

Jiyajeerao Cotton Mills Ltd.

Vs

Commissioner of Income-Tax and Excess Profits Tax, Bombay

Civil Appeals Nos. 204 of 1954 and 163 of 1958

(T. L. Venkatarama Ayyar, P. B. Gajendragadkar, A. K. Sarkar JJ)

21-05-1958.

JUDGMENT

VENKATARAMA AIYAR J. -

These two appeals arise out of proceedings taken under section 34 of the Indian Income-tax Act, 1922, hereinafter referred to as the Act, to bring to tax a sum of Rs. 27,30,094 received by the appellant during the account year 1942-1943. The appellant is a public limited company incorporated in 1921 under the provisions of the Gwalior Companies Act in what was then the independent State of Gwalior, and carries on business in the manufacture and sale of textiles. Its registered office is at Gwalior, and it is a non-resident company for the purposes of the Act. Its managing agents are Birla Brothers, Ltd. which is a private limited company registered in British India. The point in dispute in these proceedings is whether sums of money received by the appellant during the account year 1942-1943 and aggregating to Rs. 27,30,094 are liable to be taxed under the Act. The appellant admits that it received those monies during that period, and further that they represent profits made by it on certain forward contracts in Jarilla cotton. But it contends that those contracts were entered into at Gwalior with three brokers, viz., Lashkar Trading Company, Banwarilal Shivkumar and Meghraj Mundra, that the agreements between the parties specifically provide that the goods are to be delivered and prices paid at Gwalior, that, in fact, the sum of Rs. 27,30,094 is made up of differences paid in settlement of the contracts at Gwalior, that thus the profits accrued and were received wholly at Gwalior, and that, in consequence, they were not liable to be charged under the Act.

The Department, on the other hand, contends that the contracts which resulted in the profits of Rs. 27,30,094 were as a fact entered into by the managing agents of the appellant with firm of Jwaladutt Kishanprasad at Bombay, that those profits accrued in Bombay, and that they were therefore taxable under the Act. It is common ground that the sum of Rs. 27,30,094 received by the appellant as profits is in the ultimate analysis traceable to the firm of Jwaladutt Kishanprasad, and came from it. But it is contended for the appellant that this cannot settle the question whether the profits accrued to it in Bombay. According to it, the course of dealings relating to these transactions was as follows : The appellant placed its orders for the sale or purchase of cotton with the three brokers mentioned above in Gwalior. They in their turn placed orders for the sale or purchase of the same quantity of goods with the firm of J. R. Pillani, Gwalior. This firm is a branch office of Jwaladutt Kishanprasad of Bombay and communicated the orders received from the brokers to its head office in Bombay. When the contracts were finally settled on the clearing day and monies became payable, Jwaladutt Kishanprasad of Bombay sent the same of J. R. Pillani, Gwalior, which paid them over to the brokers, who in their turn paid the amounts due to the appellant under their contracts. Now, the contention of the appellant is that the contracts under which the profits sought to be taxed accrued

were not entered into by it with Jwaladutt Kishanprasad, Bombay, that the sum of Rs. 27,30,094 though traceable to that firm was due from that firm not to it but to the three brokers in Gwalior, and that, in consequence, it was not liable to be taxed under the Act. If the facts were as stated by the appellant, then there can be no doubt that the sum of Rs. 27,30,094 received by it as profits is not liable to be taxed under the Act, because no portion thereof would then have accrued or arisen in British India. The question, therefore, really is whether those facts have been established.

The Income-tax Officer who investigated the matter held by his order dated March 23, 1948, that the forward contracts in question had really been entered into by the managing agents of the appellant at Bombay, that the profits thereon had accrued at Bombay, and that the three brokers of Gwalior were mere dummies who had been put up to conceal the true character of the transactions. This order was confirmed by the Appellate Assistant Commissioner on appeal on November 14, 1949. The appellant took the matter in further appeal to the Appellate Tribunal which by its order dated July 26, 1950, remanded the case for further investigation of the true part played by the several intermediaries, who formed the links in the chain of contracts beginning with those of the appellant with the three brokers of Gwalior and of the payments ending with those by the brokers to the appellant. Pursuant to this order, the Appellate Assistant Commissioner took fresh evidence, and examined as many as seven witnesses, and on a careful and detailed analysis of their evidence, he held in his report dated August 17, 1951, that the forward contracts in question had been entered into with Jwaladutt Kishanprasad by G. D. Birla and R. D. Birla in person or by phone at Bombay, and that the contract notes with the three brokers were bogus transactions. On this report, the appeal came up for further hearing before the Appellate Tribunal, which by its order dated February 28, 1952, agreed with the conclusions of the Appellate Assistant Commissioner and affirmed its decision. The appellant then applied under section 66(1) of the Act for referring certain questions for the opinion of the court, but the said application was dismissed by the Tribunal on June 13, 1952, on the ground that the points raised were pure questions of fact. The appellant then applied to the High Court of Bombay under section 66(2) of the Act to direct the Tribunal to refer certain questions to the court, and that application was dismissed by Chagla, C.J., and Bhagwati, J., on August 6, 1952, and against that order, Civil Appeal No. 204 of 1954 has been preferred on leave granted by this court. By way of abundant caution, the appellant also applied for and obtained special leave to appeal against the order of the Tribunal dated February 28, 1952, and that is Appeal No. 163 of 1958. Mr. Kolah, the learned counsel for the appellant, stated that as the matter arising for decision in both the appeals is the same, he would address one argument with reference to both of them. Likewise, this judgment will govern both of them.

At the very outset, the question calls for an answer, does any question of law arise on the order of the Tribunal? It is only if it does, that the decision of the Tribunal will be open to consideration by the court under section 66 of the Act. Stating the same proposition in a different form, if that decision is one of fact turning on the appreciation of evidence, this court would not interfere with it in appeal under article 136 of the Constitution. Now, the point in dispute in these proceedings is whether the sum of Rs. 27,30,094 received by the appellant as profits in 1942-1943 is taxable under the Act, and that, in turn, depends on whether the forward contracts which resulted in these profits were made at Gwalior as contended by the appellant or at Bombay as held by the Tribunal. That would clearly be a question of fact, and the decision of the Tribunal thereon would not be liable to be challenged in these proceedings. Counsel for the appellant does not dispute this position, but he contents that a finding of the Tribunal even on a question of fact would be erroneous in law, if there is no evidence whatsoever to support it or if it is perverse. This question was quite recently considered by this court in *Meenakshi Mills v. Commissioner of Income-tax*, and the law was thus stated :

"The position that emerges on the authorities may thus be summed up :

- (1) When the point for determination is a pure question of law such as construction of a statute or document of title, the decision of the Tribunal is open to reference to the court under section 66(1).
- (2) When the point for determination is a mixed question of law and fact, while the finding of the Tribunal on the facts found is final in decision as to the legal effect of that finding is a question of law which can be reviewed by the court.
- (3) A finding on a question of fact is open to attack under section 66(1) as erroneous in law when there is no evidence to support or if it is perverse.
- (4) When the finding is one of fact, the fact that it is itself an inference from other basic facts will not alter its character as one of facts."

Mr. Kolah contends that the finding of the Tribunal in the present case is erroneous in law in that there is no evidence to support it, and even if there is some, the finding based thereon is perverse, and that that is a contention which falls within proposition No. 3 stated above, and is open to him. That renders it necessary that we should examine the record, not indeed with a view to decide whether the Tribunal has properly appreciated the evidence, or whether its conclusion is a right one to come to on that evidence, but with a view to see whether there evidence to support its finding and whether that finding is one which could, no that evidence, be reasonably reached. Approaching the question from this standpoint, we pose the question, what is the evidence in support of the findings of the Tribunal that the forward contracts which resulted in the profits of Rs. 27,30,094 were made in Bombay and not in Gwalior ? The answer given is that there is the direct testimony of J. R. Pillani and that is supported by circumstantial evidence. Pillani is the proprietor of both the firms of Jwaladutt Kishanprasad at Bombay and of J. R. Pillani at Gwalior, and his evidence must obviously be important, because whether the contracts of the appellant were really entered into at Gwalior or at Bombay must to a consideration extent depend on whether the transactions of these two firms which are linked up with those contracts so as to form a chain, are genuine. Pillani stated in his evidence that the forward contracts in question were made with the firm of Jwaladutt Kishanprasad at Bombay by G. D. Birla and R. D. Birla sometimes in person and sometimes over the phone, that the profits earned thereon were at first paid to Cotton Agents, Ltd., which is a concern of the Birlas at Bombay but that later on it was considered advisable that no payment should be made at Bombay, and that accordingly these amounts were returned by the Cotton Agents Ltd., to the Bombay firm and then sent at the direction of the Birlas, to J. R. Pillani, Gwalior. J. R. Pillani also deposed that at the beginning of the transactions it had not been decided in whose name they should stand, and that, therefore, when the contracts were originally entered in the books of Jwaladutt Kishanprasad, the names of the parties were left blank, and it was later on that the name of J. R. Pillani, Gwalior, was written. If this evidence is accepted, as it has been by the Income-tax authorities, then the contracts in question must be held to have been made at Bombay, and the interposition of J. R. Pillani, Gwalior, would be a mere device for concealing that fact.

Mr. Kolah was highly critical of this evidence. He contended that it ran counter to all the other evidence in the case, and was thoroughly worthless and even demonstrably false in material particulars. He argued that there were serious infirmities in this evidence, and that there had been little or no consideration thereof by the Tribunal, and that its order was accordingly bad as based on misdirections and non- directions. We shall now consider these contentions. The most important of

them relates to the statement of Pillani that at the earlier stages of the dealings, profits were paid to the account of Cotton Agents Ltd., Bombay, and that it was only later on that they were credited to J. R. Pillani, Gwalior. To follow the argument of Mr. Kolah on this point, it is necessary to mention that J. R. Pillani had two businesses in Bombay, one in cotton in the name of Jwaladutt Kishanprasad and another in shares in the name of J. R. Pillani, Bombay. Now, the position revealed in the accounts of Jwaladutt Kishanprasad with reference to the present contracts will appear from the following abstract of transactions standing in the name of J. R. Pillani, Gwalior.

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Date. Dr. Cr.

29-1-1943 Rs.

2,52,576

4-2-1943 Cotton Agents, Ltd., Bombay ... Rs. 2,00,000

5-2-1943 Rs.

2,28,250

Do. Cotton Agents, Ltd., Bombay ... Rs. 2,50,000

1-3-1943 Cr. J. R. Pillani, Bombay ... Rs. 5,65,500

Dr. J. R. Pillani, Bombay ... Rs. 5,66,000

(Rs. 5,65,000 out of this is

paid to Cotton Agents Ltd., by

J. R. Pillani, Bombay.) ...

3-3-1943 Cr. J. R. Pillani, Gwalior (On Rs.

4,62,750

11-3-1943 Cotton Agents Ltd.

Bombay issued a cheque in

favour of J. R. Pillani,

Bombay for Rs. 9,50,000 who

credit it to Jwaladutt Kishna-

Prasad.)

Dr. J. R. Pillani, Gwalior ... Rs. 15,00,000

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Now, what is important for the purpose of the present discussion in the above extract is the entry relating to Rs. 9,50,000. If this sum represents profits in cotton transactions, that would strongly

corroborate the evidence of Pillani that the profits of the present transactions were paid first to Cotton Agents Ltd., Bombay, and that it was only later on by way of afterthought that they were credited to J. R. Pillani, Gwalior, after making the necessary adjustments. Therefore, cross-examination on behalf of the appellant was directed to showing that this amount had nothing to do with cotton contracts. Pillani was asked whether J. R. Pillani, Bombay, had current account with Cotton Agents Ltd. He answered "No". Then, Mahadeo Singhji, director of the Cotton Agents Ltd., was examined and he stated that Rs. 9,50,000 was paid to the credit of the current account which J. R. Pillani, Bombay, had with the Cotton Agents Ltd., and that it did not represent profits in cotton contracts. Now, Mr. Kolah vehemently argues that this evidence proves that the story of payment first to Cotton Agents Ltd., and then a transfer of the same to J. R. Pillani, Gwalior, cannot be true, that the evidence of Pillani on this point was clearly false, but that the Tribunal made no reference to it in its order. Now, it is true that J. R. Pillani had current amount with Cotton Agents Ltd., and that the amount of Rs. 9,50,000 was paid to the credit of that account. When this was put to him, he stated by way of explanation :

"The account you referred looks like current account but it was in relation to dealing in shares with them and not exactly current account."

It may be that the previous statement of Pillani that he had no current account was inaccurate, or it may be it was false. But is that very material ? What is relevant to the point under consideration is whether Rs. 9,50,000 which was credited to Cotton Agents Ltd., related to cotton transactions or share business. Now it was proved that the sum of Rs. 2,00,000 paid to Cotton Agents Ltd., on February 4, 1943, and Rs. 2,50,000 paid to it on February 5, 1943, were paid not by J. R. Pillani, Bombay, but by Jwaladutt Kishanprasad, and that clearly shows that they related to cotton contracts and not share transactions. It is to be noted in this connection that while the payments dated February 4, 1943, and February 5, 1943, were directly by Jwaladutt Kishanprasad to Cotton Agents Ltd., the payments of Rs. 5,65,000 on March 1, 1943, and Rs. 4,62,750 on March 3, 1943, were by Jwaladutt Kishanprasad in favour of J. R. Pillani, Bombay, which in its turn passed them on to Cotton Agents Ltd. The story which these entries tell is that the transactions were originally between Jwaladutt Kishanprasad and Cotton Agents Ltd., then from March 1, 1943, they were between Jwaladutt Kishanprasad and Cotton Agents Ltd., through J. R. Pillani, Bombay, and on March 11, 1943, Cotton Agents Ltd., and J. R. Pillani, Bombay, were eliminated and J. R. Pillani, Gwalior, was brought on the scene. These are facts from which the Tribunal could reasonably find that the transactions took place as stated by Pillani.

It was argued for the appellant that Gaurishanker Narandas, the accountant of Jwaladutt Kishanprasad, did not support the version given by Pillani. That is not quite correct. He stated at first that the dealings in question were entered in the accounts with the names left blank, but that later on the name of J. R. Pillani, Gwalior, was entered. He also deposed that some payments were made to Cotton Agents Ltd., and they were received back through J. R. Pillani, Bombay, and sent to J. R. Pillani, Gwalior. When he was cross-examined on a later date, he said that what he had deposed to was not from his personal knowledge but from the information given by J. R. Pillani. But he also repeated that he had seen blanks in the accounts, and they were subsequently filled up. To this extent, his evidence does support J. R. Pillani.

It was next contended that if there had been transfer of profits by Jwaladutt Kishanprasad from Cotton Agents Ltd., to J. R. Pillani, Gwalior, that must appear in the accounts of the latter, that those accounts were with the Income-tax Commissioner and under the control of the Department and had been withheld, and that the Tribunal did not advert to this circumstance. This argument lacks

substance. Let us presume that the entries in those accounts would show that the dealings took place as contended for by the appellant. But if the arrangement of the appellant with Jwaladutt Kishanprasad was as deposed to by J. R. Pillani, the accounts of the Gwalior firm would have been maintained conformably to that arrangement. By itself, therefore, it would mean little. In this connection, it should be stated according to Pillani the branch at Gwalior was really run by the employees of the Birlas, a statement which was accepted by the Appellate Assistant Commissioner.

We have so far dealt with the criticisms levelled by the appellant against the evidence, direct and positive, in support of the finding of the Tribunal that the contracts were concluded at Bombay. But to view the matter in its proper perspective, we must look at the picture at the other end, and consider the evidence adduced to prove that the agreements were made in Gwalior. Now, the facts found by the Income-tax authorities are these : The three brokers in whose names the contracts stood were, having regard to their means, not likely to have been thought of for contracts of the magnitude which we have. They had not done business in cotton futures prior to the present contracts nor subsequent thereto. They had no bank accounts and large amounts to the tune of Rs. 30 lakhs are supposed to have been paid to them in cash by J. R. Pillani, Gwalior, and turned over by them in cash to the appellant. They produced no accounts for their dealings and the ankdas produced by them at a late stage were found to have been freshly written up. When Durgaprasad Mandalia, the manager of the appellant, was asked as to what securities he held as cover in respect of the huge transactions he entered into with men of such means, he answered that they were men of character. Sagarmal Dingliwala, the manager of J. R. Pillani, Gwalior, at the relevant period, was asked the same question, and he replied that "this business was of Jiyajeerao Cotton Mills, Ltd." The appellant had, in fact, genuine transactions with Cotton Agents Ltd., Gwalior, on a large scale, and when Durgaprasad Mandalia was asked why he did not put these transaction through them, he had to answer to give. And he was likewise unable to explain why he did not directly deal with J. R. Pillani, Gwalior. It was suggested by the learned Solicitor-General that if the object of the appellant in setting up contracts in Gwalior was to throw a veil over its contracts with Jwaladutt Kishanprasad, that could not effectively be achieved by putting them in the name of J. R. Pillani, Gwalior, which was a branch of the firm, as the veil would have been too thin to concern the true face of the contracts, and that is why the brokers were thought of. We think there is considerable force in this. Then again, Durgaprasad Mandalia was asked why he did not place the orders directly with Cotton Agents Ltd., Bombay, or J. R. Pillani, Bombay, and he said that the policy of the appellant was not to do any business in British India. Mr. Kolah argues that there is nothing wrong in business being done in such a way as to escape taxation. No exception can be taken to that statement. Every person is entitled so to arrange his affairs as to avoid taxation but the arrangement must be real and genuine and not a sham or make-believe, and the question now under consideration is whether the contracts with the brokers were genuine.

Turning next to the accounts produced by the appellant, it is seen that the transactions of the three brokers were entered in Kherij Khata, which is said to have been maintained for parties for whom there are small dealings and whose accounts are cleared up in short time. But then, these transactions are not small transactions, nor were they close in a short time. Though the dealings went on for several months and there were several settlements, it was not until the 15th March, 1943, that payments are alleged to have been made to them. In the absence of regular ledgers in the names of these parties and having regards to the fact that the entries in the Kherij Khatas were journal entries, the Income-tax authorities were not prepared to attach any value to them.

Mr. Kolah argued that the contracts between the appellant and the three brokers expressly recite that they are as between principals and principals, that there were clauses therein providing for delivery

and payment at Gwalior and that there was no reason for not accepting them as correct. But it is pointed out by the Income-tax authorities that the contracts provide for the business being done in accordance with the rules and bye-laws of the East India Cotton Association, Bombay, that according to bye-law No. 44-A of that Association "every contract made subject to these bye-laws shall take effect as contract wholly made in Bombay", and that further under the rules, the delivery of the goods must take place in Bombay. In view of this, the Income-tax Officer was of the opinion that the contracts in question had been got up for the purpose of supporting the present version of the appellant.

Mr. Kolah also contended that the evidence of Birlas would have been material in deciding whether they settled the contracts at Bombay as contended for by the Department and that though the order of remand stated that their evidence should be taken, that had not been done and that was a serious irregularity. The portion of the order of remand relevant for the present purpose is as follows :

"The managing director of the assessee company or rather the person responsible for ordering these transactions on behalf of the assessee company should also be similarly examined."

Now, the obvious intention behind this order, read as a whole, was that persons connected with the several links in the chain of contracts and series of payments concerned in these transaction should be examined with a view to elucidate the true position, and the managing director was mentioned as the person who was likely to have entered into these transactions. Durgaprasad Mandalia was the manager of the appellant company, and he gave evidence that he put the present transactions through the brokers, and that has been considered. If Birlas wanted themselves to give evidence, there was nothing to prevent them from doing so, and indeed, no complaint was made in the court below that their evidence had not been taken. There is no substance in this contention.

We have considered all the contentions urged on behalf of the appellant at some length. We would like to make it clear that we are not sitting here as a court of appeal on facts. We have examined the record only with a view to see whether there is any misdirection or non-direction, such as is likely to have affected the result, and we have come to the conclusion that there is none, and that the finding of the Tribunal is not therefore open to attack.

It was finally urged that even assuming that the contracts with the brokers were sham, the result would only be to substitute J. R. Pillani, Gwalior, in their place, and even then, the contracts would have been concluded at Gwalior. But that is not the case put forward by the appellant. Far from pleading that the brokers were nominal parties and that the contracts were with J. R. Pillani, Gwalior, the appellant contended that it had no privity of contract with J. R. Pillani, Gwalior, and the evidence adduced by it was to the effect that its contracts were only with the brokers. Another point which was sought to be raised was that the contracts must be taken to have been concluded at Bombay by Birlas and not by the appellant. This again is a plea which was not taken by the appellant, and is directly opposed to its contention that it entered into these contracts with the brokers at Gwalior. In view of the fact that the profits were actually received by the appellant, this contention is, in our opinion, wholly posterous.

In the result, the appeals fail, and are dismissed. The respondent will get its costs in Civil Appeal No. 204 of 1954. The parties will bear their own costs in Civil Appeal No. 163 of 1958.

Appeals dismissed.

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