

Commissioner of Income-Tax, Madras

Vs

A. Gajapathy Naidu

Civil Appeal No. 617 of 1963

(K. Subba Rao, J. C. Shah, S. M. Sikri JJ)

16.04.1964

JUDGMENT

SUBBA RAO J. -

This appeal by certificate is preferred against the order of the High Court of Judicature at Madras holding that a sum of Rs. 12,447 received by the respondent from the Government during the accounting year 1950-51 was not assessable to tax for the assessment year 1951-52.

Gajapathy Naidu, the respondent was supplying provisions to the Government Stanley Hospital, Royapuram, Madras. During the financial year April 1, 1948 to March 31, 1949, he entered into a contract with the Government for the supply of bread to the said hospital at the rate of Rs. 0-4-6 per lb. As the respondent was maintaining his accounts on mercantile basis, it is common case that the amount due from the Government under the terms of the said contract was credited in the accounts of the respondent for that year. For the assessment year 1949-50 the Income-tax Officer assessed the respondent to income-tax on the basis of the accounts so made. It appears that some time after March 31, 1949, representations were made to the Government for relieving the respondent from the loss sustained in the supply of bread to the hospital. The Government by its order dated November 24, 1950, directed payment of compensation for the loss sustained by the respondent in respect of the supply of bread to the hospital during th

"(1) Whether the sum of Rs. 12,447 is assessable to income-tax ?

(2) If so, whether it has been rightly assessed in the assessment year 1951-52 ?"

On the first question the High Court held that the said amount was directly related to the business of the assessee and, therefore was taxable as a trade receipt. It answered the first question in the affirmative. No argument was raised before us on the question of the correctness of this finding. Therefore, nothing further need be said about it.

The High Court answered the second question in the negative. Its conclusion is based upon the following three steps :

"(1) The only right of the assessee on the date, when he supplied the bread was to debit the Government order, which raised the rates came into existence long after; payment thereunder was ex gratia, and not on the basis of a right. Therefore, the amount of Rs. 12,447 was not and indeed could not have been debited in the books of the assessee for the year, when the supply of bread was made to the hospital

namely, 1948-49. Those accounts have been closed.

(2) But where a receipt is correlated to and arises out of a commercial transaction between the parties, the right or liability should be deemed to have been established in the past accounting period. That principle is based not on any theory of accrual, because there was no legal right existing then; but being correlated to the transaction it should properly belong to it, and the account should be reopened when the payment came in.

(3) Being a receipt of an earlier year, the amount could not be included in the assessment for the year 1951-52."

On the said reasoning the High Court held that though in fact the right to receive the amount did not accrue during the accounting year 1948-49, it should be deemed to have related to the year of contract in respect whereof the amount was paid. The Commissioner of Income-tax has preferred the present appeal against the said order of the High Court.

Learned counsel for the revenue contended that the High Court misdirected itself on the basis English decisions and that on its finding that the amount accrued to the assessee only during the accounting year 1949-50 it should have held that the Income-tax Officer had that the Income-tax Officer had correctly included it in the assessee's income for the year 1950-51. Learned counsel for the respondent argued that the said amount was paid in respect of the contract entered into between the assessee and the Government and, therefore, the said amount should properly belong to the accounting year 1948-49, and should not have been included in the assessment of the year 1951-52. To sustain his argument he relied upon certain English decisions referred to by the High Court which held that in such circumstances the relevant account of the year when the amount was due under the contract could be reopened and the additional amount, though an ex gratia payment, could be included therein.

With great respect to the learned judges of the High Court we must point out that the decision of the High Court is deflected by its reliance on English decisions delivered under circumstances peculiar to that country and on the construction of provision which are not in pari material with the provisions obtaining in India. The observations made by this court in Commissioner of Income-tax v. Vazir Sultan and Sons may usefully be restated :

"While considering the case law it is necessary to bear-in mind that the Indian Income-tax Act is not in pari materia with the British income-tax statutes, it is less elaborate in many ways, subject to fewer refinements and in arrangement and language it differs greatly from the provisions with which the courts in England have had to deal. Little help can therefore be gained by attempting to construe the Indian Income-tax Act in the light of decisions bearing upon the meaning of the income-tax legislation in England. But on analogous provisions, fundamental concepts and general principles unaffected by the specialities of the English income-tax statutes, English authorities may be useful guides."

The caution administered by this court shall always be borne in mind in construing the provisions of the Indian statute. The provisions of the Indian Income-tax Act shall be construed on their own terms without drawing any analogy from English statutes whose terms may superficially appear to be similar but on a deeper scrutiny may reveal differences not only in the wording but also in the

meaning a particular expression has acquired in the context of the development of law in that country.

The problem raised before us can only be answered on the true meaning of the express words used in section 4(1)(b)(i) of the Act. It reads :

"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 derive which - . . . . .

(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."

We are not concerned in this case with the expression "deemed to accrue or arise to him", as that expression refers to cases set out in the statute itself introducing a fiction in respect of certain incomes. In regard to the question, when and whether an income accrues or arises within the meaning of the first part of the said clause, we have a decision of this court which has clearly enunciated the principles underlying the said expression : that is the decision in *E. D. Sassoon and Co. Ltd. v. Commissioner of Income-tax*. In that decision this court accepted the definition given to the words "accrue" and "arise" by Mukerji J. in *Rogers Pyatt Shellac and Co. v. Secretary of State for Indian*, which is as follows :

".. . . . both the words are used in contradistinction to the word anterior to the point of time when the income becomes receivable and connote a character of the income which is more or less inchoate."

Under this definition accepted by this court, an income accrues or arises when the assessee acquires a right to receive the same. It is commonplace that there are two principal methods of accounting for the income, profits and gains of a business; one is the cash basis and the other, the mercantile basis. The latter system of accountancy "brings into credit what is due immediately it becomes legally due and before it is actually received; and it brings into debit expenditure the amount for which a legal liability has been incurred before it is actually disbursed." The book profits are taken for the purpose of assessment of tax, though the credit amount is not realized or the debit amount is not actually disbursed. If an income accrues within a particular year, it is liable to be assessed in the succeeding year. When does the right to receive an amount under a contract accrue or arise to the assessee, i.e., come into existence ? That depends upon the terms of a particular contract. No other relevant provision

We shall now proceed to notice some of the decisions cited at the Bar. *J.P. Hall and Co. v. Commissioner of Indian Revenue* is a decision of the Court of Appeal under section 38 of the Finance (No. 2) Act, 1951 (5 and 6 Geo. V, c. 89) dealing with excess profits duty. There it was held that for the purpose of excess profits duty, the profits from the contracts for the purchase and sale of the control gear arose to the appellant-company in the accounting years in which the gear was actually delivered and not in the pre-war period ending the 30th June, 1914, in which the contracts were made. The price of the control gear in that case was increased later without there being any contractual obligation but purely by a voluntary act of the purchaser. Though the additional amounts accrued to the assessee in a later year, it was regarded as analogous to a trade debt due in respect of

the trading operation of the earlier year. On that principle that accounts were reopened in order to bring the increase into profits of received an authoritative interpretation from this court. In this view, it is not necessary to consider further English decisions cited by learned counsel for the respondent in support of his contention. Before a Division Bench of the Allahabad High Court, in Commissioner of Income-tax v. Kalicharan Jagan Nath, when a similar question arose, learned counsel appearing for the revenue relied upon the said English decisions, but the High Court, rightly, refused to act on them on the ground that they were not relevant in interpreting section 4 of the Indian Income-tax Act. It further made an attempt to distinguish those decisions on ground based upon the alleged difference in the scope of the provisions of the respective countries. It was said that under the relevant English Act the excess profits duty was payable on computation of profits arising from a trade or business in different chargeable accounting periods and, therefore, the emphasis there was more upon the carrying on of the trade within the chargeable

In the result, we hold that the High Court in the present case should have answered the second question referred to it in the affirmative. The order of the High Court is set aside and the appeal is allowed with costs.

Appeal allowed.

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