

Commissioner of Income-Tax, Mysore, Bangalore

Vs

The Bangalore Transport Company, Ltd., Bangalore

Civil Appeal No. 435 of 1966

(J. C. Shah, S. M. Sikri, V. Ramaswami JJ)

03.04.1967

JUDGEMENT

SHAH, J.

The Bangalore Transport Company Ltd. hereinafter called 'the Company' - - operated a public motor transport service in the town of Bangalore for several years. The Legislature of the State of Mysore enacted the Bangalore Road Transport Service Act, 1956, (Mysore Act VIII of 1956) with a view to provide for the acquisition of the undertaking of the Company. By virtue of s. 3 of the Act the undertaking, assets and documents of the Company vested in the Government of Mysore, on October 1, 1956, and the Company was paid Rs. 15,50,000/-as compensation for loss of its undertaking, assets and documents.

In respect of the previous year ending March 31, 1957, the Company submitted a return under the Income-tax Act, claiming that it had earned no income from its business, since its undertaking and business was taken over by the Government of Mysore on October 1, 1956. The Income-tax Officer, Urban Circle, Bangalore, brought to tax Rs. 4,01,954 /-disclosed by the Company's audited accounts as its taxable business income. This order was confirmed by the Appellate Assistant Commissioner in appeal. The Income-tax Appellate Tribunal modified the order of assessment and allowed Rs. 97,208 /-as taxable income of the company in the previous year.

At the instance of the Company, the following question was submitted by the Appellate Tribunal to the High Court, of Mysore under s. 66(1) of the Income-tax Act, 1922 :

"Whether the sum of Rs. 3,16,439 /-was income and liable to tax on the assessee for year 1957-58 ?"

The High Court answered the question in the negative. Against that order, this appeal is preferred with special leave.

The High Court was of the opinion that it was for the Revenue to establish that out of Rs. 15,50,000/-received by the Company as compensation for loss of its undertaking, assets and documents, Rs. 3,16,439 /-were paid towards profits earned by the Company during the period April 1, 1956, to September 30, 1956. The High Court observed that even if the compensation paid to the Company was worked out as a multiple of profits earned in one or more years, that circumstance was not sufficient to prove that any compensation or any part thereof was received by the Company, in lieu of the profits earned by it. and that the nature of the payment was decisive of its character and "not the method of payment or measure". The High Court accordingly held that there was no

material on the record from which it could be reasonably held that any portion of the compensation paid represented replacement of profits earned during April 1, 1956, to September 30, 1956. In our judgment the High Court erred in assuming that the character of the compensation received by the Company was determinative of the question submitted by the Tribunal. It was the claim of the Revenue that in the previous year the Company had earned taxable profit amounting to Rs. 3,16,439 /-and that profit was subject to tax in the hands of the Company. The Department was not seeking to tax either the whole or any part of the compensation received by the Company and the discussion as to what the compensation received by the Company was intended to replace was not relevant in determining whether the profits which accrued or arose to the Company during the period April 1, 1956 to September 30, 1956 were taxable.

Counsel for the Company conceded that he was unable to support the reasoning adopted by the High Court in recording their answer to the question submitted. Counsel however contended that during the previous year no profit had accrued or arisen to the Company, and no profit was received by the Company, therefore, the Company incurred no liability to pay tax. Counsel in expounding his theme said that under the Income-tax Act liability to pay tax arises only at the end of the previous year and not before, and if during the course of the previous year the assessee closes his business or is compulsorily deprived of his undertaking and assets and on that account the assessee is unable to carry on his business, in law no profit can arise or accrue to or be received by the assessee even if during a part of the year the assessee has received payments in the course of his business. According to counsel for the Company in order that income from business may become taxable in the hands of the assessee, it must be shown that the business was carried on till the end of the previous year, and if before the conclusion of that year, the business is closed, no profit may in law be deemed to accrue to the assessee.

There is no warrant for this argument in the scheme of the Income-tax Act. Under s. 10 (1) of the Income-tax Act, 1922, tax is payable by an assessee under the head "Profits and gains of business, profession or vocation" in respect of the profits or gains of any business, profession or vocation carried on by him. There is nothing in the Act which supports the argument that for the profits of the business to be taxable, the business must be actively carried on for the whole of the previous year, or till the end of the previous year. Under the scheme of the Income-tax Act, whenever an assessee receives in the course of his business money or money's worth, income embedded therein accrues or arises to him, and becomes subject to an ambulatory charge. If at the end of the previous year, on making up accounts there is no overall income, the charge does not crystallize, because there is no income on which the charge of tax may settle. In *Turner Morrison & Company Ltd. v. Commissioner of Income-tax, West-Bengal (1)*, this Court in dealing with a case of a business of selling salt in India observed at p. 160 :

"There can.... be no question that when the gross sales proceeds were received by the Agents in India they necessarily received whatever income, profits and gains were lying dormant or hidden or otherwise embedded in them. Of course, if on the taking of accounts it be found that there was no profit during the year then the question of receipt of income, profits and gains would not arise but if there were income, profits and gains, then the proportionate part thereof attributable to the sale proceeds received by the Agents in India were income, profits and gains received by them at the moment the gross sale proceeds were received by them in India and that being the position the provisions of Section 4 (1) (a) were immediately attracted and the income, profits and gains so received became chargeable to tax under Section 3 of the Act."

The same principle applies to receipts in the course of business of a transport operator.

The Company carried on the business of a transport operator between April 1, 1956 and September 30, 1956 and the audited accounts of the Company disclosed that embedded in the gross receipts was a net profit of Rs. 4,01,954 /-during that period. That profit reduced by outgoings properly allowable in the computation of the total taxable income became subject to a charge to tax. The total taxable profits may under the scheme of the Act be determined at the end of the previous year : but it does not follow therefrom that to profits earned during the year, the charge of tax does not attach. Assuming that the business of the Company was closed on October, 1, 1956, when its undertaking and assets were taken over by the Government of Mysore, it was, for reasons stated earlier, still liable to be taxed in respect of its profits which accrued or were received by the Company prior to the date of the closure of the business.

Counsel for the Company relied upon a recent decision of this Court in Commissioner of Income-tax, Gujarat v. Ashokbhai Chimanbhai (1) and contended that profits of a business which are liable to tax under the Income-tax Act, can only accrue at the end of the previous year and not before. But that the case lays down no such proposition. Under an agreement of partnership, the manager of a hindu undivided family who was a partner was to receive a share in the profits of the firm. The accounts of the firm were to be adjusted at the end of the every calendar year. Before the expiry of the previous year relevant to the assessment year 1955-56, there was a partition in the family and the entire share in the profits of the firm was, under the partition agreement, allotted to the manager. The Income-tax Officer in proceedings for assessment to tax sought to apportion the profits received by the manager between the Undivided family and the manager in his individual capacity. This Court held that the right to receive the share of profits of the firm for the previous year 1933 arose on the settlement of accounts of the settlement of accounts of the firm, and not before, and on that date the manager alone was the owner of the share of profits and the family had no right therein and it was not liable to be taxed in respect of any part of the income. It is clear on a bare perusal of the statement of facts of that case that no income or profits had accrued to the Hindu undivided family at any time in the year of account prior to the date of dissolution. It was observed in Ashokbhai Chimanbhai's case (1) at p. 46 :

"In the gross receipts of a business day after day or from transaction to transaction lies embedded or dormant profit or loss : on such dormant profit or loss undoubtedly taxable profits, if any, of the business will be computed. But dormant profits cannot be equated with profits charged to tax under section 3 and 4 of the Income-tax Act. The concept of accrual of profits of a business involves the determination by the method of accounting at the end of the accounting year or any shorter period determined by law. If profits accrue to the assessee directly from the business the question whether they accrue de die, in diem or at the close of the year of account has at best an academic significance, but when upon ascertainment of profits the right of a person to a share therein is determined, the question assumes practical importance, for it is only on the right to receive profits or income, profits accrue to that person. If there is no right, no profits will be deemed to have accrued."

The Hindu Undivided family became entitled to a share in the profits of the firm only at the end of every calender year, and not before. If before that date the right of the family to a share in the profits was divested, no income accrued or arose to the family. In the present case the profits directly arose to the Company de die, in diem, and could be ascertained by the method of accounting adopted by the Company at the end of the year or when the business was closed.

The question whether the amount of profits assessed were actually shared by the Company within the meaning of s. 26(2) of the Indian Income-tax Act does not need consideration. By sub-s. (2) of s. 26 where a person carrying on any business, profession or vocation has been succeeded in such capacity by another person, such person and such other person shall, each be assessed in respect of his actual share, if any, of the income, profits and gains of the previous year. The question whether the profits of the Company held taxable by the Income-tax Officer represented the actual share of the Company in the profits and gains of the previous year was never raised before the Income-tax Appellate Tribunal and has not been decided. Counsel for the Company merely contended that the amount sought to be charged was not liable to be taxed, because it was not profit of the Company. Counsel has also not contended before us that for the profits received by the Company the State of Mysore is by virtue of s. 26(2) of the Income-tax Act liable to be taxed.

The answer recorded by the High Court will therefore be discharged and there will be an answer in the affirmative.

The appeal is allowed. The Company will pay the costs of the Commissioner in this Court and the High Court.

Y. P. Appeal allowed.

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