

(1931) 08 BOM CK 0022
In the Bombay High Court

In Re: The Provident Investment Co. Ltd.

Date of Decision : 20-08-1931

Acts Referred:

Income Tax Act, 1961 — Section 10(2)(3)

Citation : AIR 1932 Bom 94 : (1932) ILR (Bom) 92

Hon'ble Judges : Beaumont, C.J;Rangnekar, J

Bench : Full Bench

Judgement

Beaumont, C.J.—This reference raises a question of considerable importance, and one, I think, involving some difficulty. The case has been well argued on both sides, and I do not think any useful purpose would be served by reserving judgment, because the point, though difficult, is quite a short one. The assessee company is what may be said a finance company, and as part of its business it invests moneys in various parts of the world. It appears from the facts found in the case that in June 1926 the company borrowed a sum of 32 lakhs of rupees odd, and with that, and some other moneys which formed part of the capital of the company, it purchased large sums of sterling securities, something over 76 lakhs of rupees. It further appears that about five lakhs of rupees more has been invested in sterling securities out of the interest received on the securities purchased with the capital and borrowed moneys.

2. Now the point which arises for decision is this: The company say that they are entitled to claim as a deduction from their taxable profits in British India the interest on the 32 lakhs of rupees which they borrowed, notwithstanding the facts that that borrowed money was employed outside British India and that the profits derived from the borrowed money have not been brought within British India and therefore have not attracted Income Tax in India. The proposition is a rather startling one, but Mr. Desai refers us to what Lord Halsbury said in *Tennant v. Smith* [1892] A.C. 150 to the effect that in construing taxing Acts the Court need not look for any governing purpose; the only purpose is to take such tax as the statute imposes. Therefore, if the assessee is right on the construction of the Act, they are entitled to deduction for interest on the borrowed money notwithstanding the fact that the borrowed money has been

employed outside British India. Mr. Desai bases his claim on Section 10, Sub-section (2), sub-para. (3), Income Tax Act. What that section provides is that Income Tax shall be payable by an assessee under the head "business" in respect of profits or gains of any business carried on by him and such profits or gains shall be computed after making an allowance (interalia) in respect of capital borrowed for the purpose of the business where the payment of interest thereon is not in any way dependent on the earning, of profits, to the extent of the amount of the interest paid. Now, Mr. Desai says that this capital was borrowed for the purposes of the business and that the payment of interest on it was not in any way dependent on the earning of profits, that the section therefore applies, and that the question whether the capital was used so as to earn income which would attract Indian Income Tax is entirely beside the point. But in construing that section one must, as the learned Advocate-General claims, have regard to the context and the other provisions of the Act. u/s 4 the Act applies to income, profits or gains as described in Section 6 from whatever sources derived accruing or arising or received in British India-I only read so much as is material and then Sub-section (2) provides:

Profits and gains of a business accruing or arising without British India to a person resident in British India shall, if they are received in or brought into British India, be deemed to have accrued or arisen in British India and to be profits and gains of the year in which they are so received or brought, notwithstanding the fact that they did not so accrue or arise in that year, provided that they are so received or brought in within three years of the end of the year in which they accrued or arose.

3. So that the profits taxable are only those received in British India the words accruing or arising need not be considered in this case and they cease to be taxable at all if they are not received within three years.

4. The next section to consider is Section 6 which is Section 1 in Ch. 3 which includes the section we have to consider, viz., Section 10, and the chapter is headed "taxable income."

Section 6 provides:

Save as otherwise provided by this Act, the following heads of income, profits and gains, shall be chargeable to Income Tax in the manner hereinafter appearing

5. Then the first three heads are salaries, interest on securities and property, and the following three Sections 7, 8 and 9 deal with the methods in which those three heads of income are to be ascertained. Then the fourth heading in Section 6 is "business," and the manner in which the profits derived from business are to be ascertained is dealt with in Section 10. Now, looking at that section again in the light of "the context, tax is to be payable by an assessee under the head of "business" in respect of the profits or gains of any business carried on by him. Clearly that must mean in respect of the taxable profits or gains of any business carried on by him and the business must be one which earns taxable profits or

gains. Then when we come to Sub-section (2) (3), an allowance is to be made in respect of interest on capital borrowed for the purposes of the business. Now, I think that again must be for the purposes of the business which earns or is capable of earning taxable profits. Whether or not in fact taxable profits are earned is not necessarily the criterion, because the borrowed money may earn no profit, but I think the "business" referred to in that section is a business which is so carried on that taxable profits may be earned, and unless it is a business of that character a deduction for interest on capital money borrowed for the purposes of that business is not allowable under the Act. That point has already been covered by a decision of a Full Bench of the High Court of Madras in the case of Somasundaram Chettiar v. Commr. of Income Tax, Madras A.I.R 1928 Mad. 487. The position there was that the assessee was a money-lender who carried on business in Madras and also in Ipoh, a place in the Federated Malay States, and he claimed to deduct from the profits of his Madras business interest on money borrowed for the purposes of the Ipoh business and it was held that that was not allowable. Mr. Desai says that that case is distinguishable because in that case the assessee had two distinct businesses whereas the assessee here has only one business.

6. He says that he cannot be treated as carrying on business in the various parts of the world in which he may happen to invest his capital through bankers, or brokers in Bombay, and that his profits or gains assessable to Indian Income Tax are the balance in his whole business. Well, I agree with that general proposition, but it is not always easy to say where a finance company is carrying on business. It seems to me that the question we have to ask ourselves is what is the nature of the business of the assessee company for the purposes of Section 10 (2) (3)? Is it a business which is carried on in such a way as that taxable profits may be earned by it? The question is not, as I have said, an easy one to answer, but on the whole I have come to the conclusion that on the facts the deduction claimed is not allowable. The facts, as I have pointed out, are that this money was borrowed in June 1926, that it was employed in the purchase of securities outside British India, that these securities have been retained outside British India and the income derived from them has been dealt with outside British India ever since 1926, and that being so, it seems to me that as a matter of fact the company, qua the capital which it is using outside British India and retaining for that length of time outside British India, is not carrying on a business in respect of which profits assessable to Indian Income Tax can be earned so that an allowance can be claimed for interest on capital borrowed within the meaning of Section 10 (2) (3).

7. We are, told that some amendment of the Act in respect of these matters is in contemplation and I am far from desiring to discourage the legislature from effecting such amendment because one can see that difficult questions may arise; for instance, if this borrowed capital had been invested in securities outside British India which had failed to produce any income it would have been impossible to predicate as against the assessee company that the income if

earned would have been retained and used outside British India and in such a case an allowance might have to be made. The whole question is one which it is desirable that the legislature should deal with. But on the facts of this case I think the claim of the assessee company is not allowable, and that we must answer the questions put to us by saying that the interest payable on the sum of Rupees 32,74,134 borrowed in 1926 for the purposes of investment in sterling securities and so invested ought not to be deducted from the income of the assessee company accruing and arising in British India.

8. The assessee company to pay the costs of the Commissioner on the original side scale.

Rangnekar, J.

9. I agree.