

Premier Automobiles Ltd.

Vs

S. N. Shrivastava Income-Tax Officer, Acompanies Circle 1(3), Bombay, and Another

Writ Petition No. 67 of 1965

(J. C. Shah JJ)

10.10.1968

JUDGMENT

SHAH J. -

On February 25, 1965, the Income-tax Officer, Companies Circle 1(3), Bombay, directed that for the purpose of the Income-tax Act, 1961, the Premier Automobiles Ltd - hereinafter called "the company" - be treated as an agent of M/s. Dodge Brothers of United Kingdom-a non-resident company. On the same day the Income-tax Officer issued a notice of demand under section 156 read with section 210 of the Act calling upon the company to pay on or before March 1, 1965, advance tax of Rs. 11,51,235.91 as agent of the foreign principal during the financial year 1964-65. The company then moved a petition in this court for an order quashing and setting aside the order under section 163 and notice of demand under section 156, for the assessment year 1965-66 and for an injunction or prohibition restraining the Income-tax Officer from enforcing or implementing the order under section 163 and the notice under section 156 read with section 210 of the Income-tax Act, 1961. The petition was resisted by the Income-tax

In support of the petition counsel for the company raised two contentions :

(1) that under section 209 and 210 of the (Indian) Income-tax Act, 1961, no order for payment of advance tax can be made against an agent of non-resident; and

(2) that a provision which authorises collection of advance tax from an agent of a non-resident infringes the equality clause of the Constitution and is on that account void.

Section 207 and 208 of the Income-tax Act, 1961, in so far as they are material, provide :

"207. (1) Tax shall be payable in advance in accordance with the provisions of section 208 and 219 in the case of income other than income chargeable under the head 'capital gains'".

"208. Advance tax shall be payable in the financial year -

(a) where the income exclusive of capital gains of the assessee referred to in sub-clause (i) of clause (a) of section 209 exceeded the maximum amount not chargeable to income-tax in his case by two thousand five hundred rupees; or....."

Section 209 sets out the rules for computation of amount of advance tax payable by an assessee in the financial year. Section 210 provides by sub-section (1) :

"Where a person has been previously assessed by way of regular assessment under this Act or under the Indian Income-tax Act, 1922, the Income-tax Officer may, on or after the 1st day of April in the financial year, by order in writing, require him to pay to the credit of the Central Government advance tax determined in accordance with the provisions of section 207, 208 and 209."

Section 207, 208, 209 and 210 prescribe machinery for imposition of liability for and determination of the quantum of advance tax in respect of income which is chargeable to income-tax in the hands of a person on regular assessment.

Under the Income-tax Act, 1961, a person is liable to be assessed to tax in respect of his own income, and also in respect of certain classes of income received by or accruing or arising to other. He is also liable to be assessed to tax as a representative assessee. That is expressly so enacted by section 161(1), which provides :

"Every representative assessee, as regards the income in respect of which he is a representative assessee, shall be subject to the same duties, responsibilities and liabilities as if the income were income received by or accruing to or in favour of him beneficially, and shall be liable to assessment in his own name in respect of that income; but any such assessment shall be deemed to be made upon him in his representative capacity only,...."

A representative assessee by sub-section (1) of section 160 includes, amongst others, the agent of a non-resident in respect of the income of a non-resident specified in section 9(1)(i), and also a person who is treated as an agent under section 163. By sub-section (2) a representative assessee is deemed to be an assessee for the purpose of the Act. By section 162 the representative assessee, who as such pays any sum under the Act, may recover the sum so paid from the person on whose behalf it is paid. Section 163 (1) defines for the purposes of the Act an "agent" in relation to a non-resident. Resort to the machinery for assessing a representative assessee is however not obligatory : it is open to the Income-tax Officer to make a "direct assessment of the person on whose behalf or for whose benefit income therein referred to is receivable", or to recover "from such person the tax payable in respect of such income".

On regular assessment an agent of a non-resident is, by virtue of section 160 (1) read with section 163, liable to be assessed to tax and the tax so assessed may be recovered from him. The agent, if assessed to tax, has the right to recover tax paid by him from the person whom he represents : section 162. Since a non-resident is in respect of income which forms part of his total income liable to be assessed to tax, he may also be called upon to pay advance tax in respect of the income accruing to or received by him which forms part of his total income chargeable to tax by virtue of sections 4, 5 and 207. So far there is no dispute. Counsel for the company, however, urged that an agent of a non-resident may be assessed in regular assessment in respect of the income accruing or arising to his principal, but he cannot be called upon to pay advance tax even though he is by virtue of section 160 (2) deemed an assessee for the purposes of the Act. Diverse reasons were suggested in support of that argument. It was

An argument of hardship was raised. It was said that an agent of a non-resident may not normally have in his possession any materials on which he may estimate the income in respect of which he may be chargeable to advance tax, if he has not been previously assessed to tax as an agent of a non-resident. That again, in our judgment, is not a ground which exempts an agent from liability to pay advance tax on behalf of his principal. Liability to submit an estimate necessarily implies the duty to

secure the requisite information from the non- resident for submitting the estimate. The tax, it must be remembered, is assessed on the agent for and on behalf of the principal, and the Act has made an express provision enabling the agent to recover from the principal the tax so paid by him. Once the Income-tax Officer treats a person as an agent of a non-resident, liability to pay tax on regular assessment arises; and his liability as a representative assessee to pay advance tax is not excluded by any provision of the Ac

In our judgment, sections 207 and 208 which impose liability to pay advance tax in a financial year, section 210 which authorises the Income-tax Officer to make a demand for payment of advance tax from a person who is previously assessed, and section 212(3) which imposes the duty to make an estimate of the total income likely to be received or to accrue or arise, and to pay advance tax if the total estimated income exceeds the maximum amount not chargeable to tax in his case by Rs. 2,500, apply to every person whether he is assessed in respect of his own income or as a representative assessee, and we are unable to imply an unexpressed limitation on the express words of the statute in favour of an agent of a non-resident principal.

In the present case by order dated February 25, 1965, for the assessment year 1964-65 the company was treated as an agent of the non-resident principal. Since the company was treated as an agent of the non-resident, it became liable to pay advance tax in the financial year 1964-65. By virtue of section 207 read with section 208 the declaration that the company was an agent involved liability to pay advance tax as well as tax assessed on regular assessment. We are unable to hold that the liability to pay advance tax did not arise against the company.

The pleas that the provisions imposing liability to pay advance tax upon an agent of a non-resident infringe the equality clause of the Constitution has no substance. As already observed, the liability to pay advance tax arises under section 207 and 208 and its quantum is determined by sections 209, 210 and 212 (3), and it is not predicated of the accrual of liability that the total income of the previous year should be ascertained or precisely ascertainable when demand is made by the Income-tax Officer under section 210, or when the assessee is required to make an estimate. The assumption that an assessee whose year of account coincides with the financial year is not in respect of that year liable to pay advance tax is not warranted. The computation of advance tax is not dependent upon the completion of the previous year : it depends upon the rules prescribed by section 209, 210 and 212. Every person who has been previously assessed to tax is liable when ordered by the Income-tax Officer to pay advance tax,

The petition, therefore, fails and is dismissed with costs.

Petition dismissed.

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