Commissioner Of Income-Tax, Punjab vs Jai Parkash Om Parkash Company Ltd. on 26 November, 1963

Equivalent citations: [1964]52ITR23(SC)

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

JUDGMENT

Sarkar, J.

1. We think this appeal must be allowed. It is directed against the judgment of the High Court of Punjab refusing the appellant's application under section 66(2) of the Income-tax Act, 1922, for an order directing the Income-tax Appellate Tribunal to refer the following question to the High Court for its decision :

> "Whether on the facts and in the circumstances of the case the sum of Rs. 94,253 or any part of it accrued or arose or could be deemed to accrue or arise, or was received or could be deemed to be received by the assessee as income, profits and gains during the previous year."

2. The facts are few. The assessee entered into a contract for the forward sale of certain quantity of mustard on February 5, 1952, at Rs. 27-8-0 per maund. The price fell soon thereafter, and the purchaser purported to cancel the contract before the due date which was June 7, 1952, but the assessee refused to accept the cancellation. On February 28, 1952, the assessee sent a telegram to the purchaser that if the purchaser did not inform it within four hours that it accepted a settlement of the contract at Rs. 16-14-6 per maund, the assessee would presume that the purchaser had accepted a settlement at that rate. The purchaser never sent any reply to this telegram. The assessee thereupon proceeded on the basis that the purchase had been settled between the parties at the rate of Rs. 16-14-6 per maund and claimed a sum of Rs. 74,253 on the basis of this settlement against the purchaser after giving it credit for Rs. 20,000 due to it on another account. The claim not having been complied with, the assessee on April 8,1952,filed a suit againsd the purchaser for the recovery of that amount which was decreed by the trial court and at the date of the assessment order, an appeal from that decision was panding: in the high court of punjab . in its return for the relevant assessment year the assessee appended the following note:

> "According to the assessee there is a profit of Rs. 1,09,072... The assessee has filed a suit for Rs. 75,000..... Unless the suit is decided the exact amount of profit cannot be determined and the liability admitted by the company."

3. By the words "the company" was meant the purchaser.

4. It is not in dispute that the account of the assessee was kept on the mercantile basis. The Income-tax Officer held that the pendency of the appeal and the dispute between the assessee and its purchaser did not prevent the income from having accrued. He held that what was relevant was whether the transaction had been settled or not and that the assessee not only did not deny that the transaction had been settled but in fact went to the court on the basis of such a settlement. The assessee appealed to the Appellate Assistant Commissioner but the appeal failed. The assessee then appealed to the Tribunal which allowed it and made the following observation :

> "The Income-tax Officer was of the opinion that since the assessee was adopting a mercantile basis and had according to his own claim considered that a sum of Rs. 94,253 was due to the assessee from the other contracting party, the aforementioned sum had necessarily to be treated as the assessee's income of the relevant year of account. It seems to us that the reasoning adopted in this case by the Income-tax Officer and the Appellate Assistant Commissioner is unsound and untenable. The liability of the other contracting party to the assessee is yet under dispute. It is not till the assessee becomes indisputably entitled to the sum of Rs. 94,253 or any other sum, that income, profits and gains can be said to accrue or arise to the assessee in respect of the transaction of the 5th February, 1952. The sum of Rs. 94,253 is, therefore, excluded from the assessment."

5. The appellant Commissioner thereupon moved the Tribunal under section 66(1) of the Act for referring the question earlier set out. The Tribunal observed that "the department's case appears to be that a mere claim is tantamount to a right even where a dispute exists and no determination has been made. Even if it were a question of law, the answer to such is, in our opinion, so obvious, that we would not like to waste the time of the court by making a reference of this kind."

6. The Commissioner then moved the High Court under section 66(2) but there also he failed. Mahajan J. observe : "No amount can be said to accrue unless it is actually due. Claim to an amount is not tantamount to an amount being due.... If the appeal goes against the assessee, then nothing would be due. It is only if it goes in his favour that the amount will accrue." It seems to us obvious that what the learned judge was doing was really to answer the question which he had been asked to direct the Tribunal to refer to the High Court. That of course was not the way to deal with the matter then before the court. Khosla C.J. observe : "... the question whether an entry, which is made, is in respect of profits accrued or not, is a question of fact depending on the peculiar circumstances of any particular case." We are unable to agree with this view. The facts have been ascertained in the present case. The only question is one of law, namely, whether on those facts the income could be said to have accrued to the assessee. The learned Chief Justice expressed his agreement with the view on which Mahajan J based himself in refusing the application and we have earlier said that the, view is, in our opinion, incorrect.

7. It seems to us clear that the question of law as framed by the Commissioner does arise on the judgment of the Tribunal. An application under section 66(2) cannot be dealt with by answering that question. This is what the learned judges of the High Court did.

8. Learned counsel for the assessee relying on Sree Meenakshi Mills Ltd. v. Commissioner of Income-tax observed that the question of which a reference was sought was concluded by authority and, therefore, we should not direct a reference of it in exercise of our power under article 136. He said that the case of Commissioner of Income-tax v. Shoorji Vallabhdas and Co. showed that the question had been correctly answered by the Tribunal. We do not think that Shoorji Vallabhdas and Co.'s case supports the proposition for which it was cited. There the court was interpreting an agreement. The court was not concerned with the question whether, in such circumstances as obtained in the present case, the income can be said to have accrued. The court held that the agreement which the parties had made prevented the income from accruing and a mere book entry would not amount to an accrual of income.

9. We find no reason why the question suggested by the appellant Commissioner should not have been referred. We, therefore, set aside the judgment of the High Court and make an order that the Tribunal do state a case and refer the question mentioned earlier to the High Court for its decision. The appellant will get the costs here and below.

10. Appeal allowed.