ALLAHABAD HIGH COURT

Ram Lal Bechairam

Vs

Commissioner of Income-Tax

(Malik, J.)

07.03.1945

JUDGMENT

Malik, J.

1. The facts of this case are very simple. Messrs. Ram Lal Bechai Ram, a trading undivided Hindu family, had their head office together with a cloth shop at Semohi in the Jaunpur district in British India. They maintained also a branch cloth shop at Bhadohi in the Benares State. They were the residents of Jaunpur in British India. In their books at Bhadohi the firm maintained an account in the name of their own Semohi shop. Conversely in the Semohi books they had similarly an account in the name of the Bhadohi shop. From time to time goods were sent from one shop to the other. In the year in question, that is, in the assessment year 1938-39 it was found that cloth worth Rs. 65,203-13-9 was sent from the Bhadohi shop to the Semohi shop. The invoice price of these goods was not, however, their cost price to the Bhadohi shop but is included a profit margin equal to the profit that the Bhadohi shop would or might have derived from its customers in Bhadohi had the cloth been actually sold by that branch to customers in Benares State. In other words its own head branch in British India was notionally treated by the Bhadohi branch as its trading customer in the ordinary course of business. The Semohi shop remitted to its Bhadohi branch in the course of the same year sums amounting to Rs. 59,175-13-0 only, leaving a credit balance of Rs. 6,028 in favour of Bhadohi in the Semohi books. The Income-tax Officer accepted the Semohi books as correct and assessed the assessee as regards the income derived from the sale of goods at Semohi on the basis of the entries made in the account books. The Income-tax Officer, however, did not accept the Bhadohi books to be correct and made a best judgment assessment and came to the conclusion that the total profit earned by the Bhadohi shop was Rs. 9,573. As the whole of the invoiced purchase price of Rs. 65,203-13-9 had not been transmitted by the Semohi shop to the Bhadohi in the course of the year, the Income-tax Officer held that the balance of Rs. 6,028 must be taken to be a profit which had accrued without British India and, in the sense that as goods or money it was still in British India, had been brought into British India within the meaning of Section 4(2) of the Indian Income-tax Act (XI of 1922) before its amendment by the Indian Income-tax Amendent Act (VII of 1939).

After having held that Rs. 6,028 out of the assessed profits of Rs. 9,573 was thus brought into British India, the Income-tax Officer went on to hold that the assessee had not given him any satisfactory information as to where he had kept Rs. 3,545, the balance of the assessed profit, after allowing for the above Rs. 6,028. In the absence of any information by the assessee the Income-tax Officer held that he was justified in presuming that the whole of the profit earned outside British India was received in British India. The Income-tax Officer thus assessed the assessee on the whole sum of Rs. 9,573 which, he held, was the profit earned outside British India. The assessee appealed against this assessment under Section 30 of the Act. The Appellate Assistant Commissioner by his order dated March 25, 1942, held that no money had been transmitted from Bhadohi to Semohi, that only goods had been sent from one shop to the other and that the sum of Rs. 6,028 represented nothing but the price of goods which remained unpaid by the Semohi shop to the Bhadohi shop. Relying on the decision of their Lordships of the Privy Council in Commissioner of Income-tax, Bombay v. Ahmedabad Advance Mills Ltd., he held that the amount was not taxable. He allowed the assessees appeal and directed that the whole of the sum of Rs. 9,573 should be excluded from assessment. The Income-tax department appealed against this decision before the Tribunal which held that the goods brought into British India were "stock-in-trade" which was meant to be resold at the first available opportunity, that they were not a capital asset and the decision of the Privy Council in the case of the Ahmedabad Mills was thus distinguishable. The Tribunal allowed and restored the order of the Income-tax Officer and held that the sum of Rs. 9,573 was taxable under Section 4(2) of the Act as profits made outside British India and brought into British India. The assessee then applied under section 66(1) of the Act for the statement of a case to this Court and formulated a question of law which reads as follows :-

> "Whether, in the circumstances of the case, the Income-tax Officer has rightly included in the income liable to tax the amount of Rs. 9,573 on account of profits earned at Bhadohi in Benares State on the ground that though the said income accrued or arose in Benares State it was received or brought into British India within the meaning of section 4(2) of the Act."

This application was opposed by the department, but on October 24, 1942, the Income-tax Appellate Tribunal referred to us the following question for opinion :-

> "Whether, in the circumstances of the case, the Income-tax Officer rightly included in the income liable to tax the profit on the sale of goods priced at Rs. 65,203-13-9 and the estimated profit of concerned sales to Semohi on the ground that though the said income accrued or arose without British India it was received or brought into British India within the meaning of Section 4(2) of the Act, as it stood before its amendment in 1939."

We shall deal with the second part of the question first which relates to the estimated profit of concealed sales to Semohi. The question itself is not very clear, but from what we can gather

from reading the various orders, it appears that this part of question relates the sum of Rs. 3,545 which was the balance after deducting Rs. 6,028 from Rs. 9,573 which was the total profit estimated by the Income-tax Officer as having been earned by the Bhadohi branch outside British India. The only question that arose in connection with this sum of Rs. 3,545 was whether, in the absence of any materials on the record, the Income-tax Officer was entitled to assume that it was a profit earned outside British India which was brought into British India. Learned counsel appearing for the department has argued that there is a presumption that a man keeps all his money at the place where he resides and in the absence of anything to the contrary, the Income-tax Officers presumption was justified under Section 114 of the Indian Evidence Act which reads as follows :-

> "The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case."

It is not said on behalf of the Income-tax department that there was any evidence on which the department could find that this sum of Rs. 3,545 was actually brought into British India, and we do not consider that there is any presumption either of fact or of law that for income-tax purposes a man carries all his money with him wherever he goes. The assessee knew that, if he brought this money into British India, he would be liable to pay income-tax on it in British India. He was already subject to income-tax within the Benares state. In the absence of any evidence, direct or circumstantial, the Income-tax Officer could not assume that this amount was brought into British India and could not assess income-tax on it under section 4(2) of the Act, as it stood before its amendment in 1939. This is our answer to this part of the question. The other part of the question which remains for decision reads as follows :-

> "Whether, in the circumstances of the case, the Income-tax Officer rightly included in the income liable to tax the profit on the sale of goods priced at Rs. 65,203-13-9 on the ground that though the said income accrued or arose without British India it was received or brought into British India within the meaning of Section 4(2) of the Act, as it stood before its amendment in 1939."

There is no difficulty in answering the first part of this question that the Income-tax Officer rightly included in the income liable to tax the profit on the sale of goods priced at Rs. 65,203-13-9. These goods, though brought from Bhadohi, were actually sold by the Semohi shop and the whole of the price was received in Semohi and there could be no manner of doubt that the Income-tax Officer was entitled under section 4(1) of the Income-tax Act, as it stood before its amendment in 1939, to tax the same as profits received in British India. The second part of the question, if we may say so without meaning any disrespect to the Tribunal, really amounts to false demonstration. The income on the sale of the goods invoiced from Bhadohi to Semohi at Rs. 65,203-13-9 is certainly taxable but as we have already said, it is taxable not under section

4(2) but under section 4(1) of the Act. The reason to our minds is obvious. The Bhadohi shop and the Semohi shop were not separate legal entities. They belonged to the same assessee firm, Ram Lal Bechai Ram, an undivided Hindu family. These goods were purchased by the firm at a certain price none the less so, because they were taken in the first place to the Bhadohi shop and kept there. It must be admitted that the Bhadohi shop must have incurred some expenses in warehousing the goods and a certain apportioned amount of the overhead charges of the Bhadohi branch must be held attributable to them. That would be in proportion to the quantity of these goods to the quantity of the total turnover at Bhadohi. When these goods were sent from Bhadohi to Semohi and a margin of profit was added on to the price in the invoice could it be said that the Bhadohi shop earned this profit from the Semohi shop and that the cost price to the Semohi shop was the invoice price at which goods were received by it from its own Bhadohi branch, and that thus the profit earned in Semohi was only the difference between the sale price at Semohi and the invoice price at which the goods had been received from Bhadohi. We think it is impossible to hold that a man can make a profit out of himself. If that were possible, then all that a businessman in British India need have done to escape payment of income-tax under Section 4 before the amendment of 1939 was to have a branch outside British India and when sending goods from the branch shop to the shop in British India to include in the invoice price such a margin of notional profit, which would make it certain that, in selling the goods in British India, he would make no profit, even though in fact his firm as a whole derived a large profit from the entire transaction. We put a question to learned counsel for the department to the effect that, if the assessee had spent Rs. 10,000 on the purchase of cloth at Bhadohi and had mentioned the invoice price as Rs. 15,000 when sending the cloth from Bhadohi to Semohi and had then sold it at Semohi for Rs. 13,000 could he be said to have made a profit of Rs. 3,000 or was he to be said to have incurred a loss of Rs. 2,000. The answer of course was that he had made a profit of Rs. 3,000. Even though the price of the cloth which was sent from Bhadohi to Semohi may have been paid from Bhadohi, the fact remains that the whole of the sale price of the cloth, the invoice price of which was Rs. 65,000 odd, was received in British India or would have been received in British India as soon as the goods were sold. The Income-tax Officer probably taxed the difference between the invoice price or Rs. 65,203-13-9 and the sale price in British India. But to our mind the amount taxable should have been based on the cost price, which would include, as we have already said, the price paid for theses goods by the assessee, together with the apportioned expenses incurred by him for warehousing them, plus a certain amount for overhead charges at Bhadohi in proportion to the relation that these goods bore to the total turnover at Bhadohi. The profit or gain would be ascertained by deducting the whole of this sum from the price for which the goods were sold and in case any portion of the goods were not sold, by taking the difference in the stock as on the opening day and the last day and including that in the profit and loss account prepared to show the amount of the net profit of the assessee earned in British India under section 4(1) of the Income-tax Act. In other words our view is that it could not be said that the margin of profit added on at Bhadohi when the goods were sent to British India could be treated as profit earned outside British India. The whole of the profit, ascertained as above, which accrued to the assessee by the sale of these goods must be deemed to be profit

earned in British India, and these goods could not be taken separately as an isolated transaction but must be treated as part of the whole business of the firm spreading over the whole year. In the view that the department has taken of this case all that was necessary for the assessee was to remit the sum of Rs. 6,028 within the year to the Bhadohi shop to escape assessment for this amount. In an open and current account kept for the facility of accounting between the two shops belonging to the same proprietor, it is a matter of chance as to what is the balance that may remain due at any given moment from one to the other. It may vary from time to time and from day to day, and it is always a matter within the discretion of the head office when, if at all, the balance shall be adjusted. It does not even follow that it will ever be adjusted, since there could be no legal obligation on the Semohi branch ever to transmit money to its own Bhadohi branch. This type of business between one branch firm and another, even though they belong to the same proprietor, is not at all uncommon and, in our view, it is not the book balance that nominally remained due on March 31 that is the determining factor. We asked learned counsel for the department whether he was in a position to say that this amount was not transmitted from Semohi to Bhadohi on April 2. His answer was that the he had no knowledge about it. It is true that according to the system of accounting between the two branches, the head office at Semohi did formally enter in its books as acknowledgment of its "liability" to pay this amount to its own branch at Bhadohi. But how the assessee, for the purposes of his accounts, keeps his books is not the test by which the liability to tax is concluded. We have to look to the substance of the transaction and, to our minds, we cannot accept the Bhadohi shop and the Semohi shop as two different legal entities, one able to earn a profit from the other. Nor can we accept it that there was any legal liability on the part of the Semohi shop to pay the amount to its Bhadohi branch. In the view that we have taken of this matter, our answer to the question must be that, in the circumstances of the case, the Income-tax Officer rightly included in the income liable to tax the profit on the sale of goods invoiced at Rs. 65,203-13-9. He was, however, entitled to do it only under section 4(1) of the Income-tax Act in the manner indicated by us above and not on the ground that, thought the said income accrued or arose without British India, it was received or brought into British India within the meaning of Section 4(2) of the Act, as it stood before its amendment in 1939.

In the view that we have taken of the case we think that the department is not entitled to its costs and that the parties should bear their own costs. We asses the fee of the counsel for the department at Rs. 200 and give him six weeks within which to file a fee certificate. A copy of this judgment will be sent to the Tribunal and the Commissioner of Income-tax under the seal of the Court and the signature of the Registrar.

Reference answered accordingly.