ALLAHABAD HIGH COURT

Commissioner of Income-Tax

Vs

P.V. Kalicharan Jagannath

(Bhargava, J.)

13.05.1960

JUDGMENT

Bhargava, J.

1. The question referred for our opinion is :

> "Whether on the facts and in the circumstances of the case the sum of Rs. 72,637 is liable to be assessed in the assessment year 1946-47 ?"

On some date falling within the previous year 1st April, 1945, to 31st March, 1946, the assessee entered into a contract to supply fruits and bullock carts for transport purposes to the military department. The supply had to be made at Chheoki and at Kanpur. The Kanpur trading account showed a loss of Rs. 13,164 on supplies of Rs. 1,84,583. Thereafter, under the terms of the agreement, the assessee submitted a petition to the military department for a review, whereupon the military authorities, on the 6th of November, 1947, sanctioned the payment of an additional sum of Rs. 72,637. This sum was actually paid to the assessee on the 17th of February, 1948 and the 24th of February, 1948. The question arose whether this sum of Rs. 72,637 could be included in the assessment of the income of the assessee for the previous year relevant to the assessment year 1946-47. The Income-tax Officer, the Appellate Assistant Commissioner and the Tribunal concurrently held that this sum of money must be included in the assessment of the income for the assessment year 1946-47 because this sum was received by virtue of the agreement which had been entered into during the relevant previous year and the work under contract had also been carried out during the relevant previous year. The clause of the agreement, which was relied upon for arriving at this finding, reads as follows :

> "28. No enhancement of rates will be considered in the case of contracts concluded for periods of 3 or 6 months. In the case of annual contracts, revision of rates, i.e., increase or decrease, will be provided for, but no revision will be considered or allowed within six months of the commencement of the contract.
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> Rates for annual contracts will be subject to review, according to the rise or fall of market rates by referees appointed by the Government Reviewing Tribunal for contracts, to

consist of the Deputy Commissioner or his representative, the CRIASC or his representative and another military officer. Three members will constitute a quorum. The contractor will attend to present his case, but will not be a member of the Tribunal. The final recommendation in all cases reviewed shall rest with the officer sanctioning the contract."

The facts mentioned above clearly lead to the inference that, in the first instance, the assessee was paid for the fruits and bullock carts supplied for transport purposes to the military department at the rate mentioned in the agreement itself. The payment at that rate resulted in a loss of Rs. 13,164. For this reason, the assessee presented a petition to the military department for a review under the clause of the contract quoted above. The date of presentation of that petition is not known but the military department made an order on the 6th of November, 1947, sanctioning additional payment. The additional payments were actually made on the 17th of February, 1948, and the 24th of February, 1948. It would thus appear that, under the terms of the contract entitling the assessee to receive payment, the payments received were such that the assessee incurred a loss of Rs. 13,164 and it was only subsequently that the assessee presented a petition for review when the additional sum was allowed and the transaction resulted in a profit. In the appellate order of the Tribunal and in the statement of the case it has been said that this extra amount was sanctioned by the military authorities when the assessee preferred a claim "for enhancement of rates" but the actual facts do not bear out the view that the application presented was in the nature of a claim. When actually dealing with this point, the Tribunal also mentioned this circumstance by stating that the assessee had submitted a "petition" to the military department for a "review". A petition for review and a claim for enhancement are different in nature. A claim for enhancement could have been made if, under the terms of the agreement, the assessee had been entitled to enhancement as of right on the conditions laid down in the agreement for marking such a claim having been satisfied. In this case, it does not appear from the language of the clause of the agreement relied upon that the assessee was entitled to claim any enhancement. All that the agreement provided for was a review which could be either for the purpose of increasing or decreasing the amount payable to the assessee depending on whether the market rates had gone up or had gone down. No right to receive any additional payment as thus conferred by the terms of the agreement. The right, that the agreement conferred, was only to receive payment at the rate prescribed therein. The further provision in the agreement was that such payment was subject to review according to the rise or fall of, market rates. Until there was a review, therefore, the assessee did not become entitled to enhanced rates or any enhanced amount. It was the order of review which conferred that right to receive the enhanced amount. Until that order of review was made, the only right that had accrued to the assessee was to claim the money payable at the rate laid down in the agreement itself. It appears to us, therefore, that, in this case, the extra sum of Rs. 72,637, which is sought to be added to the income of the previous year relevant to the year 1946-47, became payable to the assessee not by virtue of any right conferred by the agreement itself but because of the order passed by the reviewing board acting under the terms of the agreement directing the payment of the amount to the assessee and thus creating a right to this amount in favour of the assessee. No doubt, the amount became payable or was made payable by the review order because the assessee had carried out the contract in accordance with the agreement executed in the previous year in question and he had even completed the performance of the contract within that previous year but the mere execution of the agreement or the performance of the contract did not entitle assessee to receive this money. In such circumstances, we cannot hold that this income arose or accrued to the assessee in the

previous year in question. The income was actually received by the assessee on the 17th of February, 1948, and the 24th of February, 1948, but it may be possible to hold that this income arose or accrued to the assessee on the 6th of November, 1947, when the military authorities sanctioned this payment after the review under the clause of the agreement mentioned above. Since the right to receive the payment did not arise or accrued to the assessee in the previous year in question, it has to be held that this income did not arise or accrued to him during that period and, consequently, this amount cannot be taken into account when assessing the income of the assessee of the previous year relevant to the assessment year 1946-47. The date of sanction by the military authorities, viz., the 6th of November, 1947, as well as the dates of receipt by the assessee, viz., the 17th February, 1948, and the 24th of February, 1948, fall outside the previous year in question and are subsequent to that order.The view, that we have taken above, follows the views expressed by the Supreme Court *in E. D. Sassoon & Co. Ltd. v. Commissioner of Income-tax. Their Lordships of the Supreme Court* in that case to consider the scope and meaning of the words "income arising or accruing". Dealing with this question, their Lordships discussed the various vases in which this expression had came up for interpretation and reproduced the following quotation from the judgment of Mukherji, J., in Rogers Pyatt Shellac & Co. v. Secretary of State for India :"Now what is income ? The term is nowhere defined in the Act.... In the absence of a statutory definition we must take its ordinary dictionary meaning - that which comes in as the periodical produce of ones work, business, lands or investment (considered in reference to its amount and commonly expressed in terms of money); annual or periodical receipts accruing to a person or corporation (Oxford Dictionary). The word clearly implies the idea of receipt, actual or constructive. The policy of the Act is to make the amount taxable when it is paid or received either actually or constructively. Accrues, arises and is received are three distinct terms. So far as receiving of income is concerned there can be no difficulty; it conveys a clear and definite meaning, and I can think of no expression which makes its meaning plainer than the word `receiving itself. The words `accrue and `arise also are not defined in the Act. The ordinary dictionary meanings of these words have got to be taken as the meanings attaching to them. `Accruing is synonymous with `arising in the sense of springing as a natural growth or result. The three expressions accrues, arises and `is received having been used in the section, strictly speaking `accrues should not be taken as synonymous with `arises but in the distinct sense of growing up by way of additional or increase or as an accession or advantage; while the word `arises means comes into existence or notice or presents itself. The former connotes the idea of a growth or accumulation and the latter of the growth or accumulation with a tangible shape so as to be receivable. It is difficult to say that this distinction has been through-out maintained in the Act and perhaps the two words seem to denote the same idea or ideas very similar, and the difference only lies in this that one is more appropriate then the other when applied to particular cases. It is clear, however, as pointed out by Fry, L. J., in Colquhoun v. Brooks (this part of the decision not having been effected by the reversal of the decision by the House of Lords) that both the words are used in contradistinction to the word `receive and indicate a right to receive. They represent a state anterior to the point of time when the income becomes receivable and connote a character of the income which is more or less inchoate."

> Thereafter their Lordships of the Supreme Court proceeded to consider a number of other cases and expressed their own decision in the following words :
> "It is clear therefore that income may accrue to an assessee without the actual receipt of the same. If the assessee acquires a right to receive the income, the income can be said to have accrued to him though it may be received later on its being ascertained. The basic

> conception is that he must have acquired a right to receive the income. There must be a debt owed to him by somebody. There must be as is otherwise expressed debitum in praesenti, solvendum in futuro; See W. S. Try Ltd. v. Johnson and Webb v. Stenton and Others, Garnishees. Unless and until there is created in favour of the assessee a debt due by somebody it cannot be said that he had acquired a right to receive the income or that income has accrued to him."

This principle laid down by the Supreme Court applied to the case before us supports the conclusion at which we have arrived earlier. In this case, during the previous year in question, under the agreement and after having performed the contract, the assessee was only entitled to receive the money at the rate laid down in the agreement itself. The rates were no doubt subject to review but it was not until the review order was passed that any right accrued to the assessee to receive additional payment. The right did not become vested in the assessee on the mere completion of the contract. It had to await creation by the review order. Putting it in the other form envisaged in the decision of the Supreme Court cited above, it cannot be said that in the previous year in question any sum was owed to the assessee by the military authorities in respect of the contract which he had to perform. Once the assessee had been paid at the rates laid down in the agreement, there was no outstanding liability of the military authorities to him and no debt remained payable to him which had to be discharged later. It was not a case where the assessee had become entitled to receive some money but he could not enforce that right because of some condition or because the sum of money had not been ascertained by that time. This was a case where the right to the money itself had not accrued to the assessee and, for holding that income had accrued to him in the previous year, it was necessary assessee must have acquired the right to receive an income in the previous year in question had to be satisfied. In these circumstances, the decision of the Supreme Court in the case cited above also leads to the same conclusion which we have arrived at earlier.Reference was also made before us to two other decisions of the Supreme Court *in Commissioner of Income-tax v. Ahmedbhai Umarbhai & Co. and Commissioner of Income-tax v.* Thiagaraja Chetty & Co. In the former case also this aspect was examined by Mukherjee, J., who was one of the judges constituting the Bench of the Supreme Court, but the views that were expressed by him are in no way difference from the views expressed by the Supreme Court in the subsequent case of E. D. Sassoon & Company Ltd., and others cited by us above. It is, therefore, not at all necessary to discuss that decision. The other case of the Supreme Court reported in *Commissioner of Income-tax v. Thiagaraja Chetty & Co.* is also of no further assistance as, in that case, the only question that camp up for consideration was whether income received as commission by the assessee could or could not be said to have accrued in a particular previous year when that commission had to be computed as a percentage of the profits of the business in which the assessee was employed and such profits of the business could be computed only after the expiry of that previous year. The question, that arose for decision, thus was whether the commission could or could not be subjected to tax when it was no more than a right to receive. The contention that it could not be charged to tax was repelled holding that the arguments in support of this contention involved a fallacy that profits do not accrue unless and until they are computed. The computation of profits, whenever it may take place, cannot be allowed to suspend their accrual. In the case of income when there is a condition that commission will not be payable until the expiry of a definite period or marking up of the account, it might be said with some justification, though that point was not decided, that the income had not accrued, but, in the case before the Supreme Court, there was no such condition. The clauses of the agreement, which were relied upon, were held to mean no more than this that

the commission was to be quantified only after certain reductions had been made and not that the commission would not accrue until the profits had been ascertained. The quantification of the commission was not a condition precedent to its accrual. On these facts and circumstances, it was held that the commission accrued as income even before it was ascertained or quantified. In the case before us the assessee has not relied on the circumstance that the exact amount subsequently paid to him had not been ascertained in the relevant previous year. Reliance is placed on the other circumstance that in the relevant previous year, even the right to receive any money, whether already ascertained or yet to be computed in future, had not accrued to the assessee. Consequently, this decision of the Supreme Court also does not go at all against the view taken by us in the present case.Learned counsel for the Department has, however, drawn our attention to a number of decisions in English cases where it would prima facie appear that a contrary view was taken. It is not necessary to make a reference to all these cases as most of them are dealt with in the latest case cited before us, viz., Severne v. Dadswell : Commissioners of Inland Revenue v. Dadswell, but special mention may be made of two of these cases, viz., but Isaac Holden & Sons Ltd. v. Commissioners of Inland Revenue, and Commissioners of Inland Revenue v. Gardner Mountain & D Ambrumenil Ltd. All these cases related to assessment of excess profits tax duty in England. In the case of Isaac Holden & Sons Ltd. the assessment of excess profits duties was being made in respect of income earned for the chargeable accounting period ended 30th June, 1918. The assessees had done a certain amount of work by June, 1918, and they were paid 1917 tariff plus 10 per cent. up to June 1918. It was then uncertain whether they would receive more at that time as they certainly had no right to demand more. They were paid 20 per cent., that is to say 10 per cent. more, in respect of the whole of 1918; pound for pound of their work they earned another 10 per cent. beyond what had been paid to them in June, 1918. This further 10 per cent. was actually paid to them after 30th June, 1918. Rowlatt, J., on these facts expressed his opinion as follows :

> "If they did more work they got more; if they did less work they got less. It was paid to them... in respect of work in 1918, including the half year. Looking at it merely on those facts, what have I to say ? Did not that arise from the work that they did in their trade in the first half of 1918 ? If not, what did it arise from ? Could it be said that it arose at all from the charity of the Government ? I cannot see what it arose from, unless it arose from the trade in the first half year... I cannot see any sensible way of looking at the facts other than that which leads me to say that these profits arose from the business in the accounting period, and, therefore, that the decision of the Commissioners was right. As the face which shows that the books were wrong has occurred after they have been closed, I do not see any difficulty in reopening them and putting them right."

Relying on these views expressed by Rowlatt, J., it was urged before us that, in the present cases, the extra payment, which was received by the assessee, was on account of the work of performance of the contract which was completed by the assessee in the relevant previous year and, consequently, it should be held that income to the extent of this extra amount arose or accrued to the assessee in the relevant previous year. It appears to us that it would be dangerous for us to apply the principles laid down by Rowlatt, J., in that case to the case before us as that decision of Rowlatt, J., was given on the provisions of the Excess Profits Duty Act as applicable in Britain and not on the provision which are contained in the Indian Income-tax Act. We may, in this connection, refer to the principle laid down by the Supreme Court in *Commissioner of Income-tax v. Vazir Sultan & Sons,* cautioning the courts in India when relying on decisions

given in England. The Supreme Court held :

> "While considering the case law it is necessary to bear in mind that the Income-tax Act is not in pari materia with the British income-tax statutes, it is less elaborate in many ways, subject to fewer refinements and in arrangement and language it differs greatly from the provisions with which the courts in England have had to deal. Little help can therefore be gained by attempting to construe the Indian Income-tax Act in the light of decisions bearing upon the meaning of the income-tax legislation in England. But on analogous provisions, fundamental concepts and general principles unaffected by the specialities of the English income-tax statutes, English authorities may be useful guides."

Under the English Act, which was being considered, excess profits duty was payable on computation of profits arising from a trade or business in each chargeable accounting period. The language which was used in the Act was open to two different interpretations. The words "in each chargeable accounting period" could either quality the word "arising" or the words "trade or business". If the expression "in each chargeable accounting period" could be held as qualifying the words "trade or business", the only requirements would be that profits should arise from a trade or business as carried on during a particular chargeable accounting period. On the other hand, if the expression "in each chargeable accounting period" could be held to qualify the word "arising", the point for determination would be as to whether the profits arose in the chargeable accounting period in question or not. It may be noticed that Rowlatt, J., in his judgment, did not really discuss the question as to the time when the profits arose. The question was decided by Rowlatt, J., on the basis the profits arose out of the business which had been carried on in the chargeable accounting period in question. In fact, in giving the decision, Rowlatt., J., very clearly put this position by posing two questions as follows :

> "Looking at it merely on those facts, what have I to say ? Did not that arise from the work that they did in their trade in the first half of 1918 ? If not, what did it arise from ? Could it be said that it arose at all from the charity of the Government ?"

Thereafter he proceeded to hold that :

> "I cannot see what it arose from, unless it arose from the trade in the first half year."

The real basis of the decision of Rowlatt, J., was that he had to determine during which period was the business carried on from which the profits in question had arisen and not the question as to whether the profits had arisen during the relevant accounting period or not. That this was the real aspect considered by him clarified subsequently by Lord Simon in Commissioners of Inland Revenue v. Gardner Mountain & DAmbrumenil Ltd. Explaining the case of Isaac Holden & Sons Ltd. v. Commissioners of Inland Revenue, Lord Simon said that :

"Rowlatt, J., held that the total amount of commission must be included in arriving at the profits of the taxpayer for the year 1917-18. In other words, the taxpayer was treated as earning, by his work in that year, all the profits arising from the business of the year, even though there was no legal right to part of them until the agreement was afterwards made."

The decision of Rowlatt, J., put by Lord Simon in this language, emphasises the fact that what Rowlatt, J., did decide was that the profits arose from the business of the accounting year in question and the income was treated as earned by the work of the assessee in that accounting

year. The point, that was thus considered and decided, was only whether the profits had or had not arisen from business of that particular year though the profits were received subsequently as a result of enhancement of rates subsequent to that relevant accounting year. In that case, therefore, the question, when the right to receive the profits accrued, did not come up for consideration at all. What had to be considered was whether the income or profits arose from any business and, further, what was the period during which the business had been carried on for the purpose of enabling those profits to arise. Under the Indian Income-tax Act, the position is different. We have already quoted above from a decision of the Supreme Court where it was held that in such a case the basic conception is that a right to received the income must have accrued in the previous year in which that income is sought to be included for assessment. This was clearly held because the language of section 4 of the Indian Income-tax Act differs from the language of the Excess Profits Duty Act in England. Under the Indian Income-tax Act, the income has to be included in the total income if the income arises or accrues to the assessee in the pervious year for which proceedings for assessment are being taken. The point to be kept in view is that section 4 does not make profits chargeable merely on their arising or accruing from business but it requires that profits should have accrued or arisen as income to the assessee and income can be held to arise or accrue to an assessee only when the assessee obtains a right to receive that income and that is precisely what the Supreme Court held in E. D. Sassoon & Company Ltd. v. Commissioner of Income-tax. It was held that, if an amount is to be taxable as income, the basic conception to be kept in view is that the right to receive must come into existence in the relevant previous year. It may be mentioned that all the other English cases, that were referred to and to which our attention was invited by learned counsel for the Department, also related to cases arising out of assessment of excess profits duty. The only case relating to assessment of income-tax in English law was the case of Johnson v. W. S. Try Ltd. In that case the decision does not support the contention put forward on behalf of the Department, that even under the income-tax must be held to be income arising or accruing in the previous year even though the right to receive profits may not have accrued or arisen in that year merely because profits arise from some business carried on during that previous year. In fact, to whatever extent assistance can be taken from this decision in Johnson v. W. S. Try Ltd., it would only support the conclusion that we have arrived at. It may be mentioned that even the language of the English Income Tax Act, as contained in Schedule D, is not identical with the language of section 4 of the Indian Income-tax Act, but there is no material difference because in Schedule D of the English Income Tax Act also income becomes chargeable to tax when it is received or arises or accrues to the assessee. No English case was, however, brought to our notice in which the principle now urged by learned counsel for the Department might have been accepted when dealing with assessment of income under Schedule D of the English Income-tax Act.For these reasons, we answer the question referred to us in the negative. The assessee will be entitled to the costs of this reference which we fix at Rs. 400. The fee of learned counsel for the Department shall also be assessed at the same amount.
Question answered in the negative.