

SUPREME COURT OF INDIA

K. R. M. T. Thiagaraja Chetty and Co.

Vs.

Commr. of Income-tax, Madras

C.A.No.132 of 1952

(M. Patanjali Sastri, C.J.I., S. R. Das, Vivian Bose, Ghulam Hasan and N. H. Bhagwati, JJ.)

14.10.1953

JUDGEMENT

GHULAM HASAN J.:

This appeal relates to the assessment year 1943-1944. The firm was entitled to Rs. 2,20,702/- as its commission, but it is common ground that the firm did not draw this amount. It is, however, not disputed that the amount was credited to the firm in the accounts. The Income- Tax Officer treated the amount as income accrued and received by the firm and held it taxable.

In appeal before the Appellate Assistant Commissioner it was contended that this sum included Rs. 81,023/- which represented the commission accruing to the firm in the Indian States where the company had opened branches for selling yarn. It was urged that this amount was not assessable, as it had not been remitted to what was then called 'British India'. The Appellate Assistant Commissioner held that under managing agency agreement, the commission due to the firm accrued, or arose in British India as it was found that the income from these branches in Indian States had been included in the profit and loss account of the Head Office for presentation to the share-holders and the commission had been worked out on the basis of the accounts so prepared and not on the basis of the accounts of each branch separately. This view was upheld by the Tribunal.

Two questions were referred by the Tribunal to the High Court, firstly whether this whole amount was assessable and secondly whether the firm was entitled to exemption of the sum of Rs. 81,023.

Upon the first question both the learned Judges agreed that the sum of Rs. 2,20,702 was rightly assessed to tax, in that there was nothing to prevent the firm from drawing the amount from the company which stood credited in their favour. Nothing has been urged in the course of arguments upon the first question.

The argument before us is confined to the sum of Rs. 81,028. It is contended that this commission accrued in what are now called "B States", but it was not brought into British India and hence it was not income which had accrued in British India. The short answer to this argument is that the business of the company was carried on in British India, that the commission carried by the firm on the profits made by the company in the States arose out of one indivisible agreement to charge the reduced commission of 5 per cent. on the profits of the company and that the managing agents had been doing the business of the agency in British India and not in the States. It is not suggested that the managing agents performed any functions in the States.

We hold, therefore, that there is no substance in this contention. We accordingly dismiss the appeal. The appellant shall pay the costs of the respondent.

Appeal dismissed.

</html