

(1930) 12 CAL CK 0013
In the Calcutta High Court
In Re: Multanchand Johurmull

Date of Decision : 10-12-1930

Acts Referred:

Citation : AIR 1931 Cal 727

Hon'ble Judges : Rankin, C.J;C.C. Ghose, J;Buckland, J

Bench : Full Bench

Judgement

Rankin, C.J.—In this case the Commissioner of income tax has referred to this Court two questions. It appears that the assessees are a Hindu undivided family, that they have a certain business in Calcutta and that they also have certain businesses at places called Meckliganj and Jamaldi which are situated out of British India, in the State of Cooch Behar. It also appears that in assessing the assessees to income tax, the income tax authorities have found that the Cooch Behar businesses made remittances to Calcutta which exceeded the remittances which the Calcutta business made to them. In the books the matter was treated as though the remittances to Calcutta were carrying interest and, as the persons who paid and the persons who received this interest are the same, namely, the assessees- the undivided Hindu family--a question has arisen as to whether this book entry of interest has any consequence as a matter of inference of fact or otherwise. The first thing that happened was that these remittances from Cooch Behar were inquired into by the income tax. Officer who was of opinion that, having regard to the transactions between the different branches, so to call them, the remittances to Calcutta were remittances of profits made in Cooch Behar. It appears that for the reasons given by the assessees, no accounts whatsoever of the Cooch Behar business were produced before the income tax Officer and the first question which is referred to us is in the following terms:

Whether the finding that the excess of credits over debits between two firms, one in British India and the other outside, represents profits is sound in law ? Is there any legal presumption in favour of such finding ?

2. Now this question ought not perhaps to have been referred at all in the terms in which it is stated. But the income tax Officer has found that the moneys to the

extent of the excess over the moneys; sent from Calcutta to Cooch Behar were moneys received in British India. He has not purported to treat the whole of them as received in British India, but only the excess as received in British India. He found, proceeding partly upon admissions that the Cooch Behar concerns were branch businesses, and this question is not referred to us. The assessee failed to produce any accounts of these businesses whatever. Thereupon he has held, on purely general grounds, (that the moneys, which this business in Cooch Behar did remit, represent profits which originally arose in Cooch Behar. As regards that, it seems to me that it was open to him so to find and, in my judgment, there is nothing unsound in law in the view which he has taken. That being so, it seems to me that the (first part of question (a) must be answered against the assessee. The second part of it does not appear to me to arise."

3. The next question which is referred to us arises in this way: It seems that one Jaychandlal Kothari resides in Cooch Behar. It also seems that he sent jute for sale to the Calcutta business of the assessee, that they sold it and that a certain amount was due to him by the Calcutta business. Instead of sending money from Calcutta to Jaychandlal Kothari, the assessee got their Cooch Behar branch or branches to pay to Jaychandlal Kothari in Cooch Behar the {debt which was really due from the Calcutta business and the Commissioner of income tax has held, on that footing, that these amounts paid in Cooch Behar by the Cooch Behar branches were received in British India constructively. In my judgment, that is not so.

4. We have been referred to certain cases on the subject-particularly to the case of *Gresham Life Assurance Society v. Bishoo* [1902] A.C. 287 and also to the case of the *Scottish Mortgage Company of New Mexico v. McKelvie* [1886] 2 Tax. Cas. 165 decided by the Court of Exchequer in Scotland. There is also another case-the case of *Forbes v. Scottish Widow's Fund and Life Assurance Society* [1895] 3 Tax. Cas. 443. But in my judgment, these cases do not form a foundation for holding that, in the present case, these sums of money which were paid to Jaychandlal Kothari were received in Calcutta and the Advocate-General did not in the end persist in so contending.

5. It has been represented to us by the learned Advocate-General that, although question (c) was raised as a question of law by the assessee and has been referred by the Commissioner, it is not clear that the question is of any importance. However that may be, it will be for the income tax authorities to decide, when they re-assess the assessee upon the footing that the sums which were paid to Jaychandlal Kothari were not sums received or deemed to have been received in British India within the meaning of Section 4 of the statute.

6. There will be no order for costs on either side.

7. The reference made by the Commissioner was made on 26th July last. He was asked to refer three questions: but he referred two and refused to refer one. Thereupon, after this reference had been in the paper for hearing, a petition is

presented to the Court under Sub-section (3), Section 66, asking for a rule upon the income tax authorities to show cause why they should not state a case upon the question which the Commissioner refused to refer. I would only say that this practice will be of no avail to any assessee. We are sitting here to hear and decide the reference which the income tax Commissioner has made and any device to introduce matters which have not been referred will be firmly discouraged. It is quite obvious that, if this new question was to be referred at all, it would be necessary to have before us a statement of the case upon it at the time when we were dealing with the other questions that have been referred. Such an application could only be made by coming and asking on good grounds for an adjournment of the hearing of the reference which the income tax Commissioner has made; and the idea that the reference made by the income tax Commissioner can be extended by now presenting to the Court an application under Clause (3), Section 66 is quite unreasonable. As the matter however has been mentioned and the application moved by Mr. Deb on behalf of the assessee, it remains only to dismiss the application. It appears abundantly clear that the reason why this question was not referred by the Commissioner is that it was a question of fact and that he had evidence upon the books of the assessee to enable him to deal with the question.

C.C. Ghose, J.

8. I agree.

Buckland, J.

9. I agree.