

H. L. Sud, Income-Tax Officer, Companies Circle 1(1), Bombay

Vs

Tata Engineering and Locomotive Co. Ltd.

Civil Appeals Nos. 688 and 689 of 1968

(J. C. Shah, V. Ramaswami, A. N. Grover JJ)

06.09.1968

JUDGMENT

RAMASWAMI J. -

The respondent is a limited company incorporated under the Indian Companies Act, 1913, and carried on business of manufacturing and selling diesel trucks and bus chassis, locomotives and other heavy engineering products. The respondent manufactures diesel trucks and bus chassis in collaboration with the German firm "Daimler Bens A.G." The business of manufacturing locomotives is carried on by the respondent in collaboration with the German firm "Krauss Maffei A.G." For each of the assessment years from 1955-56 to 1961-62, the Income-tax Officer issued a notice to the respondent under section 43 of the Indian Income-tax Officer Act, 1922 (hereinafter called "the Act") intimating that he intended treating the respondent as the agents of the two German firms. In pursuance of the notices the Income-tax Officer actually passed orders under section 43 of the Act treating the respondent as agent of the said two German firms. For the assessment year 1962-63 no notice under section 43 of the Act had be

Section 18A, 42 and 43 of the Act, as they stood at the material time, are to the following effect :

"18A. (1)(a) In the case of income in respect of which provision is not made under section 18 for deduction of income-tax at the time of payment, the Income-tax Officer may, on or after the 1st day of April, in any financial year, by order in writing, require an assessee to pay quarterly to the credit of the Central Government on the 15th day of June, 15th day of September, 15th day of December and 15th day of March in that year, respectively, an amount equal to one-quarter of the income-tax and super-tax payable on so much of such income as is included in his total income of the latest previous year in respect of which he has been assessed, if that total income exceeded the maximum amount not chargeable to tax in his case by two thousand five hundred rupees. Such income-tax and super-tax shall be calculated at at the rates in force for the financial year in which he is required to pay the tax, and shall bear to the total amount of income-tax and super- tax so calculated on the said total income the same prop

Provided that, where the previous year of the assessee in respect of any source of income ends after the 31st day of December and before the 30th day of April, the order in writing issued by the Income-tax Officer requiring the payment of income-tax and super-tax on that source of income shall substitute for the four quarterly payments hereinbefore specified, three payments of equal amount to be made on the 15th day of September, the 15th day of December and the 15th day of

March, respectively.....

(b) If the notice of demand issued under section 29 in pursuance of the order under clause (a) of this sub-section is served after any of the dates on which the instalments specified therein are payable, the tax shall be payable in equal instalments on each of such of those dates as fall after the date of the service of the notice of demand or in one sum on the 15th day of March if the notice is served after the 15th day of December.

(2) If any assessee who is required to pay tax by an order under sub-section (1) estimates at any time before the last instalment is due that the part of his income to which that sub-section applies for the period which would be the previous year for an assessment for the year next following is less than the income on which he is required to pay tax and accordingly wishes to pay an amount less than the amount which he is so required to pay, he may send to the Income-tax Officer an estimate of the tax payable by him calculated in the manner laid down in sub-section (1) on that part of his income for such period, and shall such amount as accords with his estimate in equal instalments on such of the dates specified in sub-section (1) (a) as have not expired not expired or in one sum if only the last of such dates has not expired.....

(3) Any person who has not hitherto been assessed shall, before the 15th day of March in each financial year, if his total income of the period which would be the previous year for an assessment for the financial year next following is likely to exceed the maximum amount not chargeable to tax in his case by two thousand five hundred rupees, send to the Income-tax Officer an estimate of the tax payable by him on that part of his income to which the provisions of section 18 do not apply of the said previous year calculated in the manner laid down in sub-section (1), and shall pay the amount, on such of the dates specified in that sub-section as have no expired, by instalments which may be revised according to the proviso to sub-section (2)....."

"42. (1) All income, profits or gains accruing or arising, whether directly or indirectly, through or from any business connection in the taxable territories, or through or from any property in the taxable territories, or through or from any asset or source of income in the taxable territories, or through or from any money lent at interest and brought into the taxable territories in cash or in kind or through or from the sale, exchange or transfer of a capital asset in the taxable territories, shall be deemed to be income accruing or arising within the taxable territories, and where the person entitled to the income, profits or gains is not resident in the taxable territories, shall be chargeable to income-tax either in his name or in the name of his agent, and in the latter case such agent shall be deemed to be, for all the purposes of this Act, the assessee in respect of the such income-tax :

Provided that where the person entitled to the income, profits or gains is not resident in the taxable territories, the income-tax so chargeable may be recovered by deduction under any of the provisions of section 18 and that any arrears of tax may be recovered also in accordance with the provisions of this Act from any asses of the non- resident person which are, or may at any time come, within the taxable

territories :

Provided further that any such agent, or any person who apprehends that he may be assessed as such an agent, may retain out of any money payable by him to such non-resident person a sum equal to his estimated liability under this sub-section, and in the event of any disagreement between the non-resident person and such agent or person as to the amount to be so retained, such agent or person may secure from the Income-tax Officer a certificate stating the amount to be so retained pending final settlement of the liability, and the certificate so obtained shall be his warrant for retaining that amount....."

"43. Any person employed by or on behalf of a person residing out of the taxable territories, or having any business connection with such person, or through whom such person is in the receipt of any income, profits or gains upon whom the Income-tax Officer has caused a notice to be served of his intention of treating him as the agent of the non-resident person shall, for all the purposes of this Act, be deemed to be such agent :

Provided that where transactions are carried on in the ordinary course of business through a broker in the taxable territories in such circumstances that the broker does not in respect of such transactions deal directly with or on behalf of a non-resident principal but deals with or through a non-resident broker who is carrying on such transactions in the ordinary course of his business and not as a principal such first-mentioned broker shall not be deemed to be an agent under this section in respect of such transactions :

Provided further that no person shall be deemed to be the agent of a non-resident person, unless he has had an opportunity of being heard by the Income-tax Officer as to his liability.

Explanation. - A person, whether residing in or out of the taxable territories, who acquires, after the 28th day of February, 1947, whether by sale, exchange or transfer, a capital asset in the taxable territories from a person residing out of the taxable territories shall, for the purposes of charging to tax the capital gain arising from such sale, exchange or transfer, be deemed to have a business connection, within the meaning of this section, with such person residing out of the taxable territories."

On behalf of the appellant Mr. Sukumar Mitra addressed the argument that an appointment made under section 43 of the Act was good for all purposes of the Act and therefore also for the purpose of section 18A of the Act. It was said that under section 18A, advance payment of tax is liable to be made in the current financial year, that the assessment year 1961-62 is the same as the financial year 1961-62, and that for the said financial year in which the advance payment of tax was called to be made by the respondent, there was already an appointment of the respondent as the statutory agents of the non-resident firms, the advance payment of tax was rightly demanded from the respondent. The appointment of the respondent under section 43 of the Act was made on October 21, 1961, and the notices of demand in the present case were issued on November 2/3, 1961, and therefore subsequent to the said appointment. It was, therefore, contended that the advance payment of tax was properly demanded from the respondent and

For the reasons expressed we hold that these appeals fail and are accordingly dismissed with costs - there will be one set of hearing fee.

Appeals dismissed.

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