

Commissioner of Income-Tax, Bihar & Orissa

Vs

Patney & Co.

Civil Appeal No. 326 of 1957

(B. P. Sinha, J. L. Kapur, M. Hidayatullah JJ)

05.05.1959

JUDGMENT

KAPUR, J. -

This appeal pursuant to special leave is brought by the Commissioner of Income-tax against the judgment of the High Court of Orisa holding that the amounts received by the assesses-respondents were not received in what was British India and therefore not liable to income-tax. The respondents at all material times were non-residents carrying on business at Secunderabad which was then in the territories of the Nizam of Hyderabad. They acted as agents for the supply of gas plants manufactured by Messrs. T. V. S. Iyengar & Sons, Madura, to the Nizam's Government, and also as agents of the Lucas Indian Services, Bombay branch, for the supply of certain goods to that Government. The year of assessment is 1945-46. There does not appear to have been any written agreement between the two manufacturers and the respondents but the goods were to be supplied on a commission basis. In pursuance of this agreement the respondents received from Messrs. T. V. S. Iyengar & Sons, Madura, cheques drawn on the Imperia

"The contention of the appellants is that the cheques being negotiable instrument and the creditor having accepted them and passed through their books, the receipt must be taken to be receipts in Hyderabad. We agree with the view submitted by the appellants. In Bhashyam's Negotiable Instruments Act, 8th Edition, Revised, page 556, it is stated that it will be open to a creditor to accept a cheque in absolute payment of money due to him, in which case it will be equivalent to cash payment. That being the position it cannot be said that the income was received in British India."

At the instance of the Commissioner a reference under section 66(1) of the Act was made to the High Court of Orissa for their opinion on the following question :

"Whether in the circumstances of the case, the sums of Rs. 35,202 and Rs. 5,302 received as commission from T. V. S. Iyengar & Sons Ltd. and Lucas Indian Services Ltd. respectively were income that accrued, arose or were received in British India."

The High Court found that the statement of case was imperfect and that the real question was different. It said :

"The real question in all such cases is not merely whether the cheques were drawn on a bank in British India, and sent for collection to that bank. The question is whether

when the cheques were received by the assessee having his place of business outside British India, those cheques were in fact received as absolute and final payments by way of unconditional discharge or whether they were received as mere conditional payments on realisation. The fact that cheques were drawn on a bank in British India or that they were sent for collection through a Secunderabad banker of the assessee though relevant, are not conclusive."

It therefore remitted the case to the Appellate Tribunal for submission of supplementary statement of case.

It appears that at that stage the controversy was confined to the question whether the cheques having been sent to Secunderabad and having been realised in British India would amount to a final discharge or an unconditional one. The Tribunal in its supplementary statement found that the course of conduct followed by the parties showed that the cheques were received from the Bombay and Madura firms in full satisfaction of the commission ascertained from time to time and due on such date. It said :

"The facts that such entries were made in the assessee's books, that the cheques were put into the bank immediately, that the bank at once gave credit to the assessee for these sums after charging discount thereon and immediately allowed the assessee to operate on those sums are significant."

Therefore the finding of fact by the Tribunal although not specific was that the receipt of the cheque by the respondents operated as full discharge of the debt due on account of commission from these two firms.

The matter was decided by the High Court against the appellant and in the meanwhile this court had given a judgment in Commissioner of Income-tax v. Ogale Glass Works Ltd. Even after considering the decision of that case the High Court was of the opinion that the income of the respondents was not received in British India and answered the question against the Revenue. The High Court refused to give leave to appeal to this court and it was this court which gave special leave to appeal.

The question is whether the amounts of commission paid by cheques, drawn respectively on banks at Madras and Bombay and respectively posted from Madura and Bombay, can in the circumstances of this case be held to have been received in what was British India or at Secunderabad ? The Appellate Tribunal found that all the cheques whether from Madura or from Bombay were sent by the two respective firms from Madura or Bombay and were received by the respondents at Secunderabad and were treated as payment. The question still remains as to the effect of the sending of the cheques from Madura or Bombay by post. If there is an express request by the creditor that the amount be paid by cheques to be sent by post and they are so sent there is no doubt that the payment will be taken to be at the place where the cheque or cheques are posted. The respondents argued that there was an agreement between the Madura and Bombay firms and the respondents that the money would be paid whether in cash or by cheque "at Secunderabad"

"The above commission was verbally decided to be paid to Messrs. Patney & Co. Ltd., Secunderabad, the agent company in Hyderabad State at Secunderabad in cash or by cheque as the case might be."

In the case of payment by cheques sent by post the determination of the place of payment would

depend upon the agreement between the parties or the course of conduct of the parties. If it is shown that the creditor authorised the debtor either expressly or impliedly to send a cheque by post the property in the cheque passes to the creditor as soon as it is posted. Therefore, the post office is an agent of the person to whom the cheque is posted if there be an express or implied authority to send it by post (Commissioner of Income-tax v. Ogale Glass Works Ltd.). In that case there was an express request of the assessee to remit the amount of the bills outstanding against the debtor, that is, the Government of India, by means of cheques. But it was observed by this court that according to the course of business usage in general which has to be considered as a part of the surrounding circumstances the parties must have intended that the cheques should be sent by post which is the usual and normal mode of transm

"Of course, if there be no such request, express or implied, then the delivery of the letter or the cheque to the post office is delivery to the agent of the sender himself."

It was further contended that in this case there was an express agreement that the payment was to be made at Secunderabad and, therefore, the matter does not fall within the rule in Ogale Glass Works' case, and the following principle laid down in the judgment by Das, J. (as he then was), is inapplicable :

"Applying the above principles to the facts found by the Tribunal the position appears to be this. The engagement of the Government was to make payment by cheques. The cheques were drawn in Delhi and received by the assessee in Aundh by post. According to the course of business usage in general to which, as part of the surrounding circumstances, attention has to be paid, under the authorities cited above, the parties must have intended that the cheques should be sent by post which is the usual and normal agency for transmission of such articles and according to the Tribunal's finding they were in fact received by the assessee by post."

In our opinion this intention is well-founded. Whatever may be the position when there is an express or implied request for the cheque for the amount being sent by post or when it can be inferred from the course of conduct of the parties, the appellant in this case expressly required the amount of the commission to be paid at Secunderabad and the rule of Ogale Glass Works' case would be inapplicable.

The High Court judgment in our view was correct and we would, therefore, dismiss this appeal with costs.

Appeal dismissed.

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