

PRIVY COUNCIL

Patiala State Bank

Vs.

Commissioner of Income-tax, Bombay Presidency, Sind and Baluchistan

P.C.A.No.44 of 1942

(Lords Romer, Porter Clauson, Sir George Rankin and Sir Madhavan Nair JJ.)

08.07.1943

JUDGMENT

LORD ROMER J.

1. The Patiala State Bank (the appellant in this case) is owned and controlled by the Maharajah of Patiala who constitutes the Government of that State. The head office and all the branches of the bank are situated in the State and it does not carry on any part of its business in British India. But, in the year ending 31st March 1935, the bank collected and received in British India through the hands of its agents sums representing the interest on certain Government of India securities that it had acquired in the course and for the purposes of its business. In the same year, it also received in British India, through its agents there, a substantial sum of money representing the profits accruing to it in respect of the sale at a profit of various investments similarly acquired. It is got and it cannot be disputed that all these sums of money represented profits or gains of the appellant's banking business for the year in question. In these circumstances, the Senior Income-tax Officer, Non-resident Refund Circle, Bombay, in the month of August 1937, caused an assessment to be made on the bank for the year 1935-36 in respect of the said sums (and of certain other small sums representing income of the bank received in British India in the year ending 31st March 1935) after allowing various permissible deductions. In making this assessment the Income-tax officer purported to be acting under the provisions of the Government Trading Taxation Act, 1926 (3 of 1926). The preamble to the Act is in the following words :

Whereas it is expedient to determine the liability to taxation for the time being in force in British India of the Government of any part of His Majesty's Dominions, exclusive of British India, in respect of any trade or

business carried on by or on behalf of such Government; It is hereby enacted as follows :

The material section of the Act is the second which runs as follows :

2. (1) Where a trade or business of any kind is carried on by or on behalf of the Government of any part of His Majesty's Dominions, exclusive of British India, that Government shall, in respect of the trade or business and of all operations connected therewith, all property occupied in British India and all goods owned in British India for the purposes thereof, and all income arising in connection therewith, be liable:

(a) to taxation under the Indian Income-tax Act, 1922, in the same manner and to the same extent as in the like case a company would be liable :

(b) to all other taxation for the time being in force in British India in the same manner as in the like case any other person would be liable.

(2) For the purposes of the levy and collection of Income-tax under the Indian Income-tax Act, 1922, in accordance with the provisions of sub section (1), any Government to which that sub-section applies shall be deemed to be a company within the meaning of that Act, and the provisions of that Act, shall apply accordingly.

(3) In this section the expression 'His Majesty's Dominions' includes any territory which is under His Majesty's protection or in respect of which a mandate is being exercised by the Government of any part of His Majesty's Dominions.

2. The question to be decided upon this appeal is whether the section applies to the appellant bank. It is conceded that the Patiala State is a State under His Majesty's protection and is therefore within His Majesty's Dominions for the purposes of the section. But the appellant contends that the section only applies to cases where the trade or business in question is carried on in British India. If the section does apply to the bank, then by virtue of sub section (1) (a) all income arising in connection with its trade or business is liable to taxation under the Indian Income-tax Act, 1922, in the same manner and to the same extent as in the like case a company would be liable. It is therefore desirable to state what are the relevant provisions of the Income-tax Act, 1922, applicable to a company "in the like case." They are as follows :

Section 2,-(4) 'business' includes any trade, commerce, or manufacture or any adventure or concern in the nature of trade, commerce or manufacture,

Section 3.-Where any Act of the Indian Legislature enacts that income-tax shall be charged for any year at any rate or rates applicable to the total income of an

assessee, tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of this Act in respect of all income, profits and gains of the previous year of every individual, company, firm and Hindu undivided family.

Section 4 (1) Save as hereinafter provided, this Act shall apply to ail income, profits or gains, as described or comprised in Section 6, from whatever source derived accruing, or arising or received in British India, or deemed under the provisions of this Act to accrue, or arise, or to be received in British India.

Section 6. - 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 namely :

* * * * *

(iv) Business.

Section 10.--(1) The tax shall be payable by an assessee under the head 'Business' in respect of the profits or gains of any business carried on by him.

3. In the month of October 1937, the bank appealed against the assessment that had been made upon it, and after some proceedings had taken place before the Assistant Commissioner and the Commissioner which need not be further mentioned the Commissioner, upon the application of the bank made under Section 66(2) of the last mentioned Act, referred to the High Court for its decision seven questions of law of which only the following are now material :

(1) Whether the Government Trading Taxation Act (3 of 1926) is applicable to the Patiala State Bank rendering it liable to taxation under the Indian Income-tax Act, 1922 ?

(3) Whether the property situate at Museoorie taken over by the Patiala State Bank from its debtor, a subject of the Patiala State, in part satisfaction of a loan advanced to him, is property occupied in British India for the purposes of its trade or business in British India within the meaning of Section 2 Government Trading Taxation Act, and whether all income arising from such property is liable to assessment by virtue of the provisions of the said Act ?

(4) Whether the sum of Rs. 66,720 received by the Patiala State Bank on the sale of its investments during the year 1934-35 being the excess realised by it over the cost price of such investments, which has been included under the heading of profits in the relative profit and loss accounts and balance sheet is assessable to income-tax ?

(5) Whether the income received by the Patiala State Bank from its investments

in British India constitutes income arising in connexion with a trade or business carried on in British India within the meaning of Section 2 Government Trading Taxation Act, and is therefore liable to assessment to income-tax ?

"(7) Whether the assessment to income-tax and super-tax for the year 1935-36 on the Patiala State Bank is a legal and valid assessment?"

4. of these questions, No. (3) requires a word of explanation. The property in question produced no income in the year ending on 31st March 1935, and was not, therefore, referred to in the assessment for the year 1935-36, that is alone the subject-matter of these proceedings. The question, however, would or might arise in subsequent years of assessment, and accordingly by a consent order passed by the High Court it was agreed that the present appeal should be argued and decided on the footing that income from such house property is in fact included in the assessment, the subject of the present appeal. In the circumstances and in order to save expense their Lordships are willing that the appeal should be dealt with on this footing. The Commissioner, as required by Section 66(2), Income-tax Act, stated his own opinion upon the questions set out above, and upon each of them his opinion was adverse to the contentions of the bank. In particular he rejected its contention that is implied in questions (3) and (5) that the Government Trading Taxation Act only applies to a Government carrying on a trade or business in British India. On 8th October 1940, the reference came before the High Court and was heard by Sir John Beaumont C. J., and Kania J. At the hearing before them a contention was put forward on behalf of the bank that does not appear to have been relied upon before the Commissioner. It was that the Act of 1926 was altogether invalid as having been ultra vires the Government of India. This contention, which was described by the Chief-Justice as being the principal point argued before them and the only question of substance in the case, failed, as might have been expected, to commend itself to the Court, and was very properly abandoned by Mr. King in his address to their Lordships on behalf of the bank. But it was strongly urged before their Lordships, as it was before the High Court, that the Act of 1926 only applies to a trade or business carried on in British India. The contention had been advanced successfully before the High Court of Allahabad in AIR 1930 Allahabad 389 : 127 IC 579 : 52 All 419 : 1930 ALJ 579, In the matter of Rain Prasad. It was however rejected by the High Court in the present case. "I can see," said Beaumont C. J., no justification for the view . . . that the Act is confined to business carried on in British India. It seems to me that the title, the preamble and the operative part of Section 2 make it perfectly clear that it applies to every case in which the Dominion Government is carrying on a business, and when that happens, the Dominion

Government is liable to Indian Income-tax as though it were a company.

5. Kania J. expressed himself to the same effect. The High Court accordingly answered the first question in the affirmative. Having done so, they found no difficulty in answering questions (3), (4), (5) and (7). After referring to the provisions of the Income-tax Act of 1922 the Chief Justice said this :

The effect of the charging sections, Sections 3 and 4, is to render the income, profits and gains of a company liable to British Indian income-tax if such income, profits and gains accrue or arise or are received in British India. So that Act 3 of 1926 comes to this : that where a Dominion Government is carrying on a business anywhere, it is liable to British Indian income-tax in respect of the income, profits, and gains of that business which accrue or arise or are received in British India.

6. As regards question (3) it was accordingly held by the Court that any income derived from the property therein mentioned was income arising in connexion with the business of the bank and would fall to be taxed. It was, however, held by the Court that the property was not property occupied for the purposes of the business. Question (4) was also answered in the affirmative, as was question (5) so far as it asked whether the income therein mentioned was liable to assessment to income-tax. It necessarily followed that question (7) was also answered in the affirmative. In the result a formal order dated 8th October 1940, was drawn up embodying the answers given by the Court upon the reference. It is from that order that the bank, having obtained the necessary certificate from the High Court under section 66A (2), now appeals to His Majesty in Council.

7. In their Lordships' opinion the answers which the High Court gave to the questions referred to them are plainly right, as is the reasoning upon which these answers were based. There are no words to be found in the Act of 1926 confining the operation of Section 2 to trades or businesses carried on in British India. The words of the section are quite general in their terms, and their Lordships are quite unable to find any reason whatever for introducing into the section by implication the qualification for which the appellant bank contends. The section therefore applies to the business of the bank although it is carried on exclusively in the State of Patiala. That being so, it follows that the assessment complained of is a valid assessment, inasmuch as all the items affected by it represent income, profits or gains of the said business received in British India, and are, therefore such as would have been taxable under the Act of 1922 if received by a company "in the like case." For these reasons, their Lordships will

humbly advise His Majesty that the appeal should be dismissed. The appellant must pay the respondent's costs of the appeal.

Appeal dismissed.