

Bipin Lal Kuthiala

Vs

Commissioner of Income-Tax, Punjab

Civil Appeal No. 253 of 1954

(CJI S. R. Dass, N. H. Bhagwati, T. L. Venkatarama Ayyar JJ)

04.05.1956

JUDGMENT

DAS, C.J. –

This is an appeal filed with special leave granted by this court on the 18th of May, 1954, questioning the correctness of the judgment and order of the High Court of Punjab dated the 25th June, 1953, delivered in an application under section 66 (2) of the Indian Income-tax Act, 1922, whereby the High Court dismissed the appellant's application on the ground that no question of law arose from the order of the Income-tax Appellate Tribunal dated the 4th November, 1949.

The facts are shortly as follows :

The appellant, who is a resident of Simla, is a forest contractor and had taken certain forests on lease in 1942-43 in the erstwhile Indian State of Jubbal for exploitation. The work of felling of trees and extraction of timber continued up to 1945-46. No profit or loss account had been prepared for each of the aforesaid four years separately, but a consolidated balance-sheet and profit and loss account had been drawn up for all the four years. In the appellant's Income-tax returns, the income from the forest business was calculated and shown by applying the rate of ten per cent. net on the sales made in the relevant years.

In course of the assessment proceedings for the assessment year 1943- 44, it transpired that the appellant, who was resident and ordinarily resident in British India, had in the relevant accounting year 1942-43 sold in Jubbal a quantity of timber in one lot to a single party named Sukh Dial Jagat Ram, a firm carrying on business in Abdullapore in the district of Ambala, for a sum of Rs. 1,91,000 (rupees one lakh ninety- one thousand). By his assessment order dated the 2nd February, 1948, the Income-tax officer held that on the sale of timber of the value of Rs. 1,91,000 during the relevant accounting period 1942-43, the appellant had made a profit of Rs. 20,967. As, however, no part of the sale proceeds was received during the relevant accounting period, the income from the forest business, less the statutory exemption of Rs. 4,500 was taken into consideration only for the purpose of fixing the rate. The profits made on sales during the three succeeding accounting periods 1943-44, 1944-45 and 1945-46 were also determined by the Income-tax officer as indicated in his assessment order.

On appeal by the appellant, the Appellate Assistant Commissioner allowed certain expenses, which had been disallowed by the Income-tax Officer, so that the total income from the forest business was reduced. The profit on the sale of timber during the accounting year 1942-43 was accordingly

reduced from Rs. 19,767 and the profits for the three succeeding accounting years were proportionately reduced. On further appeal to the Income-tax Appellate Tribunal, the profits were further reduced by the allowance of a further sum of Rs. 5,000 so that the profit of the accounting year 1942-43 was finally ascertained and determined to be Rs. 18,758.

In course of assessment for the assessment year 1944-45, it transpired that out of the purchase price of Rs. 1,91,000 for timber sold in the accounting year 1942-43 in the following manner :

- (a) Rs. 1,25,000 received in cash in Jubbal State.
- (b) Rs. 29,000 received in cash by the appellant in British India.
- (c) Rs. 3,000 paid in cash in British India to a contractor named Sita Ram, who was a creditor of the appellant.

The Income-tax Officer took the view that the sums of Rs. 29,000 and Rs. 3,000, aggregating to Rs. 32,000, received in the relevant accounting year 1943-44 included the entire profit that had accrued or arisen to the appellant on the sale of timber in 1942-43 for Rs. 1,91,000 and such profit was assessable to tax under section 4 (1) (b) (iii) as income, profits and gains accrued or arisen to the appellant without British India before the beginning of the previous year, that is to say, in the accounting year 1942-43 and brought into or received in British India during the relevant accounting year 1943-44 and assessed accordingly.

On appeal by the appellant the Appellate Assistant Commissioner upheld the decision of the Income-tax Officer. On further appeal by the appellant the Income-tax Appellate Tribunal took the same view and dismissed the appeal. The Appellate Tribunal, in agreement with the Income-tax authorities, held that the two payments in British India had been made by the purchaser according to the instructions of the appellant and were consequently tantamount to constructive remittances of those amounts from Jubbal State to British India and that the profits, in the absence of any evidence adduced by the appellant to the contrary, must be regarded as remittances of profits.

Being aggrieved by the decision of the Appellate Tribunal, the appellant applied to the Appellate Tribunal under section 66 (1) of the Indian Income-tax Act, 1922, praying that the Appellate Tribunal might state a case and refer to the High Court the following questions of law :

- (i) Whether, in the circumstances of the case, there is any material for the finding that instead of direct remittance the assessee has chosen to instruct a debtor in Jubbal State to discharge a part of his debt by making the payment of Rs. 32,000 in British India ?
- (ii) Whether, in the circumstances of the case, the receipt of Rs. 32,000 has been correctly held to be a constructive remittance from Jubbal State to British India ?
- (iii) Whether, in the circumstances of the case, it has been correctly held that the assessee remitted the entire profits of the account year 1942-43 in the sum of Rs. 32,00 ?
- (iv) Is there any evidence to support the finding of the Appellate Tribunal that the sale proceeds of Rs. 32,000 received in British India includes entire profits earned or accrued in Jubbal State in the account year 1942-4 ?

(v) Whether there is any material on the record to justify a conclusion that the sum of Rs. 32,000 received in British India was "income" and therefore liable to be tax ?

Question No. (v), however, was withdrawn by the appellant and the Appellate Tribunal by its order dated 7th August, 1950, dismissed the application in respect of the other questions. The appellant thereupon applied to the High Court of Punjab under section 66 (2) of the Indian Income-tax Act, 1922, praying that the Income-tax Appellate Tribunal be directed to state the case and refer the following questions of law :

(i) Whether, in the circumstances of the case, there is any material for the finding that instead of direct remittance the assessee has chosen to instruct a debtor in Jubbal State to discharge a part of his debt by making the payment of Rs. 32,000 in British India ?

(ii) Whether, in the circumstances of the case, the receipt of Rs. 32,000 has been correctly held to be a constructive remittance from Jubbal State to British India ?

(iii) Whether, in the circumstances of the case, it has been correctly held that the assessee remitted the entire profits of the account year 1942-43 in the sum of Rs. 32,00 ?

(iv) Is there any evidence to support the finding of the Appellate Tribunal that the sale proceeds of Rs. 32,000 received in British India includes entire profits earned or accrued in the Jubbal State in the account year 1942-43 ?

The High Court issued a rule to the respondent to show cause why the application should not be granted. By its order dated the 25th June, 1953, the High Court dismissed the application with costs. Leave to appeal having been refused, the appellant obtained special leave to appeal from this Court.

Learned counsel appearing in support of the appeal has urged that the decision of the Tribunal had been arrived at as a result of its overlooking the fact that at the dates when the two sums were received in British India no profit had been made at all. The timber had been sold in the accounting year 1942-43, but no payment had been received during that year. In 1943-44 a total sum of Rs. 1,57,000 had been received but that sum was much below the total outlay. It is contended that profit is the excess receipt over the aggregate amount spent in the business and therefore no profit can be said to have been received unless and until the entire outlay is recouped. At the date of the receipt of the two sums in British India the entire outlay had not been recovered and, therefore, no profit had been received by the appellant and consequently no profit could be remitted to British India. We are unable to accept this argument. There can be no getting away from the fact that profit accrues or arises on the sale, which in this case took place in 1942-43. Whatever profit there was, it certainly accrued or arose in that year. The profit on the sale of timber in 1942-43 has since been ascertained at Rs. 18,758. This finding is final and the appellant cannot go behind it. There being this profit, as eventually ascertained, the presumption, according to the cases referred to in the judgment under appeal, will be that the remittances of money from foreign business to British India must be of profits, unless the contrary were shown by the appellant.

Learned counsel for the appellant does not seriously dispute the correctness of the decisions referred to in the judgment under appeal but raises two questions. In the first place, he contends that, at the date of the receipt of the amounts in British India, the entire outlay had not been recouped and the

profit had not been recovered and, therefore, the presumption cannot arise. He relies on the decision in Commissioner of Income-tax, Burma v. Bhagwandas Bagla in support of this contention. There is no force in this contention, because it may well be that the appellant knew that his party was solvent and sound and in anticipation of the realization of the entire amount, the appellant remitted the entire profit, which he calculated would eventually come in, to British India. Indeed the events, as they transpired, fully support such view. The appellant cannot question that there was, in fact, profit which was less than the amount remitted. It was open to him to adduce evidence to show that he was winding up his business and reducing the establishment or was not in need of so much monies to be invested as capital in his business and, therefore, was remitting his capital which became unnecessary for the Jubbal business. This he failed to do. In the circumstances the appellant did not discharge the onus that was on him and the Income-tax Appellate Tribunal was quite correct in coming to the conclusion that the sum of Rs. 32,000 included the profits made on the sale of timber for Rs. 1,91,000 in the accounting year 1942-43. The facts of the case relied on by the learned counsel were quite different. There the assessee had sent timber to a foreign country for sale and his agent realized the sale proceeds and remitted the same to the assessee. Those sale proceeds were obviously return for the goods sent out for sale and, therefore, as pointed out by Roberts, C.J., at page 50 the amounts remitted by the agent were the initial outlay and no question of profit could arise until the entire outlay was recovered. Therefore, that decision can have no application to this case.

Learned counsel then contends that there was no remittance by the appellant from Jubbal to British India. It may be recalled that the sum of Rs. 3000 was paid by the purchaser to a creditor of the appellant. This circumstance itself clearly indicates that the purchaser must have been directed by the appellant to pay the amount to the creditor in British India. What did this amount do? Instead of reviving the money from the purchaser in Jubbal and remitting the money in his turn to his office in British India, the appellant directed his purchaser, who was indebted to him, to pay the amount direct to the appellant's creditor in British India. For this purpose the purchaser was nothing but the appellant's agent. Therefore, the tribunal was quite correct in saying that, in the circumstances, the payment was undoubtedly a constructive remittance of money by the appellant from Jubbal to his British India office. Similar considerations apply to the payment of Rs. 29,000 by the purchaser to the assessee himself in British India. The purchaser bought the timber in Jubbal and floated them down to its place of business at Abdullapore in the district of Ambala. The price was payable in Jubbal. In fact it made the bulk of the payment, namely Rs. 1,25,000 in Jubbal and ordinarily, left to itself, the purchaser would have also paid Rs. 29,000 at Jubbal. Why then, did the purchaser pay the amount to the assessee in appellant. An affidavit affirmed by Sukh Dial, a member of the purchaser firm, was filed and it is significant that he does not state in his affidavit that his firm, made the two payments in British India at its own violation and without been asked to do so by the appellant. In view of the surrounding circumstances the appellate tribunal and the income tax authorities were, of the opinion, fully justified in concluding that the purchaser made the two payments in British India under the instructions of the appellant and that certainly amounts to a constructive remittance of those amounts by the appellant himself from Jubbal to British India. This conclusion naturally attracts the application of the decisions which clearly establish that remittance of money in such circumstances from foreign country to British India must be presumed to be profits. There is no evidence adduced by the appellant to rebut this presumption.

It was next contended that the whole of the profit of Rs. 18,758 can not be regarded as having been brought into or received in British India, but that a proportionate part of the total profit attributable to Rs. 32,000 should be regarded as having been included in that sum. Reliance was placed on the decision of this Court in Turner Morrison & Co. Ltd. v. Commissioner of Income-tax, West Bengal.

That decision has really no application to the facts of the present case. As already stated the two amounts were paid in British India at the direction of the appellant, which means the same thing as if the payment had been by the purchaser and received by the appellant from his purchaser in Jubbal and then remitted by the appellant through the purchaser as his agent to himself and his creditor in British India. In such a situation the presumption is that the profit was included in the remittances and the decision referred to above can have no application.

On a consideration of the facts and circumstances of this case, no real or substantial question of law arises from the order of the Appellate Tribunal and the High Court was justified in dismissing the appellant's application under section 66 (2) of the India Income-tax Act, 1922. For reasons stated above this appeal is dismissed with costs.

Appeal dismissed.

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