Commissioner of Income-Tax, Bombay City

Vs

Dharamdas Hargovandas

Civil Appeal No. 240 of 1955

(P. B. Ganjendragadkar, K. N. Wanchoo, A. K. Sarkar JJ)

03.02.1961

JUDGMENT

WANCHOO, J. –

In this matter by our order made on April 24, 1958, we had referred the case back to Tribunal of submit a further statement of case certain questions. That statement of case has now been drawn up by the Tribunal and sent to this court. The matter is now ready for decision.

This is an appeal by the Commissioner of Income-tax, Bombay, against the judgment of the High Court at Bombay given on a reference under section 66(2) of the Income-tax Act answering the question referred, in the negative. That question was, "whether, in any event, on the facts found by the Tribunal, there was any remittance by the petitioner to Bombay within the meaning of the assessable under section 4(1)(b)(iii) of the Income-tax Act." The assessment year concerned was 1948-49, the accounting year being 2003 Samvat.

The facts found may now be stated. At the relevant time, Bhavnagar was a ruling State and therefore outside British India. There was a mill there which we shall, for brevity, call the Bhavnagar mills. The assessee and his brother Gordhandas had large sums in deposit with the Bhavnagar mills. These sums were profits earlier earned by the assessee and his brother in Bhavnagar. The amounts deposited belonged to the assessee and his brother in equal shares. The Bhavnagar mills kept an account of these deposits. This account showed that on April 7, 1947, a sum of Rs. 50,000 had been paid out to Harkisondas Ratilal and another sum of the same amount to Dilipkumar Trikamlal. There is another mill in Bombay which we shall call the Bombay mills. The account of the Bombay mills showed that on April 3, 1947, Rs. 50,000 had been received from each of Harkisondas Ratilal and Dilipkumar Trikamlal. Harkisondas Ratilal and Dilipkumar Trikamlal were the benamidar for the assessee and his brother and the entries indicated that

On these facts the Tribunal had come to the conclusion that there had been a remittance of the assessee's profits from Bhavnagar to Bombay, namely, Rs. 50,000 being half of the amounts mentioned above, an account of his share and such remittance was taxable under section 4(1)(b)(iii). The assessee raised the question with which we are concerned in view of this decision.

The High Court held that under the section income is taxable only when it is brought into received in the taxable territories by the assessee himself and not when it is so brought into or received on behalf of the assessee and that all that the facts found by the Tribunal showed was that the assessee disposed of his accumulated income in Bhavnagar by directing his debtor, the Bhavnagar mills, to pay an amount not to himself but to a third party, namely, the Bombay mills. According to the High

Court, "The result was that only one debtor was substituted for another. This did not amount to a receipt of the money by the assessee himself in Bombay or to a bringing of it into Bombay by him." In this view of the matter, the High Court answered the question referred in the negative.

When the appeal was heard by us on the earlier occasion, the learned advocate for the appellant contended that even on the basis on which the High Court had proceeded, namely, that there was only a substitution of one debtor for another, it has to be said that the money was received by the assessee himself in Bombay. The contention was that the respondent could not become a creditor of the Bombay mills unless he advanced the moneys to them. His point was that even assuming that the receipt of the cheque by the Bombay mills drawn in its favour by the Bhavnagar mills did not amount to receipt of moneys by the respondent, as soon as the Bombay mills credited the amount of it to the respondent, there was nationally a receipt of the money by the assessee and an advance of it by him to the Bombay mills to create the debt. The learned advocate for the assessee said in answer to this contention that there was nothing to show that the agreement for the advance of the money by the assessee to the Bombay mills had not

In this position of the arguments then advanced, we observed as follows :

> "It seems to us that this contention to the learned advocate for the respondent has to be dealt with before this appeal can be finally disposed of. We therefore think it fit to refer the case back to the Tribunal to submit a further statement of case, after taking such evidence as may be necessary, as to show how the cheques was brought from Bhavnagar to Bombay and what agreement had been made between the parties concerned as a result of which the amount of the cheque was credited in the names of Harkison Ratilal and Dilipkumar Trikamlal in the accounts of the Bombay mills. The Tribunal will submit its report within four months.
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> In view of this order we refrain from expressing any opinion on any of the points argued at the bar."

It is pursuant to this order that the further statement of case has been submitted by the Tribunal. In its statement of case now submitted the Tribunal found the following facts : The Bhavnagar mills had an account in the Bank of India Ltd. at one of its Bombay branches. A cheque book in respect of this account was with the assessee who had power to operate it on behalf of the Bhavnagar mills. The assessee acting on behalf of the Bhavnagar mills drew a cheques on the Bhavnagar mills' aforesaid account in the Bank of India Ltd. on April 3, 1947, in favour of self. This was done in Bombay. This cheque was handed over by the assessee to the Bombay mills in Bombay for being credited in the account of the Bombay mills in the names of Harkison Ratilal and Dilipkumar Trikamlal which really the benami names of the assessee and his brother. The Bombay mills on the same date presented this cheques to another branch of the Bank of India Ltd. in Bombay where they had an account, for deposit in that account. The actual e

As will appear from our earlier order hereinbefore set out, none of the points arising in the appeal had been divided by us on that occasion. The question that we have to decide is whether on these facts it can be said that income had been brought into or received in Bombay by the assessee. The relevant portion of the section is in these terms :

> "4. (1) 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 the taxable territories in such year by or on behalf of such person, or

(b) if such person is resident in the taxable territories during such year, -

(i) accrue or arise or are deemed to accrue or arise to him in the taxable territories during such year, or

(ii) accrue or arise to him without the taxable territories during such year, or

(iii) having accrued or arisen to him without the taxable territories before the beginning of such year and after the 1st day of April, 1933, are brought into or received in the taxable territories by him during such year, or

(c) if such person is not resident in the taxable territories during such year, accrue or arise or are deemed to accrue or arise to him in the taxable territories during such year; ...."

In the present case we are concerned with clause (b) In order however to understand what the words "brought into or received in the taxable territories by him" mean we have to consider the whole scheme of this sub-section. The sub-section mainly deals with the total income of any previous year which is chargeable to income-tax under section 3 of the Act. It is divided into three parts. The first part, which is clause (a) provides that all income, profits and gains received or deemed to be received in the taxable territories in such years by or on behalf of such person will be included in the taxable income. So far as clause (a) is concerned, it is immaterial whether the person is resident in the taxable territories or is not resident therein; as long as income etc. is received in the taxable territories by or on behalf of such persons in the previous year, it is liable to be included in the computation of total income. Under this clause, therefore, it is the receipt in the previous year that is material and

The second part which is clause (b) deals with the case of a person who is a resident in the taxable territories during such year. In his case all income which accrues or arises or is deemed to accrue or arise to him in the taxable territories during such year is chargeable to income-tax; besides, all income etc. which accrues or arises to him without the taxable territories during such year is also chargeable to income-tax.

Then comes the part with which we are directly concerned and which provides that all income etc. which having accrued or arisen to such person without the taxable territories before the beginning of such year and after the first day of April, 1933, is brought into received in the taxable territories by him during such year will be chargeable to income-tax. This is a special provision relating to income etc. which has accrued or arisen not in the previous year but in years previous to that though after April 1, 1933. This special provision relating to a person resident in the taxable territories must be distinguished from the provision in clause (a) in connection with which it has been held that the receipt there meant must be the first receipt, for the clause (a) applies, irrespective of whether the person is resident in the territories or not, to income etc. of the previous year received in the taxable territories in the same year. Clause (b)(iii) on the other hand refers to income etc. which accrued before

Mr. Pathak for the appellant however argues that the words in clause (b)(iii) are the same as in clause (a), namely, "are received", and therefore the receipt in clause (b)(iii) must also be the first receipt. These words, however, are not terms of art and in our opinion their meaning must receive colour from the context in which they are used. In the context of clause (a) these words could only refer to the first receipt; but it does not follow from this that is the context of clause (b)(iii) also they refer only to the first receipt.

Let us see what clause (b)(iii) is meant to provide for. It will be noticed that clause (a), clause (b)(i) and (ii) and clause (c) deal only with income etc. Which had arisen in the previous year while clause (b)(iii) deals with a special class of cases where a person resident within the taxable territories had income etc. accruing or arising to him without the taxable territories and which he did not bring into the taxable territories as and when it arose but does so many years later. In such a case it stands to reason that the income etc. having arisen to such person, may be years before the previous year, must have been received by him outside the taxable territories; but it is urged that clause (b)(iii) does not speak of receipt outside the taxable territories but only speaks of income etc. having accrued or arisen to him without the taxable territories and that it is possible that though the income etc. might have accrued long ago it might not have been received even outside the taxable territories. Thi us year of income, etc. which had already accrued or arisen without the taxable territories earlier than the previous year and may have also been received there. Any other interpretation would really make than part of clause (b)(iii) which refers to "received in the taxable territoreis" more or less useless, for it is not likely that income having accrued or arisen outside the taxable territories before the previous year should not have been received also outside the taxable territories. Therefore, the reasonable interpretation of clause (b)(iii) is that if a person resident in the taxable territories has already received without the taxable territories before the previous year brings that income into or receives that income in the taxable territories he would be chargeable to income-tax under section 3. Therefore, for the purpose of clause (b)(iii) the receiving in the taxable territories need not be the first receipt. We shall later consider what will be the effect of this interpretation on the facts of th

Then there is clause (c), which deals with the case of a person resident outside the taxable territories to whom income etc. has accrued or arisen or is deemed to have accrued or arisen in the taxable territories during the previous year. It will thus be seen than clause (a) deals with a person who may or may not be a resident in the taxable territories and makes the income etc., accruing or arising to him in the previous year liable to income-tax if it is received or deemed to be received by him the taxable territories also within the same year; clause (b) deals with the case of a person who is resident in the taxable territories and gives a wider definition of the total income and clause (c) deals with a person not resident in the taxable territories liable to income-tax in addition to what is provided in clause (a).

Let us now see on the facts of this case whether the respondent can be said to have received this sum of Rs. 50,000 in the taxable territories during the previous year. The statement of the case shows that this sum was income etc. of the respondent which accrued to him outside the taxable territories and had been received by him there and deposited in the Bhavnagar mills in his account. It is also clear from the facts which we have set out already that this money which was lying to the credit of the respondent in the Bhavnagar mills was received by him by means of a cheques on the Bank of India Ltd., Bombay, in which the Bhavnagar mills had an account and on which the respondent had the authority to draw. Having thus drawn the money by a cheques on the said bank, the respondent advanced it to the Bombay mills and the cheques was chased by the Bombay mills and the money was credited into the account of the respondent's benamidars in the Bombay mills. There was thus

clearly receipt in the previous taxable terr

The High Court has held that the income would be taxable only when brought into received in the taxable territories by the assessee himself and not when it was so brought or received on behalf of the assessee. The relevant words of clause (b)(iii) with which we are concerned by him during such year." We have held that his is a case of receipt by the respondent in the taxable territories; it is therefore unnecessary to consider in the present case whether the words "brought into the taxable territories by him" mean that the income must be brought in by the person himself as held by the High Court. This being a case of receipt, there can be no doubt that income etc. was received by the respondent and the indirect method employed in this case for receiving the money would none the less make it a receipt by the respondent himself. Reference in this connection may be made to Bipin Lal Kuthiala v. Commissioner of Income-tax, where it was held that the money was received by the assessee even though in fact what had

SARKAR, J. –

The facts necessary for this appeal are few and simple. The assessee, who is the respondent in this appeal, was a resident of Bombay. He had certain income in Bhavnagar, a place without the taxable territories, which he had kept in deposit with a concern there. This concern had an account in a bank in Bombay. The assessee, presumably as one of the officers of the concern, could operate this account. He drew, in Bombay, a cheques on this account which cheques eventually found its way into the account of a concern in Bombay in a bank there was credited in that account. The Bombay concern, thereafter, made entries in its own books of account in respect of the amount of the cheques in favour of two persons of the names of Harkison Ratilal and Dilipkumar Trikamlal. The Bhavnagar concern, in its turn, a few days later debited the account that the assessee had with it in respect of the deposits, with the amount of the cheques as moneys paid to these two persons. These two persons however were only bena

I have simplified the facts a little for clarity. Actually the account in the concern at Bhavnagar was in the joint names of the assessee and his brother and the advance to the concern in Bombay was really in their joint names. The assessee's share was half of the amount of the cheques and with that share alone we are concerned in this case.

On these facts half the amount of the cheques as representing the assessee's share of the accumulated income, was included in his total income, for assessment to income-tax for the year 1948-49 under section 4(1)(b)(iii) of the Income-tax Act, 1922. That section so far as is material is in these terms :

> "4. (1) 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 -
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> (a) are received or are deemed to be received in the taxable territories in such year by or on behalf of such person, or
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> (b) if such person is resident in the taxable territories during such year, - ...
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> (iii) having accrued or arisen to him without the taxable territories before the beginning of such year and after the 1st day of April, 1933, are brought into or received in the taxable territories by him during such year,..."

The only question is whether the assessee can be said to have "brought into" or "received" this income in Bombay within the meaning of sub- clause (iii) of section 4(1)(b). No other objection to the assessment was raised.

The respondent first contends that he cannot be said to have "received" the income in Bombay. He contends that on the facts found it must be held that he had already "received" the income in Bhavnagar and he could not "receive" it again in Bombay or anywhere else. It seems to me that this contention is well-founded. This court has held that "once an amount is received as income, any remittance or transmission of the amount to another place does not result in 'receipt', within the meaning of this clause, at the other place" : Keshav Mills Ltd. v. Commissioner of Income-tax. No doubt, the observation was made with regard to clause (a) of section 4(1). But I am unable to find any reason why the word should have different meaning in sub-clause (iii) of section 4(1)(b). On the contrary, the words "brought into" in sub-clause (iii) would furnish a reason, if one was necessary, for the view that the word "received" there means received for the first time.

I venture to think that this court did not in Keshav Mills' case, hold that that word in section 4(1)(a) meant "the first receipt after the accrual of the income", because of anything in the context in which the word occurred but because, in the nature of things, income can be "received" only once and not more than once, and a subsequent dealing with income after it has been received, can never be a "receipt" of income. It seems to me that what was said in connection with the Act as it then stood, in Board of Revenue v. Ripon Press, namely, "that you cannot receive the same sum of money qua income twice over, once outside British India and once inside it", expresses the inherent nature of receipt of income and still holds good and unless the context compels a different meaning, which I do not find the present context to do, income can be received only once. As, in the present case, it seems fairly clear that the assessee had received the income in Bhavnagar, I do not think he can be taxed on it on the basis

If, however, the assessee did not "receive" the income in Bombay, it seems clear to me that he "brought into" Bombay that income. He got in Bombay an amount which he had earlier received in Bhavnagar as income, for he advanced it to a concern in Bombay and this he could not do if he had not got it. The getting of the income in Bombay may not have been the receipt of it but how could he get it if he did not bring it in ?

After the assessee received the income in Bhavnagar, it remained all the time under his control and that is why he could not receive it again : see Sundar Das v. Collector of Gujrat. An assessee might, however, change the shape of the income received. Section 4(1)(b)(iii) does not require that in order that income may be brought into the taxable territories it is necessary that the shape of the income should not have been changed since it was first received. Indeed, it has not been contended to the contrary. Sub-clause (iii) of section 4(1)(b) would have completely defeated itself it it required that the income had to be kept in the same shape in which it had been received. Whatever shape the income had assumed, the assessee had it with him all the time as income and for the purpose of sub-clause (iii), it could be brought into the taxable territories in that shape.

Now what the assessee had done with the income in this case was to put it with a party in Bhavnagar. The income then took the shape of a debt due to him. It became a right to receive money or moneys worth. When he had that debt discharged in Bombay, he must have had it brought into Bombay. Therefore he had brought the income into Bombay.

Suppose he had received the income in the shape of coins and had kept it in his safe at Bhavnagar

and brought the coins into Bombay. There would have been no doubt that he had brought the income into Bombay. Suppose again, he had put the income originally received by him at Bhavnagar in a bank there and then he obtained a draft from the bank payable in Bombay and brought the draft from Bhavnagar to Bombay and cashed it there. Again, there would be little doubt that he had, by this process, brought the income into Bombay. It is well known that though income in income-tax law is generally contemplated in terms of money, it may be conceived in other forms. Infant anything which anything represents and produces money and is treated as such by businessmen, would be income : see per Lord Lindley in Gresham Life Assurance Society Ltd. v. Bishop. and per Lord Halsbury, L.C., in Tennant v. Smith. If the bringing of the bank draft would be bringing of income, I am unable to see why the bringing of a right to receive t

I would hence allow the appeal and answer the question referred in the affirmative.

Appeal allowed.

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