

BOMBAY HIGH COURT

The Commissioner of Income-Tax

Vs

Sarupchand Hukamchand

(J.W.F. Beaumont, C.J. Barlee, J.)

03.10.1930

JUDGMENT

J.W.F. Beaumont, C.J.

1. This is a reference under Section 66(B) of the Indian Income-tax Act, and the question raised by the Commissioner is, whether the remuneration or a part thereof (and if a part thereof which part) earned by the assesses as the secretaries, treasurers and agents of the company under the terms of the agreement Exhibit A is liable to be assessed for payment of income-tax and super-tax in British India.

2. The facts shortly are that the assesses are a firm carrying on business in Bombay, Calcutta, Indore and other places in India. They act as general agents for a company known as the Hukamchand Mills, Ltd. which is a company registered at Indore, and the terms of their service are regulated by the agreement made in Indore, which is Exhibit A. Under this agreement the assesses are appointed secretaries, treasurers and agents. By Clause 4, it is provided--The said firm shall be further entitled to charge and be paid commission at the rate of one per cent. on the gross sale proceeds of all cloth produced by the Mill in consideration of their services as the Selling Agents of the Company. The said commission of one per cent, payable to the said firm on the sale proceeds of the cloth as aforesaid shall be exclusive of any commission brokerage or any other remuneration they may have to pay to other dealers, merchants or agents for the sale of the cloth which shall be borne and paid by the said Company.

3. So that, under that clause, the assesses are entitled to a commission of one per cent, which was subsequently increased to one and a half per cent, on the gross sale proceeds of all cloth produced by the mills of the company wherever situate. Then, under Clause 10, it is provided--The said firm shall at any time hereafter, under the request in writing of the Directors for the time being of the said Company but at the sole costs and charges of the said Company open and maintain in Indore or/and Bombay or/and elsewhere (so long as the said Directors shall not by

notice in writing require them to close the same but no longer) a shop suitable for the sale by retail of the cloth and yarn manufactured at the said Company's mill and shall from time to time out of the cloth and yarn manufactured at the said Company Mills, supply the said shop with so much cloth and yarn as there shall be a demand for. The said firm shall, with the assistance of the Directors, have the general management of the said shop and of the business transacted therein and the engagement and discharge of all clerks and servants required in the said shop. The salaries of such clerks and servants shall be paid by the said company.

4. Then Clause 11 provides--The said firm shall keep books of account in Indore for the use of the said Company and shall prepare and keep or cause to be prepared and kept therein, an account of all sales, proceeds of sale, wages and other receipts and disbursements taken paid or made by the said firm for and on behalf of the said Company....and then Clause 16 provides--The said firm shall be at liberty to retain reimburse and pay themselves out of the moneys of the Company all preliminary charges and expenses legal or otherwise of and incidental to the promotion formation registration and establishment of the Company and all the costs and expenses of providing and maintaining offices for the Company its successors and assigns the salaries of clerks servants or workmen and all money expended by them on behalf of the Company its successors and assigns and all sums due to the said firm for commission or otherwise.

5. Under that clause it would be competent, in my opinion, for the assesses in managing the shop, which was subsequently opened in Bombay, before handing over to the company the proceeds of the sale of the cloth at that shop, to deduct the commission payable, and as this commission is payable on the sale of cloth and not on the profits, it is easy to arrive at the amount.

6. From the case stated it appears that the company started a shop in Bombay which was managed under the agreement by the firm, and sales of cloth were effected at that shop, and the Commissioner of Income-tax has assessed the assesses to tax in respect of the remuneration earned by them on the sales effected by the Bombay shop.

7. The only question raised in this reference is whether the asses-sees are liable to be assessed on the commission payable to them in respect of the sales of cloth at the Bombay shop. Now, as I pointed out, under Section 16, the assesses might have deducted the commission on the sales of the shop so as to make all moneys payable in respect of that commission payable to them in Bombay. Of course, if they had done that the income would have been received in British India and no question would have arisen. It is admitted by the Advocate General that in fact they did not do that. The money was all sent to Indore and the commission was paid there. The question that we have to determine is whether the commission payable to the assesses in respect of the

sale of cloth by the Bombay shop is income which accrues or arises in British India within the meaning of Section 4 of the Indian Income tax Act. The fact that the commission might have been segregated and paid in British India seems to me to have an important bearing upon the question.

8. Mr. Coltman on behalf of the assesses says that the right to commission accrues or arises under the agreement and nothing else. He says that the whole of the proceeds of sale from the Bombay shop and any other shop owned by the company are paid in the normal course of business to the company in Indore and his clients get a commission out of the whole amount and therefore the commission accrues or arises in Indore, which is outside British India.

9. On the other hand, the Advocate General says that the nature of the business carried on by the assesses, so far as it is material for the present purpose, is that they are carrying on the business of selling agents for the shop in Bombay, that they sell goods in Bombay, and they get a commission in respect of the proceeds of the sale, and that therefore their commission accrues and arises in Bombay. There is not, I think, any authority which is of much assistance. Mr. Coltman presses us with the decision of this Court in *Commissioner of Income-tax v. Bansilal Motilal* (1930) 32 Bom. L.R. 671 in which it was held, the question there being whether the interest received by the assessee at Hyderabad on Government of India Promissory Notes enforced for payment at Hyderabad treasury can be deemed to accrue in British India, that the words "accruing or arising" were more extensive, than "received" and that you have to look to the source from which the income arises. That case is quite different upon the facts from the present case, and does not help us to determine the source of the income with which we have to deal. I think this case is near the line, that there is a good deal to be said for the arguments on both sides, but upon the whole I prefer the arguments of the learned Advocate General. I think that this income being commission upon sales made in Bombay does accrue or arise in British India, and none the less so, because as matter of practice between the parties it is paid in Indore, and the ultimate right to it arises under an agreement made in Indore.

10. The figures are agreed and accordingly in my judgment the question asked by the Commissioner must be answered by saying that the remuneration amounting to Rs. 34, 658 earned by the assesses as commission upon sales at the Bombay shop of the company under the agreement Exhibit A, is liable to be assessed for income-tax and super-tax in British India.

11. Costs payable by the assesses on the Original Side scale.

Barlee, J.

12. I agree. The assesses are a firm who act as selling agents for a mill company situated in

Indore outside British India, and by the terms of their agreement they are entitled to a percentage on the gross sale value of all sales. In accordance with the same agreement a shop was established in Bombay for the sale of cloth produced by the Mill, and this shop was managed by the assesses.

13. The question which we have been asked to decide is whether the remuneration or a part thereof earned by the assesses as the secretaries, treasurers and agents of the company under the agreement is liable to be assessed for payment of income-tax and super-tax in British India.

14. The governing section is Section 4(1), This says:--this Act shall apply to all income, profits or gains, as described or comprised in Section 6, from whatever source derived, accruing or arising, or received in British India....

15. We have to see whether the commission of one and a quarter per cent, earned by the assesses on the sale of goods through the Bombay shop "accrued, arose or was received" in British India. The words 'accruing or arising' have been the subject of interpretation recently in this Court in Commissioner of Income-tax v. Bansilal Motilal (1930) 33 Bom, L.R. 671, when it was decided that they indicate 'some origin or source of growth for the income in question' and that the words are used with reference to the place from which the income is derived and that the use of the word 'source' in the expression 'from whatever source derived' confirmed that view. It is conceded, therefore, that we have to find the source of the income earned by the assesses through the Bombay shop and two theories have been put before us. Mr. Coltman has argued that we must look for the source of this income in the agreement, since without the agreement between the assesses and the company they could not have recovered anything at all. On the other hand the learned Advocate General asks us to look to the shop in British India and the sales there as a true source. It seems to me that the latter view is the one which we must accept. Of course, the term 'source' can be interpreted in several ways, in the same way as the word 'cause' can be defined as the material cause, the final cause or the immediate cause and so on. But here I am of opinion that we must look to the material source of the income and not to what perhaps may be called a metaphorical source. In fact the shop was the actual source of the gross profits of the sales, and as the whole must contain the part, it seems to me that the source of the profits earned by the assesses under the agreement was the Bombay shop and must be looked upon as arising in British India.

16. For these reasons I agree with the answer proposed by the learned Chief Justice.