
(1980) 03 RAJ CK 0011

In the Rajasthan High Court

Case No : Income Tax Reference No. 14 of 1970

Jaipur Mineral Development Syndicate

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 20-03-1980

Acts Referred:

Income Tax Act, 1922 — Section 4

Citation : (1981) 127 ITR 33 : (1980) RLW 341

Hon'ble Judges : M.L. Shrimal, J; C.M. Lodha, J

Bench : Division Bench

Advocate : S.K. Keshote, for the Appellant; S.K. Mehta, for the Respondent

Judgement

Shrtmal, J.—The Income Tax Appellate Tribunal, Delhi Bench "C", New Delhi (to be referred to as "the Tribunal" hereinafter), at the instance of the assessee has referred the following questions for being answered by this court:

"1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in holding that the property in the goods passed to the customers in the erstwhile Part A and C States, because the railway receipts in respect of the sale of goods of the value of Rs. 94,037 were made out in the name of "self" and were sent to the purchasers in the erstwhile Part A and C States after endorsing the same in their favour?

2. Whether, on the facts and in the circumstances of the case, the entire profits and gains amounting to Rs. 93,019 arisen to the assessee firm in Part A and Part C States should be taken into account for the purpose of applying the test laid down u/s 4A(6)(b) or only that part of the profits which can be determined after the application of Section 42(3) of the Act as reasonably be attributable to that part of the operations carried on in British India?"

2. The facts giving rise to this reference are that M/s. Jaipur Mineral Development Syndicate, Jaipur, the assessee-firm, is a dealer in soap stone. The mines are situated near about Dausa. The accounting year is the year ending on

May 31, 1949. Out of the total sales of Rs. 12,16,692 the assessee despatched the goods of the value of Rs. 94,037 in Part B State to purchasers in Part A and C States. The railway receipts were made in the name of "self" and endorsed in favour of the customers. Hundis were drawn in the names of the purchasers and were delivered to the local bank in Part B State for collection. The ITO, Estate Duty-cum-income tax Circle, Jaipur, held that the right to property and the goods passed to the purchasers only after the freight was paid. He accordingly considered that the profit amounting to Rs. 93,919 on the above mentioned sales had accrued to the assessee in Part A and C States.

3. The AAC held that the property in the goods passed immediately when the railway receipts were despatched to the customers. Besides that the payments were also received by assessee in Part B State. He accordingly held that the profits amounting to Rs. 93,919 had accrued or arisen in Part B State and not in Part A or C State. On the basis of the above findings he reversed the order of the ITO.

4. Being aggrieved by the findings arrived at by the AAC, the revenue filed an appeal. The Appellate Tribunal held that the goods were despatched f.o.r. destination and railway receipts were drawn in the name of "self". The freight was also required to be paid at the destination. The assessee became entitled to the purchase money on the passing of the title to the purchaser in Part A and C States and, therefore, the income accrued to the assessee in Part A and C States. The Tribunal placed reliance on two Supreme Court cases in *SETH PUSHALAL MANSINGHKA (P.) LTD. Vs. COMMISSIONER OF Income Tax, DELHI, RAJASTHAN AND MADHYA PRADESH.*, and *Commissioner of Income Tax, Bombay City and Suburban District Vs. Hukumchand Mills Ltd.*, . The assessee filed an application for referring the above-quoted two questions and the Tribunal after hearing the parties referred the above-noted two questions, vide its order dated 20th September, 1969.

5. Learned counsel appearing on behalf of the assessee urged that no doubt the railway receipts were drawn in the name of "self", but they were endorsed in the name of the purchasers without any reservation. As soon as the goods were allotted to the railway, the property in the goods passed to the purchaser. The contractual liability of the assessee/self was discharged as a seller and the delivery to the buyer was complete and the goods thereafter remained at the risk of the purchaser. Learned counsel urged that the drawing of the hundis by the assessee on the purchaser and delivering them to the bank was not conditional. The assessee finally handed over the hundis to the bank and the bank in its turn discounted the hundis to the assessee and thus the bank after becoming a holder in due course of the hundis collected the amount from the purchaser in the taxable territory on its own account.

6. Learned counsel further urged that the bank discounted the hundis without any reservation and not as the assessee's agent. Placing reliance on Sections 20, 23 and 25 of the Sale of Goods Act, learned counsel urged that as the contract

for the sale was regarding specific goods and unconditional, the property in the goods passed to the buyer as soon as the contract was completed and the drawing of the hundis in no way affected the liability of the assessee to pay tax. He tried to distinguish the two cases relied upon by the Appellate Tribunal on the ground that in SETH PUSHALAL MANSINGHKA (P.) LTD. Vs. COMMISSIONER OF Income Tax, DELHI, RAJASTHAN AND MADHYA PRADESH., the railway receipt was endorsed in favour of the bank, whereas in Commissioner of Income Tax, Bombay City and Suburban District Vs. Hukumchand Mills Ltd., the railway receipts though drawn in the name of "self" were delivered to the bank for collection and as such the ratio decidendi of these cases was not applicable to the facts of the case on hand.

7. There is no dispute on the point that the goods were despatched f.o.r. and the freight was required to be paid by the purchaser at its destination. The railway receipts were drawn in the name of "self" and endorsed in favour of the customers. Hundis were drawn in the names of the purchasers. There is nothing on record to hold that these hundis were purchased by the bank. It is a well-settled position of law that a bill of exchange does not by itself create any obligation between the drawee and the holder; if the drawee refused to accept or to pay it on its due date the holder cannot sue it for the amount and the remedy is only against the drawer or against the prior endorsees. In the case on hand nothing has been placed on record on the basis of which it could be said that the purchasers had accepted the hundis prior to their discounting by the bank. On the facts found by the Tribunal it can be safely held that the bank accepted the hundis for collection and this collection was made on behalf of the assessee in the capacity of an agent.

8. Admittedly, the purchasers were the residents of Part A and Part C States. In Commissioner of Income Tax, Bombay City and Suburban District Vs. Hukumchand Mills Ltd., while accepting the argument advanced by Mr. S. T. Desai, appearing on behalf of the revenue, the Supreme Court held that there was considerable force in the argument advanced by the counsel that the fact that the goods were to be delivered f.o.r. Indore, does not make the property in the goods pass at Indore, In that case the court held that the property in the goods passed in Part A and Part C States where the delivery was made and the income accrued only when the purchaser paid the price through the bank. On the parity of reasoning we hold that the Appellate Tribunal was right in holding that the property in the goods passed to the customers as the residents of Part A and Part C States. The answer to question No. 1 is given in the affirmative.

9. As regards question No. 2 the learned counsel appearing on behalf of the parties have rightly urged that the ITO himself has apportioned the profits and as such the question does not arise and need not be answered.

10. The reference is answered as indicated above. In the facts and circumstances of the case the parties will bear their own costs.