

The Commissioner of Income-Tax, Madhya Pradesh

Vs

Lady Kanchanbai

Civil Appeal No. 19 of 1969

(J.C. Shah, K.S. Hegde JJ)

16.12.1969

JUDGMENT

SHAH, J. -

1. In this appeal by certificate the question that arises for decision is whether under the circumstances of the case, having regard to Section 2(11)(i)(a) of the Income-tax Act, 1922 (to be hereinafter referred to as the Act), the assessee is entitled to take the year ended on March 31, 1950, as the "previous year" relevant to the assessment year 1950-51 in respect of his sources of income arising outside the "taxable territories". This question under section 66(1) of the Act was answered in favour of the assessee by the High Court of Madhya Pradesh. Aggrieved by that decision, the Commissioner of Income-tax, Madhya Pradesh has brought this appeal.

2. The assessee (the respondent) is a Hindu undivided family with its Head-office at Indore and branches at several places. It derives income from property, business in cotton and oil seeds, speculation, dividends, managing agency commission, etc. Prior to the assessment year 1950-51, the assessee was assessed under the Indian Income-tax Act, 1922, in the status of a non-resident Hindu Undivided Family. The income which accrued to or was received by the assessee in the former Indian States was not subject to tax under the Act but was taken into consideration in computing its "world income" for the purpose of determining the rate. After the Constitution came into force, the present definition of "taxable territories" was incorporated in the Income Tax Act by the Finance Act, 1950, and the areas in which the assessee was carrying on the business with which we are concerned in this appeal were included therein. The result of the amendment was that for the assessment year 1950-51, the assessee, who was a resident of Madhya Bharat, was deemed to be a resident in the "taxable territories" during the "previous year" and hence liable to be taxed in respect of its income that accrued or were received in Madhya Bharat. For the purpose of its accounts the assessee was adopting the year ended on Diwali day. In the returns submitted by the assessee, prior to the assessment year 1950-51, it had proceeded on the basis that its account year ended on Diwali day but for the assessment year 1950-51, in respect of its income accrued from its business in Madhya Bharat, it chose the financial year ending on March 31, 1950, as the "previous year". The Income-tax Officer as well as the Appellate Assistant Commissioner rejected the claim of the assessee that it could make such a choice. The Income-tax Officer as well as the Appellate Assistant Commissioner rejected the claim of the assessee that it could make such a choice. The Income-tax Officer assessed the assessee on the basis that the "previous year" in respect of the concerned sources ended on Diwali of 1949. That decision was affirmed by the Appellate Assistant Commissioner, but the Income-tax Appellate Tribunal reversed the finding of the Income-tax Officer and the Appellate Assistant Commissioner and agree with the stand taken by the assessee. Thereafter, a reference was made to the High Court of Madhya Pradesh under section 66(1) of the

Act at the instance of the Commissioner of Income Tax but the High Court agreed with the view taken by the Tribunal. Hence this appeal.

3. The question for our consideration is whether the view taken by the High Court is correct ? In order to decide that question, it is necessary to find out the true scope of Section 2(11) (i)(a) of the Act, which provision defines the term "previous year" thus :

"Previous year" means -

(i) in respect of any separate source of income, profits and gains -

(a) the twelve months ending on the 31st day of March next preceding the year for which the assessment is to be made, or, if the accounts of the assessee have been made up to a date within the said twelve months in respect of a year ending on any date other than the said 31st day of March, then, at the option of the assessee, the year ending on the date to which his accounts have been so made up :

"Provided that where in respect of a particular source of income, profits and gains, an assessee has once been assessed he shall not, in respect of that source or, as the case may be, business, profession or vocation, exercise the option given by this sub-clause so as to vary the meaning of the expression "previous year" as then applicable to him except with the consent of the Income Tax Officer and upon such conditions as the Income Tax Officer may think fit to impose."

4. From the above provision, it is clear that in respect of any separate source of income, profits or gains, unless the assessee had made a choice in accordance with the second part of section 2(11)(i)(a), the twelve months ending on the 31st day of March next preceding the year for which the assessment is made is the "previous year".

5. Therefore, all that we have to see is whether the assessee's income, profits or gains in respect of the business in Madhya Bharat had been assessed previously. If they had not been previously assessed then the assessee's case comes within the first part of section 2(11)(i)(a). In that event his return was in accordance with the law. Therefore, we have first to see what is meant by "source of income" in Section 2(11)(i)(a) of the Act and then proceed to consider whether those sources of income had "once been assessed."

6. It is necessary to note that section 2(11)(i)(a) does not refer to the income of the assessee generally but to his "separate sources of income, profits and gains". Hence, it is possible for an assessee to have a different "previous year" for each "separate source of income, profits and gains" as held by the Madras High Court in Commissioner of Income Tax v. Savumamurthy. ((1946) ITR 185) In Rhodesia Metals Ltd. v. Commissioner of Taxes, ((1941) ITR Supp 45) the Judicial Committee observed that "source" means not a legal concept but which a practical man would regard as a real source of income. There is hardly any room for doubt, nor was it contended otherwise - that the business of the assessee in Madhya Bharat constituted a separate source or sources. Hence, all that we have to see is whether the income accruing from those business had "once been assessed" under the Act.

7. This takes us to the question what exactly is the meaning of the expressions "assessed" and "assessee" in the proviso to section 2(11)(i)(a). The words "assessed", "assessment" and "assessee" have different meanings in different contexts. As observed by the Judicial Committee in

Commissioner of Income Tax, Bombay v. Khemchand Ramdas ((1938) VI ITR 414) the word "assessment" is used in the Act as meaning sometimes the computation of income, sometimes the determination of the amount of tax payable and sometimes the procedure laid down in the Act for imposing liability upon the taxpayer. Similarly, the word "assessee" connotes different meanings in different contexts - see Seth Badridas Daga and Another v. Commissioner of Income Tax Central and United Provinces. ((1949) XVII ITR 209)

8. It is true that for the purpose of finding out the total "world income" of the assessee, the income derived by the assessee from its business outside the taxable territories had been taken into consideration in the past. That was done only for the purpose of determining the rate at which the assessee's income should be assessed. No tax was imposed on the income from those business. In other words, the income derived by the assessee from the business carried on by it in territories outside the "taxable territories" were not brought to tax under the Act. The expression that "where in respect of a particular source of income, profits and gains" in the proviso to Section 2(11)(i)(a) means the income from a particular source which has been brought to tax under the Act and not which has been taken into consideration for computing the total world income of the assessee. In the context the word "assessee" in the proviso to section 2(11)(i)(a) refers to the person whose income, profits or gains, in respect of a particular source had been once assessed to tax. The word "assessed" in that proviso means subjected to levy or imposition of tax, not computed.

9. For the reasons mentioned above, we agree with the view taken by the High Court. In the result this appeal fails and the same is dismissed with costs.

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