Commissioner Of Income Tax, Bihar ... vs M/S. Patney & Co on 5 May, 1959

Equivalent citations: 1959 AIR 1070, 1959 SCR SUPL. (2) 868, AIR 1959 SUPREME COURT 1070

Author: J.L. Kapur

Bench: J.L. Kapur, Bhuvneshwar P. Sinha, M. Hidayatullah

PETITIONER:
COMMISSIONER OF INCOME TAX, BIHAR &ORISSA

Vs.

RESPONDENT:
M/S. PATNEY & CO.

DATE OF JUDGMENT:
05/05/1959

BENCH:
KAPUR, J.L.
BENCH:
KAPUR, J.L.
SINHA, BHUVNESHWAR P.
HIDAYATULLAH, M.

CITATION:
1959 AIR 1070 1959 SCR Supl. (2) 868
CITATOR INFO :
R 1960 SC 266 (14)
RF 1966 SC1466 (10)
R 1976 SC1172 (9)

ACT:
Income-tax - Assessment on non-resident-Agreement with resident debtor for payment outside British India-Remittance by cheques Posted in British India--Place of payment-Non-resident's liability to tax.

HEADNOTE:
The respondents, who were non-residents carrying on business at Secunderabad within the territories of the Nizam of Hyderabad, were acting as agents of two firms in Bombay and Madurai, in British India, for the supply of certain goods

to the Nizam's Government. In respect of the Commission due to the respondents by the firms the agreement between the parties was that the amounts were to be paid to the respondents in cash or by cheques at Secunderabad. For these amounts cheques drawn by the firms on the Bombay and Madras branches, respectively, of the Imperial Bank of India, were sent by post at Bombay and Madurai to the respondents at Secunderabad, and when received, they were credited in their books of account, the cheques being sent to their banker there for collecting and crediting to their account. For the assessment year 1945-1946 the Income-tax Officer, Berhampur (in British India), assessed these sums as taxable income holding that the amount was received in British

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India and not at Secunderabad. The Appellate Tribunal found that all the cheques received at Secunderabad by the respondents were treated by them as payment. The respondents claimed that in view of the agreement between the parties that the amount of commission should be paid at Secunderabad, when the cheques were sent by post, the post office was the agent of the debtor and not of the respondents, that the amount must be treated as having been received when the post office delivered the cheques to the respondents, and that, consequently, the amount cannot be treated as having been received in British India. The Income-tax authorities relied on the decision in Commissioner of Income-tax v. Ogale Glass Works Ltd., [1955] I S.C.R. 185.

Held, that in the case of payment by cheques sent by post the determination of the place of payment would depend upon the agreement between the parties or the course of conduct of the parties. If it is shown that the creditor authorised the debtor either expressly or impliedly to send a cheque by post the property in the cheque passes to the creditor as soon as it is posted. But where, as in the present case, the agreement was that the amount was to be paid at Secunderabad, outside British India, when the cheques were received by the respondents there the amount must be deemed to have been received at that place, and, therefore, the amount was not liable to be taxed in British India.

Commissioner of Tncome-tax v. Ogale Glass Works Ltd., [1955] 1 S.C.R. 185, distinguished.

JUDGMENT:

CIVIL APPELLATE` JURISDICTION: Civil Appeal No. 326 of 1957. Appeal by special leave from the judgment and order dated February 16, 1955, of the Orissa High Court in N. J. C. No. 117 of 1951.

C. K. Daphtary, Solicitor-General of India, K. N. Rajagopal Sastri, R. H. Dhebar and D. Gupta, for the appellants.

Rameshwar Nath, S. N. Andley and J. B. Dadachanji, for the respondent.

1959. May 5. The Judgment of the Court was delivered by KAPUR, J.-This appeal pursuant to special leave is brought by the Commissioner of lncome-tax against the judgment of the High Court of Orissa holding that the amounts received by the assessees-respondents were not received in what was British India and therefore not liable to income-tax. The respondents at all material times were non-residents carrying on business at Secunderabad which was then in the territories of the Nizam of Hyderabad. They acted as agents for the supply of gas plants manufactured by Messrs. T. V. S. Iyengar & Sons, Madura, to the Nizam's Government, and also as agents of the Lucas Indian Services, Bombay branch, for the supply of certain goods to that Government. The year of assessment is 1945-46. There does not appear to have been any written agreement between the two manufacturers and the respondents but the goods were to be supplied on a commission basis. In pursuance of this agreement the respondents received from M/s. T.V.S. lyengar & Sons, Madura, cheques drawn on the Imperial Bank of India, Madras, amounting to Rs. 35,202 in respect of all goods supplied from -Madura and also from Lucas Indian Services, Bombay, by cheques drawn on Imperial Bank of India, Bombay branch, amounting to Rs. 5,302 in respect of goods supplied by them, thus making a total of Rs. 40,504. These cheques were sent by post and when received by the respondents at Secunderabad were credited in the account books of the respondents and sent to their banker G. Raghunathmal for collecting and crediting to the account of the respondents. As against these sums so deposited the respondents at once drew cheques and thus operated on these amounts deposited. In regard to the commission received from the Bombay firm it was paid into the account on December 22, 1944, but was given credit for only on January 2, 1945. The Income-tax Officer assessed these sums as taxable income holding that the entire amount of Rs. 40,504 was received in British India and not at Secunderabad. An appeal was taken by the respondents to the Appellate Assistant Commissioner who upheld the order holding that income must be held to have accrued, arisen or received in British India. Against this order the respondents took an appeal to the Income-tax Appellate Tribunal and it was held that the amounts were received by the respondents from Madura and Bombay firms as commission but they were received at Secunderabad. The appeal was therefore allowed. The finding Of the Appellate Tribunal in their own words was:-

> " The contention of the Appellants is that the cheques being negotiable instruments and the creditor having accepted them and passed through their books, II the receipt must be taken to be receipts in Hyderabad. We agree with the view submitted by the appellants. In Bhashyam's Negotiable Instruments Act, 8th Edition, Revised, page 556, it is stated that it will be open to a creditor to accept a cheque in absolute payment of money due to him, in which case it will be equivalent to cash payment. That being the position it cannot be said that the income was received in British India ".

At the instance of the Commissioner a reference under s. 66(1) of the Act was made to the High Court of Orissa for their opinion on the following question :-

> " Whether in the circumstances of the case, the sums of Rs. 35,202 and Rs. 5,302 received as commission from T. V. S. lyengar & Sons Ltd., and Lucas Indian Services Ltd., respectively were income that accrued, arose or were received in British India ".

The High Court found that the statement of case was imperfect and that the real question was different. It said :-

> " The real question in all such cases is not merely whether the cheques were drawn on a bank in British India, and sent for collection to that bank. The question is whether when the cheques were received by the assessee having his place of business outside British India, those cheques were in fact received as absolute and final payments by way of unconditional discharge or whether they were received as mere conditional payments on realisation. The fact that cheques were drawn on a bank in British India or that they were sent for collection through a Secunderabad banker of the assessee though relevant, are not conclusive ".

It therefore remitted the case to the Appellate Tribunal for submission of supplementary statement of case. It appears that at that stage the controversy was confined to the question whether the cheques having been sent to Secunderabad and having been realised in British India would amount to a final discharge or an unconditional one. The Tribunal in its supplementary statement found that the course of conduct followed by the parties showed that the cheques were received from the Bombay and Madura firms in full satisfaction of the commission ascertained from time to time and due on such date. It said:

> " The facts that such entries were made in the assessee's books, that the cheques were put into the bank immediately, that the bank at once gave credit to the assessee for these sums after charging discount thereon and immediately allowed the assessee to operate on those sums are significant ".

Therefore the finding of fact by the Tribunal although not specific was that the receipt of the cheque by the respondents operated as full discharge of the debt due on account of commission from these two firms. The matter was decided by the High Court against the appellant and in the meanwhile this Court had given a judgment in Commissioner of Income-tax v. Ogale Glass Works Ltd (1). Even after considering the decision of that case the High Court was of the opinion that the income of the respondents was not received in British India and answered the question against the Revenue. The High Court refused to give leave to appeal to this Court and it was this Court which gave special leave to appeal.

The question is whether the amounts, of commission paid by cheques, drawn respectively on banks at Madras and Bombay and respectively posted from Madura and Bombay, can in the circumstances of this case be held to have been received in what was British India or at Secunderabad ? The Appellate Tribunal found that all the cheques whether from Madura or from Bombay were sent by the two respective firms from Madura or Bombay and were received by the respondents at Secunderabad and were treated as payment. The question still remains as to the effect of the sending

of the cheques from Madura or Bombay by post. If there is an express request by the (1) [1955] 1 S. C. R. 185.

creditor that the amount be paid by cheques to be sent by post and they are so sent there is no doubt that the payment will be taken to be at the place where the cheque or cheques are posted. The respondents argued that there was an agreement between the Madura and Bombay firms and the respondents that the money would be paid whether in cash or by cheque 'at Secunderabad' and therefore when the cheques were sent by post the post office was the agent of the debtor and not of the respondents. There is in support of the respondents an affidavit which was filed in the assessment proceedings and which was relied upon in the High Court. According to this affidavit it was verbally agreed that the commission would be paid at Secunderabad in cash or by cheque (as the case may be), the language used in the affidavit was:

> " The above commission was verbally decided to be paid to Messrs. Patney & Co. Ltd., Secunderabad the Agent Company in Hyderabad State at Secunderabad in cash or by cheque as the case might be ".

In the case of payment by cheques sent by post the determination of the place of payment would depend upon the agreement between the parties or the course of conduct of the parties. If it is shown that the creditor authorised the debtor either expressly or impliedly to send a cheque by post the property in the cheque passes to the creditor as soon as it is posted. Therefore the post office is an agent of the person to whom the cheque is posted if there be an express or implied authority to send it by post (Commissioner of Income-tax v. Ogale Glass Works Ltd. (1)). In that case there was an express request of the assessee to remit the amount of the bills outstanding against the debtor, that is, Government of India by means of cheques. But it was observed by this Court that according to the course of business usage in general which has to be considered as a part of the surrounding circumstances the parties must have intended that the cheques should be sent by post which is the usual and normal mode of transmission and therefore the posting of cheques in Delhi amounted to payment in (1) [1955] 1 S.C.R. 185.

Delhi to the post office which was constituted the agent of the assessee. But it was argued for the respondents that in the absence of such a request the post office could not be constituted as the agent of the creditor and relied on a passage in Ogale's case (1) at p. 204 where it was observed:-

> " Of course if there be no such request, express or implied, then the delivery of the letter or the cheque to the post office is delivery to the agent of the sender himself ".

It was further contended that in this case there was an express agreement that the payment was to be made at Secunderabad and therefore the matter does not fall within the rule in Ogale Glass Works case (1) and the following principle laid down in judgment by Das, J. (as he then was), is inapplicable :-

> " Applying the above principles to the facts found by the Tribunal the position appears to be this. The engagement of the Government was to make payment by

> cheques. The cheques were drawn in Delhi and received by the assessee in Aundh by post. According to the course of business usage to which, as part of the surrounding circumstances, attention has to be paid under the authorities cited above, the parties must have intended that the cheques should be sent by post which is the usual and normal agency for transmission of such articles and according to the Tribunal's finding they were in fact received by the assessee by post."

In our opinion this contention is well-founded. Whatever may be the position when there is an express or implied request for the cheque for the amount being sent by post or when it can be inferred from the course of conduct of the parties, the appellant in this case expressly required the amount of the commission to be paid at Secunderabad and the rule of Ogale Work's case (1) would be inapplicable. The High Court judgment in our view was correct and we would therefore dismiss this appeal with costs. Appeal dismissed.

(1) [1955] 1 S.C.R. 185.