Commissioner Of Income-Tax, Bombay vs C Parakh & Co. (India) Ltd. on 2 March, 1956

Equivalent citations: AIR1958SC775, [1956]29ITR661(SC), AIR 1958 SUPREME COURT 775

JUDGMENT

Venkatarama Ayyar, J.

1. The question that arises for decision in this appeal is whether sum of Rs. 1,23,719 paid by the respondent as commission to its making agents on amount of profits of it's Karachi branch can be allowed as deduction against the Indian profits. The respondent is a company registered under the Indian Companies Act, 1913, and is carrying on business in cotton. Its head office is in BOmbay, and it maintains a branch at Karachi of purchasing cotton for shipment to Bombay or export direct to other places. Separate accents are maintained and separate profit and loss statements are prepared for the business at Bombay and at Karachi. BY an agreement dated 22nd December Ltd., as its managing agents, and under clause 4 of the agreement, the remuneration payable to them was fixed at 20 per cent. Of the net annul profits.

2. During the accounting year 1st October, 1947, to 30th September, 1948, the respondent made a total profit of Rs. 15,63,504, of which Rs. 9,44,905 was earned in the business at Bombay and Rs. 6,18,599 at Karachi. On this, the commission payable to the managing agents as per clause 4 of the agreement was Rs. 3,12,699. The respondent debited a sum of Rs. 1,88,980 out of this amount in the profit and loss statement of the Bombay head office, being the 20 % apportionable to the profits shown there in, and deducting this sum of the total profits of Rs. 9,44,905 showed a sum of Rs. 7,55,925 as the net profits of the business of Bombay. It likewise debited a sum of Rs. 1,23,719 to the profit and a loss statement of the Karachi branch, and deducting it out of the total profits of Rs. 6,18,599 earned by the branch, showed a sum of Rs. 4,94,879 as its net profits.

3. The respondent is resident and ordinarily resident in India,. and therefore it would be chargeable to in come tax its total world income. Accordingly, the Income tax office took into the account profits earned both in India nd in Karachi deducted therefrom the entire commission paid to the managing agents, and after making certain adjustment, which are not material for the present purpose, determined the total income at Rs. 13,09,375. The correctness of this figure is not now in dispute.

4. As part of this income was earned in Karachi, that the would also be chargeable to income tax in Pakistan. To avoid the hardship arising from the same income being subjected to taxation twice over in the two Dominions, section 49(b), provided that " the Central Government may enter into an agreement with Pakistan... for the avoidance of double taxation of income, profits and gains under

this Act. " And in exercise of the powers conferred under this sectarian. a notification was issued on the 10th December, 1947., providing for relief being granted against double taxation of income in the manner and to the extent provided therein. The Income Tax officer having ascertained the total income assessable to tax under the law of the this country at Rs. 13,09,375 proceeded to determine the extent of the relief to be awarded to the respondent in respect of the profits earned in Karachi and chargeable under the law of the Pakistan. For this purpose, he accepted as c correct the sum of Rs. 4,94,879 which the respondent had shown as the net profits in the profits and loss statement for karachi, and after making certain adjustment and deductions in accordance with clause 4 of the agreement and item 7 (a) in the schedule annexed thereto, held that the amount in respect of which the respondent was entitled to abatement under the agreement was Rs. 5,00344.

5. The assessee preferred to an appeal against this order to the Appellate Assistant Commissioner, and contended that the Income Tax Officer was in error in taking Rs. 4,94,879 given in the profits and loss statement for Karachi as the profits of the Karachi branch, because this figure had been arrived at after the deducting a sum of Rs. 1,23,719 being the proportionate of the amount of the managing agency commission but that the whole of it was payable at Bombay and was debatable to the head office, and that accordingly, the sum of Rs, 6,18,599 should have been taken as the profits of the branch and not Rs. 4,94,879. The Appellate Assistant Commissioner disagreed with this contention, a nd confirmed the order of the Income Tax offer. The respondent took the matter in appeal to the Tribunal, which held that the terms of the managing agency agreement, the entire commission was payable at bombay, and that the accordingly no portion of it should be debited to the Karachi branch. In the result the appeal was to that the extent allowed. Thereupon, on the application of the Commissioner, the Tribunal referred the following question for the decision of the High Court.

> "Whether on the fact and in the circumstance of the case, the amount of Rs. 1,23,719 paid to the managing agents as commission at 20% of the net profits of the Karachi branch, is allowable as a revenue deduction against the Indian profits of the assess company for the year of account ?"

6. This reference was heard by Chagla, C.J. and Tendolkar, J. They observed that there was considered force in the contention on behalf of the Commissioner that the abatement to which the assessee would be entitled under the Agreement between this country and Pakistan would only with reference tot he net profits earned in Pakistan which alone would be assessable to income tax, and that the assessee firm itself having deducted sum of Rs. 1,23,719 as managing agency commission expenses debatable to that the branch abatement should be allowable only in respect of Rs. 4,94,879 being the net proofs as declared by it. But they held following the decision in Birla Brothers Ltd. V. Commissioner of Income tax the hanging agency commission should in its entirely be debited to the BOMBAY branch, even though the duty of the managing agents lay part in Karachi, and accordingly answered the reference in the affirmative. They, however, granted a certificate under section 66-A of the income TAx Act to appeal to this court. That is how the Appeal comes before us.

7. On behalf of the Appellate, the learned Solicitor General contended that the sum of Rs. 1,23,719 could not to be added to the sum of Rs. 4,94,879 as the profits assessable to income tax in Pakistan,

because the entire commission of Rs, 3,12,699 due under the agreement had been deducted out of the Rs. 15,63,504 the total income of the assessee, and it was only the net income of Rs. 12,50,804 that had been allocated Rs. 7,55,925 for the business at Bombay and Rs. 4,94,879 for the Karachi business, and that to disallow Rs. 1,23,719 which had been included in the profits and loss statement of Pakistan would be to give re lief twice over in respect of the same income. It was also contended that as the assessee had itself deducted that the amount from the profits as business allowance in its profits and loss statement for karachi and obtained relief in Pakistan on that footing, it was not entitled to claim relief in respect of that very amount under the terms of the Agreement between the two Dominion, Forth respondent, Mr. Kolah contended that under the provision of the Income TAx Act the respondent was not entitled to deduct Rs. 1,23,719, in the profits earned at Karachi, that in deducting that amount in the profits and loss statement for karachi the assessee had made mistake, and that, in fact, the Income Tax authorities in Pakistan who had originally admitted the deduction on the basis of the profits and loss statement had subsequently revised the assessment on the ground of error, and the had disallowed it., He further contended that the question as to the relief to which the assessee was entitled under the Agreement between the two Dominions was not arise for consideration., NOw, the question referred under section 66 (I) for the decision of the court is simply whether the sum of Rs. 1,23,719 is allowable as deduction against the Indian profits of the company. and though there is some discussion in the judgment of the High Court on the scope of the Agreement between the two Dominions and the principles deducible from the provision thereof, the reference itself did not raise any such question, and we prefer not to express any opinion thereon.

8. On the question of the admissibility of the deduction of Rs. 1,23.719 the contention of the appellant is that as the respondent had itself split up the commission of Rs. 3,12,699 paid to the managing agents, and the appropriated Rs. 1,23,719 thereof to the profits earned at Karachi and had debited th same with it, it was not entitled to go back upon it. and claim the amount as a deduction against the Indian profits. We do not see any force in this contention. Whether the respondent is entitled to the particular deduction or not will dependent on the provision of law relating thereto and not on the view, which it might the take of its rights and consequently, if the whole of the commission is under the law liable to the deducted against the Indian profits, the respondent cannot be estoppel from claiming the benefit of such deduction, by reason of the fact that it erroneously allocated a part of it towards the profits earned in Karachi. What has therefore to be determined is whether, notwithstanding the apportionment made by and the respondent in the profits and loss statement, the deduction is admissible under the law.

9. Section 10 (2) (XV) of the Indian Income TAx Act provided that in computing the profits of a business, allowances is to be made for any expenditure laid out or expended wholly and exclusively for the purpose of such business. Now, the respondent is carrying on business in cotton both in India and In Karachi. When an assessee carries on the same business at a number of places, there is for the purpose of section 10, only one business, and the net profits of the business have to be ascertained therefrom all the expenses. The fact that same of the branches are in foreign territories will make no difference in the position, if the assessee is as, in the present case, resident and ordinarily resident within the taxable territories. Therefore, the profits earned in India and in Karachi have to be thrown together, and the expenses including the commissions payable to the managing agents deducted therefrom, and it is the net profits thus struck that become chargeable

under the Act. That is how the Income tax Officer had worked out the figure. The respondent is therefore clearly entitled to the managing agents including the sum of Rs. 1,23,719 against the Indian profits.

10. It should further be added that the apportionment of the Rs. 1,23,719 in the profit and loss statement of the on Which the appellant rests his argument is not warranted by the terms of the managing agency agreement, and is indeed opposed to them. Under that the agreement, the managing agents are entitled to a 20 % commission on the annual net profits of the company. and to the ascerta those profits one had to take into account the result of the trade in all its branches. In the present case, profits were earned during the accounting period both the in Bombay and in Karachi, and the apportionment of the commission between the two branches makes no material difference in the result. But it might happens that the business at Bombay results in profits, while that at Karachi ends in loss. In that event, what the managing agents would be entitled to would be commission not on the profits made in the BOMBAY but on the net profits after settings off the loss in the Karachi branch against the profits of the BOMBAY business. And that would also be the position if the business at Bombay resulted in loss, while that the Karachi ended in profits. The appropriation, therefore, of Rs. 1,23,719 as proportionate commission in respect of the profits of Rs. 6,18,599 earned at Karachi in the profits and loss statement for that the branch is not in accordance either with the terms of the managing agency agreement or with the accordance either with the terms of the managing agency agreement, or with rights of the rights of the respondent under the law.

11. The judgment of the court below is right, and this appeal must be dismissed with costs.

12. Appeal dismissed.