

SUPREME COURT OF INDIA

Commissioner of Income-Tax

Vs.

Soorajmall Nagarmull

(S Agrawal and G Nanavati JJ.)

28.01.1997

ORDER

1. This appeal, by certificate granted by the Calcutta High Court under Section 66A(2) of the Indian Income-tax Act, 1922, arises out of a reference made by the Income-tax Appellate Tribunal (hereinafter referred to as "the Tribunal") wherein the following question was referred for the opinion of the High Court (page 919) :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the sum of Rs. 1 lakh was income derived from money lent at interest and brought into Pakistan in cash or in kind within the meaning of item No. 5(f) to the Schedule to the Agreement for Avoidance of Double Taxation between India and Pakistan ?"

2. The High Court has answered the said question against the Revenue and in favour of the assessee. It relates to the assessment year 1949-50.

3. The facts, briefly stated, are that the assessee was the managing agent of two sugar mills situated in East Pakistan. The assessee had lent moneys to the managed companies in East Pakistan which was brought from Calcutta to East Pakistan for the business of the managed companies of the

assessee. The Appellate Assistant Commissioner found that the interest that was due to the assessee on funds advanced to the managed companies in Pakistan would be Rs. 1,00,000 and held that Rs. 1,00,000 was the income derived by the assessee from moneys lent on interest and brought into Pakistan in cash or in kind. The Tribunal agreed with the Appellate Assistant Commissioner and upheld the claim of the assessee that the matter fell within the ambit of Clause 5(f) of the Schedule to article IV of India and Pakistan Avoidance of Double Taxation Agreement and it did not accept the claim of the Revenue that it fell under Clause 9 of the said Schedule. Clauses 5(f) and 9 of the said Schedule to the said agreement (page 920) :

"Sources of income or nature of transaction from which income is derived Percentage of income which each Dominion is entitled to charge under the Agreement Remarks 5(f). Income derived from any money lent at interest and brought into a Dominion in cash or in kind. 100 per cent by the Dominion into which the money is brought. Nil by the other.

9. Any income derived from a source or category of transaction not mentioned in any of the foregoing items of this Schedule. 100 per cent by the Dominion into which the income actually accrues or arises. Nil by the other.

4. The High Court after considering the said clauses has observed as under (page 921):

"In Clause 5(f) of the Agreement, Pakistan is entitled to the charge of 100 per cent, of the income. The money had been brought to Pakistan by the managed companies and the assessee derived income from money lent on interest and brought into that Dominion. Pakistan in that case would be entitled to claim 100 per cent, of the income. Clause 9 of the agreement is a residuary clause. The assessee could be brought under this Clause had there been no intention of application of the money borrowed for the management or development of the companies situated in Pakistan.

Thus, from the facts and circumstances of the case, it appears to us that the transaction of moneys, though they had been made in Calcutta, was for a specific purpose, namely, to be diverted to Pakistan for the management or development of their companies situated in East Pakistan and thus entitling the assesses to take the benefit of Clause 5(f) of art. IV of the Indo-Pakistan Ageement."

5. We have heard Shri R. R. Mishra, learned senior counsel for the Revenue, and Shri J. Ramamurthy, learned senior counsel, who was requested to assist the court on behalf of the respondent as *animus curiae*. In our opinion, the High Court has rightly held that Clause 9 was not attracted in this case and Clause 5(f) would cover the present matter. We, therefore, do not find any infirmity in the impugned judgment of the High Court. The appeal is accordingly dismissed. No order as to costs.

6. We record our appreciation for the assistance rendered by Shri Ramamurthy in this matter.