

(1975) 04 AP CK 0011

In the Andhra Pradesh High Court

Case No : Case Referred No. 49 of 1973

Commissioner of Income Tax

APPELLANT

Vs

Hindustan Shipyard Ltd.

RESPONDENT

Date of Decision : 08-04-1975

Acts Referred:

Income Tax Act, 1961 — Section 163(1), 256(1), 5(2), 9(1)

Citation : (1977) 109 ITR 158

Hon'ble Judges : Punneya, J; Chinnappa Reddy, J

Bench : Division Bench

Advocate : P. Rama Rao, for the Appellant; S.A.L. Narayana Row, for W.V.V. Sunder Rao, for the Respondent

Judgement

Chinnappa Reddy, J.—Hindustan Shipyard Ltd., Visakhapatnam, a Government of India undertaking, registered under the Indian Companies Act, entered into an agreement with Zakłady Przemysłu Metalowego H-Cegielski, Poznań, Poland, a Polish company, for the purchase of six main diesel engines with accessories. The price of each engine with the accessories was Rs. 30,72,346 f.o.b. Polish or other European ports in non-convertible Indian rupees. The day of payment, it was stipulated, was to be deemed to be the day of crediting the amount to the account of Bank Handlowy, Warszawa, with the Bank of India, Bombay. 90 per cent. of the value of the machinery shipped was agreed to be paid through the State Bank of India, Visakhapatnam, on collection basis, against the original set of documents to be submitted directly to the State Bank of India, Visakhapatnam, within fifteen days from the date of presentation from the State Bank of India, Visakhapatnam, to the purchasers. The remaining 10 per cent. was agreed to be paid on the expiry of the guarantee period of six months after delivery of the respective vessels. The price agreed to be paid was inclusive of 5 per cent. commission payable to Messrs. S. M. Maneklal Industries Ltd., Bombay, agents of the Polish company. The property in the engines was to pass to the purchasers immediately on delivery on board the vessel named by the forwarding agents of the purchasers at the port of shipment named by the Polish company.

The agreement made detailed provisions for inspection, testing and acceptance of the engines. The engines were agreed to be erected by the staff of the purchaser under the supervision of the erector and supervising engineer placed at the disposal of the purchaser by the Polish company. The Polish company agreed to supply an erector and a supervising engineer for a period of 12 months for every ship free of charge. The Polish company also agreed to provide for every ship, free of cost, one guarantee engineer for a period of 6 months on board the ship. Detailed provisions were made in the agreement regarding the various guarantees given by the Polish company. The Polish company also agreed to organise a training course in Poland for a period of 6 months for eight technical employees of the purchaser to be sent in batches. The expenses of the training course including travelling expenses were to be borne by the Polish company. The agreement contained the other usual conditions regarding cancellation of contract, extension of time, settlement of disputes, etc.

2. The Income Tax Officer took the view that the Polish company had received taxable income through the Hindustan Shipyard Ltd., the assessee-company, which company he held was the agent of the Polish company within the meaning of Section 163(1) of the Income Tax Act, 1961. The assessee-company preferred an appeal to the Appellate Assistant Commissioner. Before the Appellate Assistant Commissioner it was conceded by the department that the income received by the Polish company was not assessable on receipt or accrual basis in the hands of the assessee-company u/s 5(2) of the Income Tax Act, 1961. The dispute resolved itself to the question whether the non-resident Polish company had any "business connection" with the assessee-company so as to attract the provisions of Sections 9(1)(i) and 163(1)(b) of the Income Tax Act, 1961. The Appellate Assistant Commissioner found against the assessee on the issues argued before him and rejected the appeals of the assessee. On further appeal to the Income Tax Appellate Tribunal, it was held that the Polish company had no "business connection" with the assessee-company within the meaning of Sections 9(1)(i) and 163(1)(b) of the Income Tax Act, 1961, and, therefore, the income of the foreign company was not liable to be assessed in the hands of the assessee-company. An attempt was made by the department to raise before the Tribunal once again the question of recourse to Section 5(2) of the Income Tax Act, 1961. The Tribunal pointed out that it was not open to the department to reagitate the question which had been specifically given up before the Appellate Assistant Commissioner. However, the Tribunal went on to express an opinion that the income of the foreign company could not be assessed in the hands of the assessee-company on accrual or receipt basis u/s 5(2). The assessee's appeals were allowed by the Tribunal. A consolidated application was made by the Commissioner of Income Tax to the Income Tax Appellate Tribunal to state a case and refer the following questions of law for the decision of the High Court:

"(1) Whether, on the facts and in the circumstances of the case, the relationship between the Hindustan Shipyard Ltd. and the non-resident fell within the meaning of Section 163(1) of the Income Tax Act, 1961 ?

(2) If the answer to the above question is in the affirmative, whether on the facts and in the circumstances of the case, any profits or gains accrued or had arisen to the non-resident on account of the business connection with the Hindustan Shipyard Ltd. during the previous years relevant to the assessment years 1967-68 to 1970-71 ?"

3. The Tribunal stated a case and referred to us for our decision the following question :

"Whether, on the facts and in the circumstances of the case, there was any business connection between the Hindustan Shipyard Ltd. and the non-resident so as to justify the appointment of the former as the agent of the latter u/s 163 read with Section 160(1)(i) of the Income Tax Act, 1961 ?"

4. The learned standing counsel for the Income Tax department wanted to raise before us the the question whether the income of the foreign company could not be assessed in the hands of the assessee-company on a receipt or accrual basis u/s 5(2) of the Income Tax Act, 1961. He argued that though the Tribunal did not refer the question for our decision, the facts stated were sufficient to enable him to raise the question and that it was competent for us to go into the question. He relied upon a decision of the Supreme Court in Commissioner of Income Tax (Central), Calcutta Vs. Mcleod and Co. Ltd., . Sri S. A. L. Narayana Row, the learned counsel for the assessee, objected to the question being raised without reference by the Tribunal. We think that there is force in the objections of Sri Narayana Row.

5. In Commissioner of Income Tax (Central), Calcutta Vs. Mcleod and Co. Ltd., , all that was decided was that it was open to the court to consider whether the statement of the case by the Tribunal was complete and whether the proper question of law was raised by the Tribunal. The Supreme Court quoted with approval the following observations of Kania J. in N. Vs. KHANDVALA v. COMMISSIONER OF Income Tax., :

"When a statement of case, with the question of law framed by the Tribunal, is filed in court for disposal, if a party is aggrieved and wants to contend that certain further facts ought to be stated, or certain questions of law should be raised, he can make an application by way of notice of motion. That should be heard along with the case stated by the Tribunal for the court's opinion. At that time the court will consider whether the statement of case is complete for the question of law raised by the Tribunal. The court can also consider whether on the case stated by the Tribunal the proper question is raised or not. That is the proper time for an aggrieved party to bring to the notice of the court that certain further and other facts are necessary to be stated or certain further or other questions of law arise and should be brought for decision by the court." The observations show that where the reference is defective either because the statement of case is incomplete for the question of law raised by the Tribunal or because the Tribunal has not raised the proper questions arising on the

statement of case, it is open to the court to consider, on a notice of motion by the aggrieved party, the further and other facts necessary for decision by the court or the further or other questions of law arising in the case and requiring a decision by the court. The observations of the Supreme Court are confined only to such defective references. They do not justify adjudication by the court of a question not referred to it by the Tribunal either because the Tribunal was not invited to refer such question or because the Tribunal expressly refused to do so. We do not want, therefore, to express our views on the correctness of the following observations of Mr. Sampath Iyengar at page 1636 of the sixth edition (volume 2) of his commentary on the Income Tax Act :

"In respect of Section 9(1)(i) incomes, the assessment is made normally on the agent in India of the non-resident. The assessee is the agent himself, and he is made substantively liable to the tax. The principal does not come into the picture vis-a-vis the Income Tax Officer. It is for the agent who is so assessed and pays the tax to settle his accounts with his principal. Such agent is called in the 1961 Act a representative assessee.

In respect of other incomes, viz., incomes u/s 5(2)(a) and Section 5(2)(b) first part (income actually accruing or arising), the assessment should be made on the non-resident direct. There is no provision in the Act for the making of a "representative assessment" in respect of such incomes."

6. The question for our consideration, therefore, is whether the Polish company can be said to have any "business connection" with the assessee-company. It will be useful to extract here the relevant provisions of the Income Tax Act. Section 9(1)(i), in so far as it is relevant, is as follows :

"(1) The following incomes shall be deemed to accrue or arise in India--(i) all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through or from any money lent at interest and brought into India in cash or in kind or through the transfer of a capital asset situate in India." Section 160(1)(i) and Section 160(2), in so far as they are relevant, are as follows :

"160. (1) For the purposes of this Act, "representative assessee" means-

(i) in respect of the income of a non-resident specified in Clause (i) of Sub-section (1) of Section 9, the agent of the non-resident, including a person who is treated as an agent u/s 163;.....

(2) Every representative assessee shall be deemed to be an assessee for the purposes of this Act."

Section 163(1)(b), in so far as it is relevant, is as follows :

"163. (1) For the purposes of this Act, "agent" in relation to a nonresident, includes any person in India--.....

(b) who has any business connection with the non-resident;.,...."

7. It is seen that the expression "business connection" occurs in Sections 9(1)(i) and 163(1)(b). The expression is not defined in the Income Tax Act. Though the word "business" is defined, it is clear that we cannot derive any guidance from the definition of the expression "business" in discovering the meaning of the expression "business connection".

8. The expression has, however, been considered and explained in a series of cases and an examination of those cases will help us to understand what the expression means.

9. In AIR 1931 42 (Privy Council) the foreign company was a manufacturer of typewriting machines. The assessee-company purchased the goodwill of its business in certain territory in India and as consideration allotted to the foreign company 60,000 fully paid shares in the assessee-company. In fact, the capital of the assessee-company was divided into 60,000 shares only and that meant that all the shares of the assessee-company were held by the foreign company. The Privy Council held that although there was no contractual obligation by which the assessee-company was compelled to purchase any of the manufactures of the company, the flow of business between the two companies was secured by the fact that the ultimate and complete control of the assessee-company was vested in the foreign company which owned all its shares. It was, therefore, held that a "business connection" existed between the assessee-company and the foreign company.

10. In Commissioner of Income Tax v. Currimbhoy Ebrahim & Sons Ltd. [1935] 3 ITR 395 the assessee-company which carried on business in Bombay borrowed a sum of Rs. 50 lakhs from the Nizam of Hyderabad, a non-resident. Interest was agreed to be paid at Hyderabad (at that time outside India). In the year of account the assessee-company paid to the Imperial Bank at Hyderabad to the credit of the Nizam a sum of Rs. 3 lakhs odd on account of interest. The assessee-company was sought to be treated as the Nizam's agent and assessed u/s 42(1) of the Indian Income Tax Act, 1922. The question arose whether the assessee-company was a "business connection" of the Nizam of Hyderabad. The Privy Council observed that it was not shown that the Nizam had at any time any interest directly or indirectly in the assessee-company. Nor was there evidence of a course of dealing between the parties such as might fairly be described as "business connection" previously subsisting between them. The Privy Council also observed that the phrase "business connection" was different from, though doubtless not unrelated to the word "business" of which there was a definition in the Act.

11. In Commissioner of Income Tax v. Visalakshi Achi [1937] 3 ITR 448 a Full Bench of the Rangoon High Court held that there will not necessarily be a business connection between a non-resident moneylender and a resident in British India who borrowed from such nonresident money-lender, Mackney J.

expressed the view that the expression "business connection" must denote a connection which produces, by itself, all profits or gains and not a mere state or condition which was favourable to the making of profits.

12. In COMMISSIONER OF Income Tax, BOMBAY Vs. METRO GOLDWYN MAYER (INDIA) LTD. (AS AGENTS OF CULVER EXPORT CORPORATION OF NEW YORK)., the non-resident company which transferred to the assessee-company the right to exploit certain motion picture productions in India, was to be given in return 70 per cent, of the takings. It was held that there was a "business connection". Beaumont C. J. observed :

"Taking the document as a whole, it seems to me perfectly plain that there is a "business connection" between these two companies, under which the non-resident company is to acquire 70 per cent. of the takings which, I think, must necessarily involve that profits or gains are made by him from or through this business connection."

13. In HIRA MILLS LTD., CAWNPORE Vs. Income Tax OFFICER CAWNPORE., the assessee, a non-resident, sold his goods in British India through brokers who were not his employees and who did not canvass orders exclusively for him. Offers of purchase signed by brokers were accepted or rejected by the assessee outside British India and the goods were generally consigned to "self" at the place of destination where the merchants concerned took delivery by paying invoiced price to a broker or banker. The Allahabad High Court held that there was no "business connection ". Sir Iqbal Ahmed C.J. observed :

"The next question is whether there was a "connection" between the assessee and that business. In one way there was an obvious connection in that the assessee was the maker of the goods which were eventually consumed by British India buyers. But we do not think that it is a connection in such a loose sense as this that is contemplated by Section 42(1) of the Indian Income Tax Act, On the facts, as proved, what other "connection" was there ? The assessee had no branch, agency or establishment of its own in British India. We cannot discover any facts upon which it can be held even that the assessee, by an arrangement with British India brokers, had in effect constituted an agency for itself. The brokers were not, as far as we know, retained by the assessee. The assessee had no claim upon the goodwill of the brokers. The fact that the assessee may have paid the brokers a commission and certain out-of-pocket expenses, if and when they brought an offer which the assessee accepted, does not, we think, alter the circumstances. As we see it, on the proved facts, the position was that the assessee sold its goods in British India to a British India customer, if and when that customer, either direct or through a broker, offered to purchase them by sending an order to Ujjain, We do not think that this amounted to a "business connection in British India" from or through which the assessee derived the profits or gains on those transactions within the meaning of the authorities to which our attention has been drawn. They were sales to customers who happened to be in British India. It may be that, in the circumstances of this or

any other particular case, the profits or gains accruing or arising to a non-resident from its sales in British India can be reached by the British India Income Tax authorities u/s 4(1) of the Indian Income Tax Act. But that is quite a different thing from "deeming" them to have accrued or arisen in British India from or through a "business connection". In this case we do not think that there was any such "business connection" as falls within Section 42(1) of the Act."

14. In *Banglore Woollen, Cotton and Silk Mills Co. Ltd. Vs. Commissioner of Income Tax*, the question arose whether the assessee, a non-resident company, who manufactured woollen, cotton and silk goods which were sold by the assessee's managing agents at Madras under a managing agency agreement had "business connection" in India. The agreement provided that the managing agents should buy all the raw materials required by the assessee and should sell all the goods manufactured by the assessee. The managing agents were entrusted with complete control and management of the assessee-company. The question was whether it could be said that the assessee had a business connection in British India. Satyanarayana Rao J. stated--See *Banglore Woollen, Cotton and Silk Mills Co. Ltd. Vs. Commissioner of Income Tax*,

"A detailed examination of these decisions, however, does not enable us to arrive at the exact meaning of the expression "business connection" and define its scope and ambit.....In order to constitute a business connection there must be some continuity of relationship between a person in British India who makes profits and the non-resident who receives them.....A business connection, therefore, may arise by reason of the existence of a branch of the non-resident company or organisation in British India or by the existence of a factory or even by the existence of an agent. Very often, there may be subsidiary company in British India, subsidiary to the non-resident company, formed with the object of selling the manufactured goods or wares of the non-resident principal. The business connection may be even a connection arising out of financial relations. The non-resident business and the resident business may be two separate legal entities and they may be closely connected or associated either by reason of some common control or by reason of the non-resident company or firm financing the resident company or firm. The goods of a non-resident company may be sold by a broker or commission agent residing in British India or the person resident may render various services to the non-resident or conduct business activities. These are some of the factors which result in a business connection within the meaning of the section."

15. In *ANGLO-FRENCH TEXTILE COMPANY, LTD. Vs. COMMISSIONER OF Income Tax, MADRAS : NO. 2.*, the assessee-company, a non-resident company, had appointed an Indian company as its constituted agents for the purpose of its business in British India. The agents had full powers to purchase stock, sign bills, etc., for the assessee-company. The assessee-company was held to have a "business connection" in India. The Supreme Court observed (page 108):

"The learned counsel argued in a rather half-hearted manner that there was no

business connection of the assessee in British India. This contention does not require serious consideration. An isolated transaction between a non-resident and a resident in British India without any course of dealings such as might fairly be described as a business connection does not attract the application of Section 42, but when, there is a continuity of business relationship between the person in British India who helps to make the profits and the person outside British India who receives or realizes the profits, such relationship does constitute a business connection. In this case there was a regular agency established in British India for the purchase of the entire raw materials required for the manufacture abroad and the agent was chosen by reason, of his skill, reputation and experience in the line of trade. The terms of the agency stated in the earlier part of this judgment fully establish that Messrs. Best & Co. Ltd. were carrying on something almost akin to the business of a managing agency in India of the foreign company and the latter certainly had a connection with this agency. We, therefore, negative this contention of the learned counsel as well."

16. In *A.P. Damodara Shenoy Vs. Commissioner of Income Tax, Bombay City*, the assessee supplied goods of the value of Rs. 3,56,990 to a nonresident firm in the capacity of a commission agent, the goods having been purchased by him at Bombay. He charged brokerage of 1% on the goods supplied. It was held that the non-resident firm had a "business connection in India through the assessee. Chagla C. J. observed as follows (page 656):

"Now, it is perfectly true that we have laid down that a stray or casual transaction entered into by an agent on behalf of the principal will not constitute a business connection within the meaning of Section 43. But whether there is a continuity about the connection or whether the agent has entered into stray and casual transactions is a question of fact which must depend upon the circumstances of each case. It is impossible to lay down a hard and fast Rule and to say when casualness will cease and continuity will come in. Mr. Palkhivala's contention is that in this case the only facts found are that the goods were supplied all in the course of the assessment year and there is no finding that any goods were supplied by the assessee in earlier years, and Mr. Palkhivala says that in order to establish continuity goods must be supplied over a period of time which according to him must mean more than at least a year. It is difficult to understand why there should be no continuity if a large number of orders are given by the principal and executed by the agent, even though those orders are within a period of one year or even within the period of one month. What constitutes continuity is not necessarily the length of time during which the connection has been maintained, but the nature of the connection, and if a large number of orders are given from time to time even within a short period, then that may in a given case constitute the continuity necessary to establish a connection, and that is exactly the position here."

17. In *Commissioner of Income Tax, Bombay City Vs. T.M. Bhumraddi and Another*, the Bombay High Court had to consider the question whether the

assessee-firm, a non-resident firm who sold oil manufactured by them to a concern in British India could be said to have a business connection in India. It was found that all the transactions between the assessee and the British Indian concern were as between principal and principal. It was held that the assessee-firm had no "business connection" in British India. Tendolkar and Desai J J. observed (page 90) :

"In our opinion, there is nothing whatever in those facts to warrant any finding of a business connection. The moment the Tribunal found as it did that the transactions were between principal and principal there would have to be other strong and independent facts to establish some business connection."

18. In Commissioner of Income Tax, Punjab Vs. R.D. Aggarwal and Company, the assessee carried on business as commission agent of nonresident exporters. The procedure was that the assessee canvassed orders and communicated them to the non-resident companies for acceptance. If it resulted in a contract the assessee would become entitled to commission at varying rates. The assessee, however, had no authority to accept orders on behalf of the non-resident companies. The orders were accepted by the non-resident companies. The price was received by them and delivery was given by them outside the taxable territories. It was held that there was no business connection. Shah J. referred to several earlier cases. Referring to Commissioner of Income Tax v. Currimbhoy Ebrahim and Sons Ltd. [1935] 3 ITR 395 observed :

"There being nothing to show that the Nizam had at any time any interest, direct or indirect, in the respondent-company, there was no business connection in British India within the meaning of Section 42 of the Act between the company and the Nizam."

19. After referring to the facts of the case before the Supreme Court, Shah J. observed Commissioner of Income Tax, Punjab Vs. R.D. Aggarwal and Company, :

"Turning to the facts of the present case, as found by the revenue authorities, contracts for the sale of goods took place outside the taxable territories, price was received by the non-residents outside the taxable territories, and delivery was also given outside the taxable territories. No operation such as procuring raw materials, manufacture of finished goods, sale of goods or delivery of goods against price took place within the taxable territories: the assessee merely procured orders from merchants in Amritsar for purchase of goods from the non-resident companies. The orders were offers which the assessee had no authority to accept on behalf of the non-residents. Some commercial activity was undoubtedly carried on by the assessee in the matter of procuring orders, which resulted in contracts for sale by the non-residents of goods to merchants at Amritsar. But on this account no business connection of the assessee with the nonresidents within the taxable territories resulted. The activity of the assessee in procuring orders was not as agents of the non-residents in the matter of sale of goods manufactured by the latter, nor of procuring raw materials in the

taxable territories for their manufacturing process. Their activities led to the making of offers by merchants in the taxable territories to purchase goods manufactured by the non-residents which the latter were not obliged to accept. The expression "business connection" postulates a real and intimate relation between trading activity carried on outside the taxable territories and trading activity within the territories, the relation between the two contributing to the earning of income by the non resident in his trading activity. In this case such a relation is absent."

20. In Commissioner of Income Tax Vs. Carborundum Company, the assessee, a foreign company, entered into an agreement with an Indian company for rendering certain services which included the furnishing of technical information and know-how to the Indian company, providing the Indian company with technical personnel for starting the plant and superintending its operations and training Indian personnel to replace the foreign technical personnel as rapidly as possible. In return, the assessee was to receive from the Indian company an annual service fee equal to 3% of the net sales of the products manufactured by the Indian company each year. The Madras High Court held that there was a business connection.

21. These are the cases cited before us at the Bar. There must, of course, be several other decided cases considering the question of "business connection". But, we think the cases cited before us draw a line, with sufficient clarity, between what is "business connection" and what is not "business connection". Whether it is goods that are supplied or services that are rendered, the common thread of mutual interest must run through the fabric of the trading activities carried on outside and inside the taxable territories. That is what has been described by judges as a "real and intimate connection ". The commonness of interest may be by way of management control or financial control or by way of sharing of profits. It may also come into existence in some other manner. But there must be something more than a mere transaction of sale and purchase between principal and principal.

22. In the AIR 1931 42 (Privy Council) the ultimate and complete control of the Indian company was vested in the foreign company which owned all its shares. In the case of COMMISSIONER OF Income Tax, BOMBAY Vs. METRO GOLDWYN MAYER (INDIA) LTD. (AS AGENTS OF CULVER EXPORT CORPORATION OF NEW YORK)., the non-resident company was entitled to 70% of the takings of the Indian company. In the case of Bangalore Woollen, Cotton and Silk Mills Co. Ltd. Vs. Commissioner of Income Tax, the managing agents in British India were entrusted with complete control and management of the non-resident company. In the case of ANGLO-FRENCH TEXTILE COMPANY, LTD. Vs. COMMISSIONER OF Income Tax, MADRAS : NO. 2., the Indian company had full power to purchase stock, sign bills, etc., for the non-resident company. In A.P. Damodara Shenoy Vs. Commissioner of Income Tax, Bombay City, the resident-assessee purchased goods and supplied them to the non-resident company on a large scale and

charged commission. In Commissioner of Income Tax Vs. Carborundum Company, the foreign company was entitled to be paid a percentage of the net sales of the products manufactured by the Indian company in return for the services rendered by it. These cases illustrate that some commonness of interest in the trading activities inside and outside the taxable territories is of the very essence of "business connection". These cases may be contrasted with the cases falling on the other side of the line. In Currimbhoy Ebrahim's case [1935] 3 ITR 395 apart from the relationship of creditor and debtor, the non-resident creditor had no interest, direct or indirect, in the resident debtor. Visalakshi Achi's [1937] 5 ITR 448 was a similar case. In the case of HIRA MILLS LTD., CAWNPORE Vs. Income Tax OFFICER CAWNPORE., the assessee sold goods through brokers who were not his employees and who did not canvass orders exclusively for him. The brokers merely passed on the orders to the non-resident-company and did not involve themselves in the sale. In Commissioner of Income Tax, Bombay City Vs. T.M. Bhumraddi and Another, the transactions were sales between principal and principal. In Commissioner of Income Tax, Punjab Vs. R.D. Aggarwal and Company, the assessee, a commission agent, merely passed on orders to the non-resident exporter which orders might or might not be accepted. These cases illustrate how every transaction between a resident and a non-resident which results in profit to the non-resident does not necessarily result in a business connection, in the absence of the extra commonness of interest described by judges as real and intimate connection.

23. Applying these principles to the present case we have no hesitation in holding that there was no "business connection" such as would justify the Indian company being treated as the agent of the Polish Company within the meaning of Section 163(1)(b) of the Income Tax Act. The transaction between the Indian company and the Polish company was one between principal and principal.

24. It is true that the Polish company agreed to render certain limited services. But those services were connected with the effective fulfilment of the contract of sale and were merely incidental to the contract, usually included in all such contracts, by way of guarantee of the efficient working of the products sold. They were not services which created an interest of the type seen in the case of Commissioner of Income Tax Vs. Carborundum Company, . We answer the question referred to us in favour of the assessee. The assessee is entitled to the costs of the reference. Advocate's fee Rs. 250.