C. A. P. Andiappan

Vs

The C.I.T., Madras and Another

Civil Appeals Nos. 1689 and 1690 of 1968

(K.S. Hegde, A.N. Grover JJ)

09.08.1971

JUDGMENT

HEGDE, J. -

1. These appeals by certificate arise from the decision of the High Court of Madras in Writ Petition Nos. 1030 and 1031 of 1963. Therein the petitioner invoked the extraordinary jurisdiction of the High Court under Article 226 of the Constitution to quash the orders of the respondents wherein he was not granted the abatement he sought to obtain in the assessment years 1959-60 and 1960-61. The High Court came to the conclusion that the appellant is not entitled to any more abatement than that was given by the authorities under the 'Assessment for Relief or for Avoidance of Double Taxation in India and Ceylon' which will be hereinafter referred to as the "agreement". It accordingly dismissed the writ petitions but gave a certificate under Article 133(1)(c) of the Constitution of India certifying that this is a fit case for appeal to this Court.

2. The appellant is a resident in this country. But he is carrying on business in Ceylon. During the assessment year 1959-60 he earned a gross income of Rs. 39,473/- and in the assessment year 1960-61 he earned a gross income of Rs. 39,047/-. He had only a house in India whose annual rental value was Rs. 38/-. The entire assessable income of his was that what he earned in Ceylon. On his income in Ceylon, he was taxed in a sum of Rs. 5,919/- for the assessment year 1959-60 and in a sum of Rs. 6,036/- for the assessment year 1960-61. For the same income, in India, under the Indian Law his tax was computed for the assessment year 1959-60 at Rs. 10,282.62 P. and for the assessment year 1960-61 Rs. 9,521,35 P. The tax payable by him in Ceylon was given as abatement and he was called upon to pay only the balance. The tax payable by him in Ceylon as a non-resident would have been Rs. 9,889/- in the assessment year 1959-60 and Rs. 9,983/- in the assessment year 1960-61. But in view of Section 45(2) of the Ceylon Income-Tax Ordinance, 1932, and also in view of the 'Agreement' he was taxed as if he was a resident in Ceylon.

3. Two questions arising for decision are whether he was not liable to be taxed at all in India and if he was liable to be taxed in India, what should have been the proper abatement given to him.

4. Mr. Ramchandran appearing for the assessee contended firstly that in view of the 'Agreement' entered into between India and Ceylon as provided in Section 49-A of the Indian Income-Tax Act, 1922, he was not liable to be taxed in India at all. In the alternative, he contended that while determining the tax payable by him in this country, the department should have deducted the entire tax that he would have had to pay had he been taxed as a non-resident. For this contention also he relies on the terms of the agreement entered into between India and Ceylon. He does not dispute the fact but for the agreement the assessee would have been liable to pay in this country a tax of Rs.

10,282.62 P. in the assessment year 1959-60 and Rs. 9,521.35 P. in the assessment year 1960-61.

5. In order to consider the correctness of the contentions advanced by Mr. Ramchandran, we will now turn to the relevant provisions of the 'Agreement'. That 'Agreement' was notified in Notification S.R.O. 456, dated February 6, 1957. The portion of the notification which is relevant for our purposes is contained in Article 3 and Column 8 of the Schedule to that agreement. Article 3 reads :

> "Each country shall make assessment in the ordinary was under its own laws; and where either country under the operation of its laws charges any income from the sources or categories of transactions specified in Column 1 of the Schedule to this Agreement (hereinafter referred to as the Schedule) in excess of the amount calculated according to the percentages specified in Columns II and III thereof, that country shall allow an abatement equal to the lower of the amounts of tax attributable to such excess in either country.

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SCHEDULE_____
_Sources of income or Percentage of income which Remarksnature of transaction each country is entitled tofrom which income is charge under the Agreementderived_____
_____ I II III
IV_____8. Any income derived 100 per cent. by Nil by the from a source or the country in other." category of trans- which the income actions not mentioned actually accrues or in any of the fore- arises. going items of the Schedule._____
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6. The first portion of Article 3 says that "each country shall make an assessment in the ordinary way under its own laws". This means to begin with both India and Ceylon were required to assess the assessee in accordance with law prevailing in each of these countries. Thus far it is plain. From this it is clear that the first contention advanced on behalf of the assessee has no basis. Hence it must fail. Now we come to the second part of that article to the extent necessary for determining the second contention. It reads :

> "and where either country under the operation of its laws charges any income from the sources or categories of transactions specified in Column I of the schedule to this Agreement..... in excess of the amount calculated according to the percentages specified in Columns II and III thereof, that country shall allow an abatement equal to the lower of the amounts of tax attributable to such excess in either country."

The language employed in this part of the article is quite confusing. That part of the article has to be read with the schedule. On a proper reading of that provision alongwith the schedule, which means in the present case, Item 8 of the schedule, it appears to us that what it says is :

From out of the amount ascertained under the first part of the article deduct the tax payable by the assessee in the other country in respect of the whole or any portion of the amount brought to tax under the first part of the article. The word 'attributable' in that article merely means 'payable'.

Applying the principle mentioned above to the facts of the present case, the following result is reached. The tax payable under the Indian law as seen earlier was Rs. 10,282.62 P. in the assessment year 1959-60. The tax payable under the Ceylonese law in that year was Rs. 5,919/-. That has to be deducted from the tax computed under the Indian law. The balance alone is leviable. Similarly in the assessment year 1960-61, the tax computed under the Indian law is Rs. 9,521.35 P. and the tax levied under the Ceylonese is being Rs. 6,036/-. In levying tax in this country the tax payable in Ceylone has to be deducted. It was urged by Mr. Ramchandran that what we have to take into consideration is not the actual tax levied in Ceylon but the tax leviable in Ceylon on a non-resident. He says that the deduction given under Section 45(2) of the Ordinance promulgated in Ceylon is only an allowance. Hence the same does not form part of the actual taxation. We are unable to accede to that contention. In considering what taxes are attributable to the tax laws of a particular country, one has to take into consideration all the provisions of the statutes levying tax. In other words for determining the tax due from an assessee, we have not merely to look to the charging section but also to the provisions providing exemptions and allowances. If so read, it is quite clear that the amount of tax attributable to the Ceylonese law is that which was ultimately levied on the assessee.

7. The agreement that was entered into between India and Pakistan is similar in terms with the agreement, with which we are concerned in these appeals, except that in Article 4 therein which corresponds to Article 3 in the agreement before us in the place of the word 'attributable' the word 'payable' is used. But this change does not make any difference in substance. Interpreting that agreement this Court in Ramesh R. Saraiya v. Commissioner of Income-tax, Bombay City-I, (55 ITR 699 : (1965) 1 SCR 287 : AIR 1965 SC 1263 : 35 Com Cas 251 : (1965) 1 SCJ 348.) held that Article IV of the Indo-Pakistan Agreement for the avoidance of Double Taxation clearly shows that each Dominion can make an assessment in the ordinary way regardless of the Agreement. The restriction which is imposed on each Dominion under the Agreement is not on the power of assessment but on the liberty to retain the tax assessed. Nor does the Schedule to the Agreement limit the power of each Dominion to assess in the normal way all the income that is liable to taxation under its laws. The Schedule has been appended only for the purpose of calculating the abatement to be allowed by each Dominion. The ratio of this decision, in our opinion, governs the facts of this case.

8. We also do not see any reason, for treating the appellant in a manner different from other assessees, who are resident in this country.

9. In the result these appeals fail and the same are dismissed. No costs.

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