Supreme Court of India
Rajkumar Mills Ltd vs C.I.T. Bombay on 20 October, 1954
Author: Bhagwati
Bench: M.C. Mahajan (Cj), S.R. Das, S.J. Imam, N.H. Bhagwati, T.L.V. Aiyyar

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                CASE NO.:
Appeal (civil)  153 of 1953

PETITIONER:
RAJKUMAR MILLS LTD.

RESPONDENT:
C.I.T. BOMBAY

DATE OF JUDGMENT: 20/10/1954

BENCH:
M.C. MAHAJAN (CJ) & S.R. DAS & S.J. IMAM & N.H. BHAGWATI & T.L.V. AIYYAR

JUDGMENT:
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JUDGMENT AIR 1955 SC 628 The Judgment was delivered by BHAGWATI, J.

BHAGWATI, J.

The appellant, a non-resident company, was assessed to income-tax for the assessment year 1942-43 in respect, inter alia, of the profits earned on the sales of textile goods of the value of Rs. 4, 21, 871 supplied to the Government of India and of the value of Rs. 6, 02, 911 supplied to merchants in British India on orders secured through "reporters." The assessment was upheld on appeal and on further appeal by the Tribunal. Eventually three questions of law were referred by the Tribunal to the High Court, viz 1. Whether the profits on the sale of goods to the Government of India accrued or arose in British India

2. Whether the profits on the sale of goods through the company's paid employees in British India accrued or arose in British India

3. Whether the sale proceeds amounting to Rs. 1, 37, 469-13-9 which necessarily included profits were received in British India by or on behalf of the assessee company The third question was not pressed before the High Court. But in regard to questions Nos. 1 and 2 the High Court found that the statement of the case by the Tribunal was most unsatisfactory, that the relevant correspondence and documents were scattered over the statement of the case and the annexures and that it was difficult to make out what was the connection between the two. It therefore considered it necessary to send the matter back to the Tribunal. While so doing however the High Court asked the Tribunal not to submit to it a further statement of the case but gave certain directions and asked the Tribunal to decide the matter in accordance with those directions. Even though with regard to the sum of Rs. 6, 02, 911 the question referred was whether the profits on the sales of these goods accrued or arose in British India, the High Court founding on what according to it appeared from the assessment order, viz., that Rs. 5, 80, 069 were actually received in British India, gave a further direction that the

Tribunal should consider whether that sum was received in British India and if they found that that was so, the question of accrual or arising of profits would have to be determined only with regard to the balance, viz., Rs. 6, 02, 911 less Rs. 5, 80, 069. The High Court refused leave to appeal to this Court and the appellant therefore applied for special leave which was granted by an order of this Court dated the 23rd December, 1952The facts relevant to the determination of the questions Nos. 1 and 2 shortly stated were as follows :---

(a) In about November, 1940, an invitation to tender was sent out by the Government of India asking for a tender for the supply of stores detailed in the schedule attached thereto. On the 14th November, 1940, the appellant sent a tender form offering to supply 1, 51, 007 sheets "in strict accordance with the conditions of contract printed below" and at the price quoted in the schedule the time and rate of delivery being as stated therein. On the 17th December, 1940, the Government of India wrote to the appellant purporting to accept the tender to the extent of 51, 304 sheets, but subject to the conditions as contained in I.S.D. 12(S) to the extent of the quantity and on the terms as to delivery specified therein (Ex. ' C '). The appellant wrote a letter to the Government of India confirming the purported acceptance of the tender by the latter and stating that it would execute the order within the due period. The order was duly executed by the appellant. The goods were railed f.o.r. Indore and were before consignment inspected and approved and certified by the Inspector of Government. The railway receipt and the Inspector's certificate were sent by the appellant to the Government and the payment for the goods was made by the Government at Indore

(b) The appellant had engaged "reporters" to secure orders from British India. They used to communicate to the appellant in Indore offers received from the purchasers in British India. The appellant informed the reporters either accepting the said offers or quoting higher rates in which event the purchasers accepted the higher rates and the reporters intimated to the appellant that they had sold the goods at those higher rates. This communication was confirmed by the appellant informing the reporters that they had confirmed the sale. A formal document confirming the offer was then drawn up and was executed by the purchasers asking the appellant to supply the goods therein mentioned. This offer was subject to a written acceptance by the appellant in part or in full within 15 days of the date of the said document failing which it was to be considered as cancelledThe High Court considered that the only ground on which the revenue could tax the sale proceeds in British India was that the contracts for sale had taken place in British India and that therefore profits accrued or arose in British India. The High Court therefore gave the following directions in respect of these two classes of sales :---

(a) The Tribunal "must first consider whether Ex. C. constitutes a counter-offer. Then they must consider that if it is a counter-offer whether it was accepted by the assessee because then the agreement for sale would be entered into in Indore and not in British India ; if they take the view that Ex. C does not constitute a counter-off or if they find that although Ex. C constitutes a counter-offer there was no acceptance they can from that infer that the parties treated Ex. C not as a counter- offer but as the acceptance itself ; then the view taken by the Tribunal will be correct that the contract for sale was entered into in British India and not in Indore."

(b) The Tribunal were" to consider the evidence placed before it by the assessee and decide whether there was a written acceptance of the offer made by the merchant. If the Tribunal finds that there was such a written acceptance then undoubtedly the sale was effected in Indore and not in British India. If on the other hand they come to the conclusion that there was no written acceptance then they will adhere to their original order that the sale was effected in British India."

We are of the opinion that these directions were not in accordance with law. In order to arrive at the conclusion that the contract for the sale of goods to the Government of India was entered into in British India it was necessary to establish that the acceptance of the tender was made by the Government in British India or if Exhibit C constitutes a counter-offer that counter-offer was accepted by the appellant not at Indore but in British India. If such counter-offer had been accepted by the appellant in Indore either by a letter of acceptance written by the appellant or by conduct in supplying the goods in accordance with the terms of the counter- offer the contract for sale took place in Indore and not in British India. In regard to the sales of goods to the various merchants in British India also it was necessary to establish that the offers made by these merchants to the appellant were accepted by the appellant not at Indore but in British India. The formal documents containing the offers which were drawn up and executed by the purchasers asking the appellant to supply the goods therein mentioned stated that the offers were subject to a written acceptance by the appellant in part or in full within 15 days of the date of the document and contained a further condition that should the offer not be accepted by the appellant within 15 days it was to be considered as cancelled. If such written acceptances were forthcoming the contracts for sale took place in Indore and not in British India. If the offer not having been accepted within the 15 days therein mentioned was deemed to have been cancelled, the circumstances attendant upon the supply of those goods would have to be scrutinised and a conclusion reached on a consideration of the relevant circumstances as to whether under those circumstances the contract for sale could be said to have been entered into in Indore or in British IndiaThe High Court was therefore in error in giving the directions it did to the Tribunal. It moreover abjured its advisory function and asked the Tribunal not to submit to it any further statement of the case but to dispose of the matter according to law and in accordance with directions given by it. This in our opinion the High Court was not entitled to do. If the High Court on the statement of the case submitted to it by the Tribunal found it difficult to come to the conclusion that the contracts for sale had been entered into in British India it should have called upon the Tribunal to submit to it a further statement of the case. The question whether the contracts for sale were entered into in British India or at Indore was not a question of fact to be determined by the Tribunal. It was a question of law to be determined by the High Court on a true construction of the correspondence, documents and the conduct of the parties. The learned Attorney-General frankly conceded that he could not support that part of the order passed by the High Court and agreed that a further statement of the case should have been called for by the High Court in regard to the questions 1 and 2 The direction which the High Court gave in regard to the sum of Rs. 5, 80, 069 also was uncalled for. The statement of the case submitted by the Tribunal to the High Court did not mention any such thing and the High Court was in error in giving any such direction to the Tribunal We therefore allow the appeal, quash the order made by the High Court and direct that the Tribunal do submit to the High Court a further statement of the case in regard to questions 1 and 2 which were referred by them to the High Court. The respondent will pay the appellant's costs of this appeal