

Commissioner of Income-Tax, Bangalore

Vs

Union Tile Exporters

Civil Appeals Nos. 1769 to 1771 of 1967

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

10.09.1968

JUDGMENT

GROVER J. -

These appeals are by certificate from the common judgment of the Mysore High Court on the following question of law which were referred by the Income-tax Appellate Tribunal under section 66(1) of the Income-tax Act, 1922, hereinafter called "the Act."

"(1) Whether, on the facts and circumstances of the case, the income of the assessee did not arise in Bangalore (Mysore State) in respect of sales effected by the assessee to the Burma Teak Trading Co. Ltd., Colombo ?

(2) If the answer to the above question is in favour of the assessee, then whether on the facts and circumstances of the case of the assessee is entitled to the concession under the Part B States (Taxation Concessions) order, 1950 ? and

(3) Whether, on the facts and circumstances of the case the apportionment of profit of business is called for pursuant to the assessee's trading activities in Bangalore (Mysore State) ?"

The assessee is a firm carrying on business in Bangalore in the Mysore State. It was appointed as the sole selling agent for Ceylon except Jaffna Peninsula and the town of Trincomalee for the purpose of marketing selling or distributing Lotus Brand tiles and ridges manufactured by M/s. Modern Tile & Clay Works of Feroke.

According to an agreement dated August 10, 1949, between the parties all prices quoted by the manufacturer were to be f.o.b. Beypore port and for loading into country crafts; the right to charter or engage vessels was to be with the agents. Beypore is in the taxable territory as also Feroke where the tile manufacturers carried on their business. One of the employees of the assessee stayed at Calicut during the season to supervise the operation of delivery of articles and to engage vessels. The bills of lading were obtained by the assessee's representative at Beypore and sent to Bangalore where the hundis together with the invoices and shipping documents were handed over by the assessee to the Indian Overseas Bank Ltd., Bangalore. Pursuant to the letter of credit opened by the Burma Teak Trading Co. Ltd., Colombo, which was the purchaser, payments were made by the aforesaid bank to the assessee. It is unnecessary to state that details about the profits which the assessee made during the relevant assessment ye

The High Court was of the view that, since the profits were received in the part B State, namely, Bangalore, it could not be said that the entire profit accrued or arose within the meaning of clause (a) of sub-section (1) of section 4 of the Act in the taxable territories other than Part B State. After referring to section 42(3) of the Act and certain decisions of this court, it was observed that the business operations which produced profits were carried out at three different places, i.e., Bangalore, Feroke and Ceylon. Therefore, a portion of these profits must be held to have accrued in all these places. The only profits which could be deemed to have accrued be said to have accrued at Feroke. The profits that could be attributed to the business operations at Bangalore could not be deemed to have accrued in the taxable territories other than the Part B State nor could it be said that the profits that had accrued at Ceylon could be deemed to have accrued in the taxable territories other than Part B States.

"(1) The profits of the assessee in respect of the sales effected by it to Burma Teak Trading Co., Colombo, did not entirely arise in Bangalore (then a Part B State), it arose in Bangalore, Feroke and Ceylon.

(2) The assessee was entitled to the concession under the Order in respect of the profits that could be attributed towards business operations conducted in Bangalore and Ceylon.

(3) Apportionment of profits of business was called for pursuant to the assessee's trading profits.

The sole point which has been raised before us by the learned Attorney-General, who appears for the appellant, is that hardly any activity took place of such a nature as could be said to give rise to accrual of profits in Bangalore. It is pointed out that admittedly the manufacturing concern from where the tiles had to be sent to Colombo was in Feroke in British India and that the goods were also delivered f.o.r. Beypore, which was in British India. The assessee's agent resided in British India and supervised all the operations there.

Our attention has been invited to the findings of the Tribunal which, inter alia, were that the assessee purchased the goods at places outside Bangalore and the sales were also effected in Ceylon; the assessee continued to retain its title to the goods till they were delivered to the Ceylonese buyers on their accepting the documents and bills of exchange forwarded through the bank in that country. The sale operations were carried out in Ceylon and the profits attributable to those transactions accrued and arose only in Ceylon which was outside the taxable territories. The essential question, according to the learned Attorney-General is, whether any part of income accrued or arose at Bangalore. According to the learned counsel for the respondent, it was clear that the profits accrued at Bangalore where the assessee's registered office was situate and where the contracts were entered into by the assessee for the sale and purchase of the goods and where monies were received. At any rate, the profits producing o

If it be held, as indeed it must be held, that the making of contracts pursuant to which all the subsequent activity in respect of the execution of those contracts took place resulting in profits to the assessee, is an integral part of the entire selling operations, there can be no escape from the conclusion at which the High Court arrived. The appeals consequently fail and they are dismissed with costs (one hearing fee).

Appeals dismissed.

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