PRIVY COUNCIL

Badridas Daga

Vs.

Commissioner of Income-tax, Central and United Provinces, Lucknow

P.C.A.No.87 of 1947
(Lords Uthwatt, Morton of Henryton, Reid, Sir Madhavan Nair and Sir John Beaumont JJ.)

20.12.1948

JUDGMENT

LORD REID J.

1. The appellants in this case were, during the material time, partners of the firm of Rai Bahadur Bansilal Abirchand which carried on business both within British India and elsewhere. Each appellant had a quarter share in the firm. The firm was a registered firm resident in British India within the meaning of the Indian Income-tax Act. The first appellant was not ordinarily resident and the second appellant was not resident in British India within the meaning of that Act. A considerable part of the firm's income arose or accrued outside British India and was not brought into or received in British India. The question in the present case shortly stated is whether the appellants are bound to include in their total incomes for the purpose of Indian income-tax the whole of their shares of the firm's income or whether they are entitled to exclude a proportion of those shares corresponding to the proportion of the firm's income which arose or accrued outside British India.

2. The appellants were assessed to income, tax for the year 1939-40 by the Income-tax Officer, Nagpur, in amounts which included the whole of their shares of the firm's income for the previous year. They appealed unsuccessfully to the Appellate Assistant Commissioner of Income-tax, Agra, They then appealed to the Income-tax Appellate Tribunal (Bombay Bench). This appeal was also unsuccessful and the appellants requested the Tribunal to state a case for reference to the High Court. The Tribunal made a joint reference to the High Court of Judicature at Nagpur by stating one case which covered the appeals of both appellants. The questions referred to the High Court

were:

> "(1) Where the total income of a resident and registered firm of Rai Bahadur Bansilal Abirchand has been computed by including in it income profits and gains accruing or arising to it without British India in accordance with the provisions of Section 4(1) (b), Income-tax (Amendment) Act, 1939, and is thereafter apportioned among its partners for inclusion in their individual assessments under Section 23(5) (a) of the Act, whether Seth Badridas Daga, who is a 'resident but not ordinarily resident' partner of the resident firm, is entitled to treat his proportionate share of the profits so included as profits accruing or arising to him outside British India so as to entitle him to the benefit of the second proviso to Section 4(1) of the Act?
>
> (2) Where the total income of a resident and registered firm of Rai Bahadur Bansilal Abirchand has been computed by including in it income profits and gains accruing or arising to it without British India in accordance with the provisions of Section 4(1) (b), Income-tax (Amendment) Act, 1939, and is thereafter apportioned among its partners for inclusion in their individual assessments under Section 23(5) (a) of the Act, whether Seth Ramnath Daga, who is a ' non-resident' partner of the resident firm, is entitled to exclude from his total income such proportionate share of the profits of the said firm which accrue or arise to it without British India, under Section 4(1) (c) of the Act?"

3. On 11th February 1944, the High Court at Nagpur made an order answering both these questions in the negative. The present appeal is against that order, leave to appeal having been granted by order of the High Court dated 26th October 1945.

4. The decision of this case depends on the interpretation of certain sections of the Indian Income-tax Act, including amendments made by the Indian Income-tax (Amendment) Act 1939, and earlier amending Acts.

5. It will be convenient to begin with Section 23 which deals with assessment. Some confusion arises from the fact that in the Act the words "assessment" and "assessee" are used in different places with different meanings. Section 2 (2) defines "assessee" as "a person by whom income-tax is payable", but the context in Section 23 makes it clear that down at least to the middle of sub section (5) (a) " assess " and "assessment" refer primarily to the computation of the amount of income and "assesses" means primarily a person the amount of whose income is being computed. The section requires the Income-tax Officer to do two things: first to compute or "assess" a person's total income, and then to determine the sum payable as tax. Sub-sections (1)

to (4) set out alternative methods of computation or "assessment". In the normal case the person whose income is being computed is the person who pays the tax and for that case these sub-sections also provide for the Income-tax Officer taking the second step and determining the sum payable at tax. But the case of a firm is specially dealt with by sub-section (5). This sub-section only comes into operation after the total income of the firm has been computed or "assessed" under one of the earlier sub-sections. It draws a distinction between registered and unregistered firms. In the case of a registered firm, the firm does not itself pay income-tax and therefore the sub-section directs that the sum payable by the firm shall not be determined, but that each partner's share of the firm's income shall be included in the assessment or computation of the total Income of that partner. Thereupon the sum payable by that partner as tax is to be determined on the basis of that assessment which includes his share of the firm's income.

6. It is now necessary to turn to Section 4(1) of the Act, which defines total income. The parts of that sub-section relevant to the decision of this case are:

> "Subject to the provisions of this Act the total income of any previous year of any person includes all income profits and gains from whatever source derived which
> (a) are received or are deemed to be received in British India in such year by or on behalf of such period or.....
> (c) if such person is not resident In British India during such year, accrue or arise or are deemed to accrue or arise to him in British India during such year:
> Provided . . . . that in the case of a person not ordinarily resident in British India, income, profits and gains which accrue or arise to him without British India shall not be so included unless they are derived from a business controlled in or a profession or vocation set up in India or unless they are brought into or received in British India by him during such year."

7. It was argued for the appellants that the provisions of Section 4 limiting the liability of persons not resident or not ordinarily resident in British India must be applied universally so as to qualify or even override any subsequent provision in the Act dealing with a particular kind of income which is so framed as to exclude this limitation. This argument neglects the opening words of Section 4 "Subject to the provisions of this Act", and contradicts the principle that the Act must be read as a whole. In their Lordships' view, the question in this case is whether the provisions of the Act which deal with partnership income can be reconciled with an intention to

exclude from the total income of partners not resident or not ordinarily resident in British India a part of their share of the firm's income in respect of income accruing to the firm from outside British India.

8. The second proviso to Section 23(5) (a) deals with partners not resident in British India. It provides that the share of such a partner shall be assessed on the firm at the rates which would be applicable if it were assessed on him personally, and it makes no provision for any deduction from that share in respect of any part of the partnership profits having arisen outside British India. It is difficult to understand why no reference was made to any such deduction if it was intended that any such deduction should be made. If no deduction is intended to be allowed in this case there is no reason to hold that any deduction is permissible in any other case of a partner not resident or not ordinarily resident in British India.

9. If the appellants' contention if correct, it would be necessary for the Income-tax Officer not only to determine the total income of each firm as he is directed to do by Section 18 but also to determine what part of that income was such that if it were the income of a person not resident or not ordinarily resident in British India it would not be part of his total income within the meaning of the Income-tax Act. Without such a determination it would not be possible to assess the taxable income of a non-resident partner. But there is nothing to require the Income-tax Officer to undertake this task.

10. It may be that if those difficulties were overcome the relief sought by the appellants could be worked out satisfactorily in cases where the firm made profits both within and without British India, but great difficulties would be encountered in a case where a firm made profits in British India but incurred losses in its foreign business. It is not at all clear what the taxable income of a non-resident partner would be in such a case, if the appellants' contention were correct.

11. These are some of the difficulties which would be encountered if it were held that the operation of Section 28 must be modified to meet the appellants' contention. This contention would require much to be written into the section which is not there, would complicate its operation and would lead to practical difficulties. Their Lordships are satisfied that this section cannot be to modified : it must be taken as it stands. Moreover there are other sections such as Section 16(1) the terms of which are almost equally difficult to reconcile with the appellants' contention. Their Lordships, therefore, hold that this contention is not well founded and that the decision of the High Court at Nagpur was correct.

12. Their Lordships will humbly advise His Majesty that this appeal be dismissed. The appellants will pay the costs of the appeal.

Appeal dismissed.