) 10

ACT:
Income Tax Act 1922-Sales effected by a Company in erstwhile state in British India-Determination of the quantum of profits on the sales effected in British India and the basis of apportionment of the profits in the absence of any statutory or fixed formula should be based on relevant material.

HEADNOTE:
The assessee appellant is a public limited company owning textile Mills at Indore and carrying on the business of manufacture and sale of textiles. During the assessment year 1942-43, it effected in British India the following categories of sales viz. (a) sales canvassed by the

company's representatives amounting to Rs. 6,46,028, (b) sales canvassed through brokers and agents in British India Merchants and their brokers during their visit at Indore amounting to Rs. 2,86,224 and (iv) Sales to British Indian Merchants at the time of their own or their brokers visit at Indore amounting to Rs. 2,55,916/-.

In 1968(1) S.C.R. 47, on an appeal, by Revenue, arising out of a reference u/s 66(1) of the Income Tax Act, this court held that the income by way of the Sales of Rs. 14,80,059/- in respect of the appellant company was income "accrued or arose" within British India and a proportionate part of it was assessable to Indian Income Tax. This court remitted the case to the High Court to answer the reference regarding the correctness of the determination of the profits on the sales computed by the Tribunal by application of Rule 33 and also whether 1/3 of the profits so determined could be said to accrue or arise in British India, which the High Court answered in favour of the Revenue. In the appeals before this Court it was found that the High Court had not taken into account the relevant circumstances for answering the reference since it was contended by both the parties that Rule 33 was not applicable to the facts of the case. As per the directions, the Tribunal submitted a supplementary statement of the case wherein it found (1) that in respect of the sales canvassed by the companies representatives and through brokers and agents amounting to Rs. 9,37,919 it was just and equitable to apportion 15% of the profits said to have arisen and accrued in British India and (ii) that in respect of the sales to British Indian Merchants and/or their brokers during their visit at Indore amounting to Rs. 5,42,140/-. 7 1/2 per cent of the profits could be said to have accrued and arisen in British India. As the profits were found to represent 31.12 per cent of the turnover, the profits in respect of the turnover of Rs. 9,37,919 were calculated at the rate of 4 1/2 per cent (i.e. 15% of 31.12 per cent) which amounted to Rs. 42,200/-. Similarly the profits in respect of the turnover of 5,42,140/- @ the rate of 2 1/4% (7 1/2 per cent of 31.12 per cent) amounted to Rs. 12,200. The total profits for the year 1942-43 was Rs. 54,400 (Rs. 42,200+12,200), according to the Tribunal.

Accepting the appeals, the Court,

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HELD: (i) The question as to what proportion of the profits of the sales in the four categories arose or accrued in British India is essentially one of fact depending upon the circumstances of the case. In the absence of some statutory or other fixed formula; any finding on the question of proportion involves same element of guess work. The endeavour can only be to be approximate and there cannot in the very nature of things be great precision and exactness in the matter. As long as the proportion fixed by the Tribunal is based upon the relevant material, it should not be disturbed. [716C-D]

(ii) In the instant case, the profit which arose and accrued in British India to the assessee-appellant for the assessment year 1942-43 was Rs. 54,400. It
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is just and equitable to apportion 15% of the profits of sales in categories (a) and (b) and 7 1/2 per cent of the profits of sales in categories (c) and (d) as accruing or arising in British India. [716D-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1062- 1066 (NT) of 1970.

From the Judgment and Order dated the 31st January/1st February 1968 of the High Court of Judicature at Bombay in Income-Tax Reference No. 5 of 1961.

S. T. Desai, A. K. Verma (Mrs), and J. B. Dadachanji for the Appellant.

B. Sen and S. P. Nayar; for the Respondent. The Judgment of the Court was delivered by KHANNA, J.-This judgment would dispose of five civil appeals No. 1062 to 1066 which arise out of references under section 66(1) of the Indian Income-tax Act, 1922 made at the instance of the assessee-appellant.

The assessee-appellant, Hukam Chand Mills Ltd. Indore, is a public limited company. It owns a textile mill at Indore and carries on the business of manufacture and sale of textiles. These appeals have a long history and are concerned with the income of the appellant during the calendar years 1941, 1942, 1944, 1945 and 1946, the relevant assessment years for which were 1942-43, 1943-44, 1945-46, 1946-47 and 1947-48. In those years the assessee effected sales of textiles to merchants in the then British India. Question which arose for consideration was as to what part of the income arising out of those sale transactions accrued or arose in British India. As the questions of law involved in each of the appeals were identical, the facts relating to the assessment year 1942-43 only were taken into consideration. According to the finding of the Income-tax Officer in that year the price of the textiles sold by the assessee in British India aggregated to Rs. 14,80,059. This amount consisted of the following four categories:

(a) Sales in pursuance of business canvassed by company's represen tatives in British India, also described as item (3) Rs. 6,46,028

(b) Sales to British Indian merchants through brokers and agents in British India, also described as item (4) Rs. 2,91,891

(c) Sales to British Indian merchants and brokers during their visit to Indore, also described as item (5) Rs. 2,86,224

(d) Sales to British Indian merchants at the time of their own or their broker's visit at Indore, also described as item (9) Rs. 2,55,916 _____ TOTAL Rs. 14,80,059 Profits from those sales were held at 31.12 per cent to amount to Rs. 4,60,560. Profits attributable to operations carried out in British India were held by the Appellate Assistant Commissioner to be one-third of Rs. 4,60,560, i.e. Rs. 1,53,520. In doing so the Appellate Assistant Commissioner acted upon the analogy of rule 33 of the Indian Income-tax Rules, 1922. We need not set out the finding of the Income-tax Officer. The Tribunal substantially agreed with the Appellate Assistant Commissioner. At the instance of the assessee the following two questions were inter alia referred to the High Court:

"(2) Whether on the facts and in the circumstances of the applicants' case, the Tribunal was right in holding that in respect of sales of Rs. 14,80,059/- the profit was correctly determined by application of rule 33 and one-

third of the profits so determined could be said to accrue or arise in British India ? (3) Whether on the facts and in the circumstances of the applicants' case, the Tribunal was right in holding that a proportionate part of the profits determined on sales grouped under items 3, 4, 5 and 9 in the assessment order by the application of rule 33 was assessable to income-tax?"

The High Court answered question No. (3) in favour of the assessee. In view of its finding on question No. (3), the High Court did not answer question No. (2). The Commissioner of Income-tax then came up in appeal to this Court, and the decision of this Court is reported in 67 I.T.R. 79 = [1968] (1) S.C.R. 47. This Court held that the answer to question No. (3) should be in the negative as the property in goods passed to the purchaser in British India and proportionate part of the profits of these sales accrued in British India and as such was assessable to Indian income-tax. The case was remitted to the High Court to answer question No. (2) in accordance with law. On remand the High Court held that the profits were correctly determined by the application of rule 33 and one-third of the profits so determined could be said to arise or accrue in British India. When the matter came up in appeal before this Court, it was found that the High Court had not taken into account the relevant circumstances for answering question No. (2). It was also stated by counsel for both the parties that rule 33 was not applicable to the facts of the case. This Court accordingly directed the Appellate Tribunal to submit a supplementary statement of the case to this Court. Supplementary statement of the case has now been received.

The Tribunal found that in respect of the sales in categories (a) and (b) amounting to Rs. 9,37,919, it was just and equitable to apportion 15 per cent of the profits said to have arisen and accrued in British India. Regarding sales in categories (c) and (d) for a total amount of Rs. 5,42,140, the Tribunal held that 7 1/2 per cent of the profits could be said to have accrued and arisen in British India. As the profits were found to represent 31.12 per cent of the turnover, the profits in respect of the turnover of Rs. 9,37,919 comprised in categories (a) and (b) were calculated at the rate of 4 1/2 per cent (i.e. 15 per cent of 31.12 per cent). The profits in British India were thus found to be Rs.

42,200. Profits accuring and arising in British India in respect of sales turnover of Rs. 5,42,140 comprised in categories (c) and (d) at the rate of 2 1/4 per cent (7 1/2 per cent of 31.12 per cent) were found to be Rs. 12,200. The total profits accruing or arising in British India to the assessee company in the assessment year 1942-43 were thus worked out to be Rs. 54,400. The above finding of the Tribunal has been arrived at on consideration of the facts of the case. The modus operandi in respect of the sales of various categories was found by the Tribunal to be as under:

> "(a) Sales of Rs. 6,46,028
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> (i) The assessee's paid representatives at Bombay canvassed the sales, on behalf of the assessee, to merchants in British India.
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> (ii) The orders were sent by British Indian merchants to the assessee at Indore.
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> (iii)The assessee accepted the orders at Indore, prepared the contracts and signed them at Indore and forwarded the same to customers in British India.
>
> (iv) The customers signed the contracts in British India.
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> (v) The contracts were signed on company's forms.
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> (vi) The contracts bore British Indian stamps.
>
> (b) Sales of Rs. 2,91,891
>
> (i) The brokers in British India, described as freelance brokers, transmitted the offers to the company at Indore.
>
> (ii) The offers were made to the company on the brokers' own forms.
>
> (iii)The brokers were not engaged by the assessee-

company and such orders were placed by the brokers in the normal course of their business.

(iv) The customers signed the contracts in British India.

(c) Sales of Rs. 2,86,224

(i) These sales were made to British Indian merchants who went to Indore to negotiate and place orders.

(ii) The orders were accepted at Indore.

(iii)The contracts bore British Indian stamps.

(iv) The customers signed the contracts in British India.

(d) Sales of Rs. 2,55,916

(i) These sales were made to British Indian merchants on their or their brokers' personal visits to Indore.

(ii) The offers were taken direct at Indore.

(iii)Contracts for such sales were made in the same manner as stated hereinbefore."

The Tribunal also gave a finding that the assessee maintained an organisation in British India, that that organisation was interested in bringing to the notice of the British Indian merchants, brokers and consuming public the goods manufactured by the assessee-company and that the ground-work for sales effected in these groups was done in British India.

Nothing has been urged before us either on behalf of the assessee appellant or on behalf of the revenue- respondent to assail the finding of the Tribunal in the supplementary statement of case. The question as to what proportion of the profits of the sales in categories (a),

(b), (c) and (d) arose or accrued in British India is essentially one of fact depending upon the circumstances of the case. In the absence of some statutory or other fixed formula, any finding on the question of proportion involves some element of guess work. The endeavour can only be to be approximate and there cannot in the very nature of things be great precision and exactness in the matter. As long as the proportion fixed by the Tribunal is based upon the relevant material, it should not be disturbed.

We accordingly accept the appeals, discharge the answer given to question No. (2) by the High Court and hold that the profit which arose and accrued in British India to the assessee-appellant for the assessment year 1942-43 was Rs. 54,400. We also hold that it is just and equitable to apportion 15 per cent of the profits of sales in categories

(a) and (b) as accruing or arising in British India and 7 1/2 per cent of the profits of sales in categories (c) and

(d) as accruing or arising in British India. The parties in the circumstances shall bear their own costs.

S.R. Appeals allowed.