
(1937) 01 CAL CK 0009
In the Calcutta High Court
Case No : Reference No. 14 of 1936

MOHANPURA TEA COMPANY, LIMITED, APPELLANT
Vs
RE. RESPONDENT

Date of Decision : 28-01-1937

Acts Referred:

Income Tax Act, 1961 — Section 4(3)(viii), 59

Citation : (1937) 5 ITR 118

Hon'ble Judges : Panckridge, J;Costello, J

Bench : Full Bench

Judgement

PANCKRIDGE, J. - The assessee are a company incorporated under the Indian Companies Act with their registered office in Calcutta. Their income, profits, and gains, are derived from the sale of tea grown and manufactured on a tea estate in the Indian State of Tipperah, and then sent to Calcutta and sold there. For the year 1935-36 the income tax Officer assessed the company on the taxable income of Rs 1,029 on which an income tax of 162-10 has been demanded. The assessee claim that 60 per cent. of their assessed income is not liable to tax.

The assessee rely on the principle laid down in the Killing Valley Tea Company Ltd. v. Secretary of State for Indian (I.L.R. 48 Cal. 161) where it was held that when tea is grown and manufactured in British India a portion of the income, profits and gains derived from its sale in British India must be regarded as "agricultural income" and therefore, outside the scope of the Indian Income Tax Act by reason of Section 4(3)(viii) of the Indian Income Tax Act. This principle has subsequently been recognised by Rule 24 made u/s 59 of the Act. The material paragraph of the Rule is as follows : "Income derived from the sale of tea grown and manufactured by the seller in British India shall be computed as if it were income derived from business and 40 per cent. of such income shall be deemed to be income, profits and gains liable to tax."

In the present case, however, the assessee are admittedly not entitled to the

exemption provided by Section 4(3)(viii) of the Act because tea grown in an Indian State is not "agricultural income" as defined in the Section 2, sub-section (1), which limits agricultural income to income derived from land which is used for agricultural purposes and is either assessed to land revenue in British India, or subject to a local rate assessed and collected by officers of Government as such. Accordingly, if the income of the assessee is income, profits or gains, accruing or arising or received in British India within the meaning of Section 4, Sub-section (1), the charging sections of the Act will apply.

The assessee maintains that their income is not income, profits, or gains, arising or accruing or received in British India, but they admit that but for a proviso with which I shall deal shortly, it would be income, profits or gains deemed under the provisions of the Act to be income, profits or gains received in British India within the meaning of sub-section (1). Sub-section (2) defines what income, profits or gains, shall be so deemed. The material words are as follows :- "Income, profits and gains 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." As I have said, the assessee admits that these words prima facie cover the whole of the income, profits and gains, in respect of which they have been assessed, but they rely on the following proviso to sub-section (2) introduced into the Act by the Indian Income Tax Amendment Act, 1933 : Provided further that nothing in this sub-section shall apply to income from agriculture arising or accruing in a State in India from land for which any annual payment in money or in kind is made to the State."

The Commissioner of Income Tax has held that, in the circumstances the income, profits and gains accrued or arose or were received in British India within the meaning of Section 4, sub-section (1), and are not merely deemed under the Act so to arise or accrue or be received, and that there is, accordingly, no need to consider the meaning of the proviso.

At the request of the assessee, he has referred the question of law involved to this Court u/s 66(2) of the Act in the following form : "Whether on the facts and circumstances of this case, the whole of the income of this Tea Company has accrued, arisen or been received in British India." I am of opinion that the Commissioner is right in his opinion that an affirmative answer must be given to this question. I think, if one compares sub-section (1) with sub-section (2) with sub-section (2) it is clear that what sub-section (2) contemplates is a case where income, profits and gains have assumed their form as such outside British India, and are thereafter received in or brought into British India.

In the present case, what was received in or brought into British India was not income, profits and gains, but manufactured tea. Indeed, until the manufactured tea had been sold at a profit in Calcutta it can hardly be said that there were any income profits and gains. Had the tea been sold in Tipperah and the price had either been received in Calcutta, or received in Tipperah and subsequently

remitted to Calcutta, it would have been a different matter, and it may be that such a case would prima facie fall within sub-section (2) subject to the proviso as to income from agriculture.

The assessees strongly rely on the decision of the Privy Council in the case of Commissioners of Taxation v. Kirk (I.L.R. 1900 A.C. 588) and at first sight, this case appears to be of considerable assistance to them, but, if the language of the statute which was the subject matter of that decision is compared with the language of the Indian Income Tax Act, the differences are obvious. Under the New South Wales Land and Income Tax assessment Act, 1895, Section 15, the following incomes are made liable to tax :

Sub-section (1) : "Arising or accruing to any person where-soever residing from any profession, trade, employment or vocation carried on in New South Wales Whether the same be carried on by such person or on his behalf wholly or in part by any other person."

(3) "Deriver from lands of the Crown held under lease of licence issued by or on behlaf of the Crown".

(4) "Arising or accruing to any person wheresoever residing from any kind of property except from land subject to land tax as herein after specifically excepted or from any other source what soever in New South Wales not included in the preceding sun-sections".

The assessees were a mining company with mines in the colony of New South Wales. The ore was extracted in New Sourth Wales and was converted from a crude into a mercantile product in New South Wales. The mercantile product was, however, sold and the price paid, not in New South Wales but in Victoria. Their Lordships observe at page 592 : "The word trade no doubt primarily means traffic by way of sale or exchange of commercial dealing, but may have a larger meaning so as to include manufactures. But if you confine trade to its literal as ti include manufactures. But if you confine trade to its literal meaning one may ask why is not this in come derived (mediately or immediately) from lands of the Crown held on lease under S. 15, Sub-S.3, or from some other source in New South Wales under Sub-S.4. Their Lordships attach no special meaning to the word "derived", which they treat as synonymous with arising or accruing. It appears to their Lordships that there are four processes in the earning or production of this income : (1) the extraction of the ore from the soil; (2) the conversion of the crude ore into a merchantable product, which is a manufacturing process; (3) the sale of the merchantable product; (4) the receipt of the moneys arising from the sale. All these processes are necessary stages which terminate in money, and the income is the money resulting less the expenses attendant on all the stages. The first process seems to their Lordships clearly within Sub-S.3, and the second or manufacturing process, if not within the meaning of trade in Sub-S.1, is certainly included in the words any other source whatever in Sub-S.4."

The assesseees in the case before us attach great weight to the passage in which it is said that "derived" should be treated as synonymous with "arising" or "accruing". It will be observed however, that the liability to tax depended not on whether the income arose or accrued in New South Wales, but whether it arose or accrued from a source in New South Wales.

Now the place where income accrue or arisen is by means necessarily the place where the source from which it accrue or arisen is situated. This is a distinction which the argument of the assesseees appears to me to overlook.

In my opinion, in the circumstances of the present case, no income, profit, or gains, arose or accrued until the manufactured tea was sold in Calcutta which is, therefore, the place where the income, profit and accrued. Accordingly, Section 4, sub-section (2), and the proviso thereto have no application and the question of law propounded by the Commissioner of India Tax must have an affirmative answer.

The assesseees will pay costs of the Reference including the cost of the cost of the advocate appearing.

COSTELLO, J. - I agree.

Reference answer accordingly.