

Commissioner of Income-Tax, West Bengal III

Vs

Imperial Chemical Industries (India) (P.) Ltd. [1969] 72 I. T .R (Sh. N.) 5

Civil Appeals Nos. 1549 to 1552 of 1968

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

20.02.1969

JUDGMENT

RAMASWAMI J. -

These appeals are brought by certificate from the judgment of the Calcutta High Court dated 28th September, 1964, in Income-tax Reference No. 18 of 1961.

The respondent (hereinafter called the assessee) is a private limited company incorporated in India and is a subsidiary of the Imperial Chemical Industries, London, which holds the entire share capital of the assessee. The business of the assessee consists mainly of acting as selling agents in India for a large variety of goods such as chemicals, dyes, explosives, etc., manufactured or purchased by its London principles and sold in India. The Imperial Chemical Industries (Export) Glasgow [hereinafter referred to as the I. C. I. (Export) Ltd.] is another subsidiary of I. C. I. London which holds the entire share capital of I. C. I. (Export) Ltd. The I. C. I. (Export) Ltd. had appointed as their selling agents in India four companies, viz., (1) Gillanders Arbuthnot and Co. Ltd., Calcutta, (2) Best and Co. Ltd., Madras, (3) Anglo-Thai Co. Ltd., Bombay and (4) Shaw Wallace and Co. Ltd. With effect from 1st April 1948, the I. C. I. (Export) Ltd. terminated the services of the aforesaid selling agents and appointe

The year of account of the assessee is from 1st October to 30th September every year. As a result of the above method of accounting, the following figures appeared in the assessee's books of accounts.

#-----	Gross commission	Transfer to Net
commission reserve for compensation-----		Rs.
Rs. Rs.	1st April, 1948, to 30th September, 1948	2,91,396 2,03,503 87,893
	Year ending 30th September, 1949	7,67,294 5,41,526 2,25,768
	Year ending 30th September, 1950	7,52,204 5,29,284 2,22,920
	Year ending 30th September, 1951	10,20,922 4,00,052 6,20,870
-----	Total	28,31,816 16,74,365 11,57,451
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For the assessment years 1949-50, 1950-51, 1951-52 and 1952-53 the assessee showed the net amounts of commission earned on the selling agencies by the I. C. I. (Export) Ltd., adding a footnote that the amounts were arrived at after deducting the amount of compensation payable to the outgoing agents. By his order dated 28th January, 1957, for the assessment year 1951-52 the Income-tax Officer held that the deductions were not permissible. In an appeal preferred by the assessee the Appellate Assistant Commissioner confirmed the assessment by his order dated 25th November, 1957. The assessee took the matter in further appeal to the Appellate Tribunal which

dismissed and appeal. the Appellate Tribunal held that there was no justification for the absence of a written agreement between the I. C. I. (Export) Ltd. and the assessee when the former selling agencies were terminated and the assessee was appointed as the sole selling agencies were terminated and the assessee was not collecting any commission on behalf

At the instance of the assessee the following question of law was referred to the High Court under section 66(1) of the Income-tax Act, 1922 (hereinafter called the Act) :

'Whether the inclusion by the Income-tax officer of Rs. 2,03,503, Rs. 5,41,526, Rs. 5,29,284 and Rs. 4,00,052 in the assessment for the years 1949-50, 1950-51, 1951-52 and 1952-53 for the relevant accounting years ending the 30th September 1948, 1949, 1950 and 1951, respectively, in the computation of the total income of the assessee is justified and correct ?'

The High Court answered the question in the negative in favour of the assessee holding that the inclusion of the amount of compensation in the total income of the assessee for the relevant assessment years was not justified.

On behalf of the appellant it was contended that the High Court had no legal justification for interfering with the finding of the Appellate Tribunal that there was no proof of the agreement between the assessee and the I. C. I. (Export) Ltd. with regard to the quantum of commission to be paid to the assessee for the period between 1st April, 1948, and 31st March, 1951. On this point reference was made by Mr. Chagla to (a) the letter dated 11th March, 1947, from the I. C. I. (Export) Ltd. to M/s. Gillanders Arbuthnot and Co., (b) the affidavits of Mr. W. A. Bell and Mr. J. W. Donaldson and (c) the letter dated 3rd January, 1958 of M/s. Lovelocke and Lewes, Chartered Accountants, Calcutta. It was argued that these documents established that there was an agreement between the I. C. I. (Export) Ltd. and the assessee, that for the period 1st April, 1948, to 31st March 1951, the assessee was entitled to receive and its commission only the amounts representing the difference between the normal rates of commission

It was argued by Mr. Chagla that even if the agreement was not established, the amount paid by the assessee as compensation to the ex-agents was an expenditure laid out wholly and exclusively for the purpose of the business and as such is allowable under section 10(2) (xv) of the Act. The contrary viewpoint was urged on behalf of the om of the I. C. I. (Export) Ltd. for the payment of compensation to the ex-agents and the payment was made not in the character of a trader but in the character of the agent of its principal. The contention of the appellant was that the assessee got the right to sell goods after 1st April, 1948, and for getting that right the assessee parted with the portion of its commission for the first two years after the third year. This position was borne out by the accounts of the respondent which show that the assessee received the commission at full rates and out of it created a reserve account of which these compensations were made to the ex-agents. We have already referred to the find

It was finally contended on behalf of the respondent that by virtue of an overriding title the income was diverted before it reached the assessee, and so, the amount of compensation paid to the ex-agents did not form part of the income of the assessee. In other words, the contention was that the compensation payable to the ex-agents was diverted from the income of the assessee by an overriding title arising under the agreement between the assessee and the I. C. I. (Export) Ltd. The argument was stressed that the commission payable as compensation to the ex-agents did not form part of the income of the assessee. We are unable to accept this argument as correct. We have already pointed terms of the agreement between the assessee and the I. C. I. (Export) Ltd. have not

been established. In any event, even on the basis of the affidavits of Mr. Bell and Mr. Donaldson the payment of compensation to the ex-agents was apparently made by the assessee for and on behalf of the I. C. I. (Export) Ltd. The assessee's docu

"But their Lordships do not agree with the learned Chief Justice in his rejection of the view that the sums paid by the appellant to his step-mother were not 'income' of the appellant at all. This in their Lordships' opinion is the true view of the matter.

When the Act by section 3 subjects to charge 'all income' of the individual, it is what reaches the individual as income which it is intended to charge. In the present case the decree of the court by charging the appellant's whole resources with a specific payment to his step-mother has to that extent diverted his income from him and has directed it to his step-mother; to that extent what he receives for her is not his income. It is not a case of the application by the appellant of part of his income in a particular way, it is rather the allocation of a sum out of his revenue before it becomes income in his hands."

Another case of the Judicial Committee is reported in *P. C. Mullick v. Commissioner of Income-tax*, where a testator appointed the appellants as executors and directed them to pay Rs. 10,000 out of the income on the occasion of his addya sradh. The executors paid Rs. 5,537 for such expenses and sought to deduct the amount from the assessable income. The Judicial Committee confirmed the decision of the Calcutta High Court disallowing the deduction and observed that the payments were made out of the income of the estate coming to the hands of the executors and in pursuance of an obligation imposed upon them by the testator. The Judicial Committee observed that it was not a case in which a portion of the income had been observed that it was not a case in which a portion of the income had been diverted by an overriding title from the person who would have received it otherwise ad distinguished *Bejoy Singh Dudhuria's case*. In *Commissioner of Income- tax v. Sitaldas Tirathdas, Hidayatullah J.*, speaking for the cour

"There is a difference between an amount which a person is obliged to apply out of his income and an amount which by the nature of the obligation cannot be said to be a part of the income of the assessee. Where by the obligation income is diverted before it reaches the assessee, it is deductible; but where the income is required to be applied to discharge an obligation after such income reaches the assessee, the same consequence, in law, does not follow. It is the first kind of payment which can truly be excused and not the second. The second payment is merely an obligation to pay another a portion of one's own income, which has been received and is since applied. The first case in which the income never reaches the assessee, who even if he were to collect it, does so, not as part of his income, but for and on behalf of the person to whom it is payable."

In view of the principle laid down in these authorities we are of opinion that the payment of compensation by the assessee to the ex- agents was not by an overriding title created either by act of the parties or by operation of law. We accordingly reject the argument of Mr. Chagla on this aspect of the case.

For the reasons expressed we hold that the judgment of the Calcutta High Court dated 28th September, 1964, should be set aside and the question referred by the Appellate Tribunal should be answered in the affirmative and against the assessee. The appeals are accordingly allowed with the

costs. One hearing fee.

Appeals allowed.

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