

Commissioner of Income Tax, Delhi (now Rajasthan)

Vs

Mewar Textile Mills Ltd.

Civil Appeal No. 1503 Of 1970

(K.S. Hegde, P. Jagmohan Reddy, H.R. Khanna JJ)

05.03.1973

JUDGMENT

HEGDE J. -

1. This is an appeal by certificate. It was a long history. The assessment with which we are concerned relates to the assessment year 1943-44. This case along with other case appears to have come in this Court earlier and the matter was remanded to the High court for disposal in accordance with the directions given by this Court. Thereafter the High Court called for supplementary statement from the Tribunal. The Tribunal after setting out the material facts, has referred to following question to the High Court.

"Whether the Tribunal was right in its finding that the assessee would not be liable to tax in respect of the good sold by the assessee on Railway receipts in the names of the consignees to the tune of Rs. 2,73,488 effected in the assessment year 1943-44"

2. The High Court has answered the question in the affirmative in favour of the assessee.

3. The assessee is a dealer in cloth in the Bhilwara town in one of the former Indian States, It sold certain bales of cloth to declares in the then British India. The total price realised in respect of those sales in the assessment year in question was Rs. 2,73,488. The question of consideration is whether the profits earned by those sales are taxable in British India.

4. The Tribunal came to the conclusion that the sales were effected at Bhilwara. The title to those properties sold passed to the purchasers at Bhilwara itself. The goods were put on rail at Bhilwara and the railway receipt were taken in the name of the consignees and sent to them by post. It cannot be disputed that the purchasers become owners of the cloth purchased at Bhilwara itself. This is also the finding of the Tribunal. From this it follows that the sales in question took place outside British India. The only other question that remains to be considered is whether the income was realised in British India. As mentioned earlier, the railway receipts were sent by the assessee to its customers in British India by post. After receiving the railway receipts the purchasers appear to have paid the sale price to a banker who is the banker of the assessee as well. The question for consideration is whether the banker received the money on behalf of the assessee or on behalf of the purchaser. The Tribunal has come to the conclusion that on behalf the banker was the agent of the purchasers and not the agent of the assessee. This again is a finding of fact. The mere fact that the banker was also a banker of the assessee does not go to show that the baker realised the amount as agent of the assessee. The department appears to have failed to established the fact that the banker functioned as the agent of the assessee. If the banker had functioned as the agent of the purchaser, then it cannot

be said that any part of the income was realised in British India Mr. T. A. Ramachandran, learned counsel for the revenue sought to establish from the record that the finding of the Tribunal is factually wrong. That is not a question that we can to into at this state.

5. In the result this appeal fails and the same is dismissed with costs.

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