Supreme Court of India
Moti Ram vs Commissioner Of Income-Tax on 24 April, 1958
Equivalent citations: AIR 1959 SC 63, 1958 34 ITR 646 SC
Author: Sarkar
Bench: A Sarkar, P Gajendragadkar, V B Eradi
JUDGMENT Sarkar, J.

1. This is an appeal by the assessee against the order of the Appellate Tribunal dated May 8, 1953, whereby that Tribunal confirmed the Appellate Assistant Commissioner's order of July 23, 1951, and the only question is whether the appellant is liable under section 4(1)(b)(iii) of the Income-tax Act to pay tax on Rs. 1,20,000 remitted by him from Srinagar in Kashmir to British India in the relevant accounting year as his profits accumulated outside British India and brought by him into British India.

2. This appeal arises out of the proceedings for the assessments of the appellant's income for the year 1945-46. The judgment had been carrying on a business in cloth in Srinagar for a long time. In 1943- 44 he started a similar business in Amritsar. It appears that in the relevant previous year, that is, between March 25, 1944, and April 12, 1945, the appellant had remitted from Srinagar to British India and aggregate sum of Rs. 5,00,850 for the purchase of goods there of which Rs. 3,00,000 were found by the Income-tax Officer, Amritsar, who was in charge of the assessment, to have been his income in Kashmir accrued prior to such year and after March 31, 1940. The Income-tax Officer had therefore directed him to pay tax on the said sum of Rs. 3,00,000.

3. The appellant preferred an appeal from this order to the Appellate Assistant Commissioner who held that the amount remitted out of the income in Srinagar was Rs. 1,20,000 and not Rs. 3,00,000 as found by the Income-tax officer, and that the appellant was liable to pay tax on this sum.

4. The appellant then took the matter in appeal to the Appellate Tribunal. It appears to have been contended by the appellant before the Tribunal that the moneys had been remitted from Srinagar out of the working funds there and not out of past accumulated income. The Tribunal came to the conclusion that no sufficient opportunity had been given to the appellate to establish that the profits sought to be taxed were not mixed up in the working funds in Srinagar. In that view of the matter the Tribunal remanded the case to the Income-tax officer for a proper enquiry and report as to whether, and if so, to what extent, the moneys sent to British India and utilised there in the purchase of goods included preceding year's profits available for remittance to British India.

5. When the matter thus came back to the Income-tax Officer for the enquiry, it was admitted by the appellant that the profits in Srinagar were mixed up with the working funds there and it was not possible for him work out from his accounts to what extent the moneys sent to British India were the working funds of the current year. In view of the this admission, the only materials available on which the further enquiry could be made by the Income-tax officer were those which had been produced at the time of the first assessments and that officer having considered these materials, reported that the Appellate Assistant Commissioner's view that the profits transmitted to British India amounted to Rs. 1,20,000 was justified.

6. The Tribunal then took up the case again on the basis of this report. It held that having admitted that the profits in Srinagar were mixed up with the working funds, the appellant had failed to show that the remittances to British India had not been out of the profits and that, therefore, the burden which lay on the appellant of rebutting the presumption that remittances were made out of profits had not been discharged. It appears from the judgment of the Tribunal that at he hearing before it after the report of the Income-tax officer had been received, the appellant for the first time sought to argue that there were no remittances to British India at all. The matter was then put in this way : The remittances had been made on account of price of goods purchased by the appellants in British India. These remittances had been made by telegraphic money orders despatched from Srinagar post offices and by bank drafts sent by post from Srinagar. The remitter, that is the appellant, had not control over the moneys covered by the telegraphic money-orders or the bank drafts, once the instructions for the telegraphic money-orders had been give or the bank drafts issued and, therefore, the moneys covered by them were thereafter not the appellant's moneys. The moneys were despatched by telegraphic money-orders and bank drafts sent by post under the instructions of the sellers of the goods and, therefore, the post office was really the agent of these sellers. That being so, when the moneys or drafts were put into the post office at Srinagar for transmission to the sellers, they had really become the property of the sellers and the appellant ceased to be the owner of them. Therefore, the moneys that were brought into India under this arrangement and by this method were the moneys of the sellers and not really the appellant's moneys and whether they were his profits in Srinagar or not, the appellant was not liable to pay tax on them. The Tribunal felt that this contention of the appellant raised new questions of fact which could not be decided without taking further evidence and it thereupon did not allow the appellant to raise it. As there was no other objection to the Appellate Assistant Commissioner's order, the Tribunal dismissed the appeal from it.

7. The appellant then made an application to the Tribunal under section 66(1) of the Act for a reference of certain questions to the High Court of Punjab for its decision but this application was dismissed. the appellants did not thereafter make any application to the High Court under section 66(2) for an order on the Tribunal to refer the question to the former as the Department had in the meantime attached the appellant's properties in British India and was proceedings to realise the amount of the tax levied, and the appellant wanted a stay of the proceedings for the realisation of the tax which, he was advised, the High Court could not grant in an application under section 66(2). In those circumstances the appellant applied to this court for special leave to appeal from the judgment of the Tribunal and such leave was granted on February 1, 1954. The present appeal arises from the leave so granted. This court at the same time ordered a stay of the proceedings for the realisation of the tax from the appellant.

8. The learned counsel for the appellants raised before us the question which the Tribunal had not permitted the appellant to raise before it, namely whether the moneys brought into British India were the appellant's moneys or not. We do not think it necessary to go into the merits of this contention and indeed we cannot decide it on the materials on the record. We are clear in our mind that the Tribunal was right in holding that the question raised by the appellant could not be decided without taking further evidence. The Tribunal refused permission to the appellant to lead further evidence and it had full jurisdiction to do so. We see no reason to interfere with the exercise of the

Tribunal's discretion in the matter. We find nothing to throw any doubt on the Tribunal's finding that the present contention was raised by the appellant for the first time when the case came back to the Tribunal on the report of the Income-tax Officer. Indeed it is quite clear to us that if this contention had been raised earlier, the remand to that officer would have been wholly unnecessary and the appellant himself would have pointed this out especially in view of the fact that he was not in a position to show that his profits at Srinagar had not been mixed up with the working funds, to enable him to do which alone the case had been remanded.

9. It was contended before us that the Tribunal had in fact asked the appellant to produce affidavits to prove that arrangements with the sellers was regarding the despatch of the moneys and a certificate from the bank to show that the moneys had been sent by drafts and telegraphic money orders and that once a draft was issued to a beneficiary it could not be recalled by the sender. It was said that the appellants had in fact produced the affidavits and certificate. These are actually included in the printed records. The respondent, the Commissioner of Income-tax, Punjab, contended that the Tribunal had never asked for affidavits or certificate. We are included to think that the respondents is right, for we do not find anywhere any order by the Tribunal calling for the affidavits or the certificate. Further it was open to the Tribunal, even if it had earlier given permission to the appellants to produce the affidavits and the certificate, not to accept them, if it decided not to allow the appellant to raise the new contention, as it in fact did decide. We may also state that we are not any events satisfied that the affidavits and the certificate support the appellant's contention. It is unnecessary to go into this aspect further for we think that the Tribunal was justified in refusing leave to the appellant to raise a new contention.

10. We find that there is no valid objection to the Tribunal's judgment and we, therefore, dismiss this appeal with costs. The order staying proceedings for the realisation of the tax is also vacated.

11. Appeal dismissed.