

# **BOMBAY HIGH COURT**

Rajkumar Mills Ltd

Vs.

Income-Tax Appellate Tribunal

Misc. Application No. 43 of 1957

(Tendolkar and S.T. Desai, JJ.)

30.09.1957

## **JUDGMENT**

### **Tendolkar, J.**

1. The assessment proceedings out of which this petition for a writ arises have had a chequered career, and what is sought to be challenged on this petition now is an order made by the Appellate Tribunal under Section 66 (5) of the Income-tax Act after the High Court had answered certain questions referred to it.

2. The assessment year with which we are concerned is the year 1942-43 and the accounting year was the calendar year 1941. The assessee company carried on business in the Holkar State at Indore and was assessed in the status of a non-resident company. During the accounting year it had sales of cloth amounting to Rs. 50,33,183/- and the company itself supplied to the Income-tax Officer an analysis of these sales which the Income-tax Officer by his order accepted. It is essential to set out that analysis in order to understand the contentions of the parties that arise for determination of this writ petition :

It will be noticed that in this table the total sales under items V and VII are Rs-6,02,911/- and Rs. 4,21,873 respectively. Both these items were subjected to tax by the Income-tax Officer on the basis that the income accrued in British India and, therefore, Section 4 (1) (c) was attracted. Indeed, these two items were included in the first seven items in the statement given above, the total of which is Rs. 12,74,751/- and these entire sales were held to be taxable under Section 4 (1) (c) on the basis of accrual. The I. T. O. also brought to tax the two amounts of Rs. 9,57,687/- and Rs. 1,37,470/- appearing in the third and fourth columns of the statement under item VIII as receipts in British India under Section 4 (1) (a). Against this order of the Income-tax Officer, there was an appeal to the A. A. C. The appeal was unsuccessful. There was a further appeal to the Tribunal. That again was unsuccessful and out of the order of the Tribunal the two following questions were referred to this Court on the 25th of November, 1950 :

- (1) Whether the profits on the sale of goods to the Government of India accrued or arose in British India?
- (2) Whether the profits on the sale of goods through the company's paid employees in British India accrued or arose in British India?

It will be noticed at once that these two questions relate to the two amounts of Rs. 4,21,873/- and Rs. 6,02,911/- respectively. The reference was heard by the Chief Justice and myself on the 29th August, 1951 and by our judgment we held that the sales of Rs. 4,21,873/- took place at Indore and the sale proceeds were received at Indore, but the statement of the case did not enable us to determine where the contracts were accepted. We then pointed out the importance of knowing the place where the contracts were entered into and referred the matter back to the Tribunal to dispose of the matter on the basis of our judgment. With regard to the sum of Rs. 6,02,911/- we held that the Tribunal had omitted to take into account various documents and we directed the Tribunal to take them into account and to decide the matter themselves. In the course of the judgment of the Division Bench delivered by the learned Chief Justice, it was also pointed out that the I. T. O. had found that a sum of Rs. 5,80,069/- out of the sum of Rs. 6,02,911/- had been actually received in British India and this fact appeared to have been completely overlooked by the Tribunal. We, therefore, directed the Tribunal that they should take this fact into account upon remand. Against this judgment of the Division Bench, there was an appeal to the Supreme Court\* and their Lordships of the Supreme Court were pleased to hold that this Court was in error in requiring the Tribunal to dispose of the matter themselves instead of asking for a supplemental statement of the case; they also held that the direction that this Court had given in regard to the sum of Rs. 5,80,069/- was "uncalled for". Thereafter a supplemental statement was submitted by the Tribunal to this Court and the reference was heard again by the same bench; and on the 5th of September, 1956 we answered both the questions referred to us in the negative. The order of the High Court was forwarded to the Tribunal for disposal of the matter in conformity with the judgment as required by Section 66 (5) of the Indian Income-tax Act.

\*See the judgment reported as *Rajkumar Mills v. I. T. Commissioner*<sup>1</sup>, -Ed.

3. When the matter went before the Tribunal, it was contended on behalf of the Department that as these two items of Rs. 6,02,911/- and Rs. 4,21,873/- had been brought to tax under Section 4 (1) (c), the question of applying Section 4 (1) (a) to a part of the sum of Rs. 6,02,911/- which was received in British India as shown in the statement we have set out above had not been considered by the I. T. O., the A. A. C or the Tribunal, although the I. T. O. had in fact found that a sum of Rs. 5,80,069/- had been received in British India; and the Department, therefore, submitted to the Tribunal that the question of subjecting to tax any portion of the income arising from the sales of Rs. 6,02,911/- on a receipt basis under Section 4 (1) (a) should be referred to the Income-tax Officer. The Tribunal upheld this contention of the Department and, therefore, they sent the matter back to the Income-tax Officer to revise the assessment according to law in respect only of the sum of Rs. 6,02,911/- after considering whether Section 4 (1) (a) was

applicable in respect of the sum of Rs. 5,80,069/-. The Tribunal further stated that this matter may not have been properly examined in the first instance by the Income-tax Officer at the time of making the assessment and he should, therefore, reconsider the matter. It is against this order that this writ petition has been presented and the contention of Mr. Kolah is that the Tribunal acted without jurisdiction in making this order.

4. Section 66, Sub-Section (5) provides as follows :

<sup>1</sup> AIR 1955 SC 628

"The High Court upon the hearing of any such case shall decide the questions of law raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded and shall send a copy of such judgment under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as necessary to dispose of the case conformably to such judgment."

It is clear, therefore, that what the Tribunal is required to do after the questions have been answered by the High Court is to "pass such orders as are necessary to dispose of the case conformably to such judgment". Mr. Kolah contends that the requirement of this sub-section merely enables the Tribunal to make a formal order and the Tribunal cannot do anything more. Mr. Kolah's contention is that since the High Court held that in respect of both the items of Rs. 6,02,911/- and Rs. 4,21,873/- this Court had held that they were not taxable under Section 4(1) (c), the Tribunal should simply have deleted these items from the order of assessment and done nothing more. It appears to us that such a superficial view of this sub-section is not warranted by the words of the sub-section which are "shall pass such orders as are necessary to dispose of the case." The words that follow namely, "conformably to such judgment" are merely words of limitation which prescribe that whatever the Tribunal does, they must of necessity conform to the judgment of the High Court; but subject to conforming to the judgment of the High Court, the Tribunal has to pass such orders as are necessary to dispose of the case, and the nature of the order that the Tribunal can pass in a given case must depend on the circumstances of the case, the questions referred to the High Court and other relevant factors; and, in our opinion, it is not correct to describe the order that a Tribunal can pass under this sub-section merely as a formal order. To take only an obvious case, if a person has been assessed in the status of a resident and the question referred to the High Court was whether there was any evidence to hold that the person was a resident and the High Court determined that there was no such evidence, and, therefore, in order to give effect to the judgment of the High Court the assessee has to be treated as a non-resident, the Tribunal obviously may have to re-assess the assessee on the footing of being a non-resident. Therefore, in each case, it is necessary to consider what order is within the competence of the Tribunal and the matter cannot be disposed of merely on the plea that only a formal order can be passed by the Tribunal under this sub-section.

5. Then Mr. Kolah says that what the Tribunal has done is in effect to circumvent the judgment

of the Supreme Court to which we have already drawn attention. In that judgment, as we have already pointed out, their Lordships held that the direction which the High Court had given in regard to the sum of Rs. 5,80,069/- was "uncalled for". No doubt, the result of this decision of the Supreme Court is that the direction given by this Court must be treated by the Tribunal as not given at all, and, therefore, the Tribunal must not act upon any such direction. That part of our judgment which deals with this direction may indeed be treated as not forming part of it any more for the purpose of giving effect to our judgment; but it does not follow therefrom that what the Tribunal is now seeking to do is to circumvent the judgment of the Supreme Court. Their Lordships of the Supreme Court were concerned in determining whether the High Court had jurisdiction to give that direction and not whether the Tribunal, when the questions referred to the High Court were determined in the manner in which they have ultimately been determined, have to consider whether Rs. 5,80,069/- were liable to be taxed on the basis of receipt. We do not think, therefore, that the order of the Tribunal can be challenged on the ground that it is an attempt to circumvent the judgment of the Supreme Court.

6. Then Mr. Kolah argues that the powers of the Tribunal on appeal are limited, as was held in the case of *Motor Union Insurance Co. Ltd, v. Commissioner of Income Tax, Bombay*<sup>2</sup>, per Kania J., as he then was, at page 282 (of ITR): (at p. 290 Of AIR), and in *Puranmal Radhakishan and Co. V. Commissioner of Income Tax*<sup>3</sup>, which is a decision to which I was a party. These two decisions have been followed by this Court in several unreported cases and what we have laid down is that the Tribunal cannot base its decision on appeal on any fresh grounds. What the Tribunal primarily is entitled to do is to determine the objections raised by the appellant before it, and the word "thereon" in Section 33 limits the jurisdiction of the Tribunal to the grounds of appeal raised before it. This, however, does not preclude the Tribunal from determining the matter on the basis of facts which have been canvassed before the I. T. O. and the A. A. C, on which a finding may have been recorded by either the I. T. O. or the A. A. C, but which finding did not become necessary for the determination of the assessment because a particular view of the assessee's liability was taken in the assessment proceedings, which view the Tribunal dissents from; or the same position is reached where the Tribunal may accept that view, but upon a reference the view is held to be not justified by the High Court. Therefore, the real question in this case is; "Is it a new case put forward by the Department before the Tribunal that Rs. 5,80,069/- out of the sum of Rs. 6,02,911/- were actually received in British India and were, therefore, taxable under Section 4 (1) (a)?" If it is, obviously the Tribunal would have had no jurisdiction to make the order that it did. If, on the other hand, this is not a new case for the Department, but has always been its case, then the Tribunal would have jurisdiction to make the order that it did.

7. Now, turning to the order of the Income-tax Officer, as I have stated above, the Income-tax Officer accepted the statement furnished by the assessee company in which that company itself showed that out of a sum of Rs. 6,02,911/- the total realisation through shops or banks in British India was Rs. 5,80,069/-. In that statement, taking all the items into account, the total realisations

in India were Rs. 19,26,459/-. Out of these, Rs. 8,29,641/- and Rs. 1,661/- were realisations in respect of sales the income of which the Income-tax Officer held accrued in British India and he taxed the income from these sales under Section 4 (1) (c) on that footing. Quite obviously, therefore, he could not again tax a part of that income which was represented by the realisations of the sale proceeds in British India under Section 4 (1) (a). He excluded that part and taxed the income from Rs. 10,95,157/- which were realisations in respect of sales made at Indore, the income from total sale-price of which was not subject to tax in British India. Therefore, it is no doubt true that so far as the sum of Rs. 5,80,069/- is concerned, this was not brought to tax by the I. T. O. in British India on the basis of receipt; but obviously that was not done, not because the I. T. O. did not find that the amount was not received in British India, but because he held that this was receipt out of the total sales of Rs. 6,02,911/-, the income from which was taxable in British India on the accrual basis under Section 4 (1) (c), Mr. Kolah contends that the word "realisations" used in the statement supplied by his clients and accepted by the I. T. O. does not mean the same thing as receipt. It may be that in strict law it does not; but what is material for the present purpose is that the Income-tax

<sup>2</sup>1945-13 ITR 272

<sup>3</sup>1957-31 ITR 294 (Bom)

Officer obviously treated it as synonymous with receipt, because when he brought to tax Rs. 10,95,157/- under Section 4 (1) (a), he describes that amount as "realized in British India", and of course what is taxable under Section 4 (1) (a) is what is received in British India and not merely realized. There is, therefore, no doubt that before the Income-tax Officer it was the case of the Department that a sum of Rs. 5,80,069/-, with which alone we are concerned on this writ petition, was received in British India and it was so found by the Income-tax Officer.

8. We next come to the stage of the appeal before the A.A.C. In this case, the A.A.C. confirmed the assessment and, therefore, the A. A. C. also did not have to consider whether any portion of the sum of Rs. 6,02,911/- was received in India and was taxable as such; but let us consider for a moment what would have happened if the A. A. C. had come to a contrary conclusion that income arising from the total sales of Rs. 6,02,911/- was not taxable on the accrual basis under Section 4(1) (c) of the Income-tax Act. The powers of the Appellate Assistant Commissioner are to be found in Section 31 and Sub-Section (3) (b) of that section provides:

"In disposing of an appeal the Appellate Assistant Commissioner may, in the case of an order of Assessment -

(b) set aside the assessment and direct the Income-tax Officer to make a fresh assessment after making such further inquiry as the Income-tax Officer thinks fit.

Therefore, it appears to us to be plain that if the A. A. C. had come to the conclusion that the total sales of Rs. 6,02,911/- were wrongly brought to tax on the accrual basis, he would have had jurisdiction to set aside the assessment to that extent and to direct the Income-tax Officer to make a fresh assessment after ascertaining whether any portion of the sale-proceeds had been received in British India. This position Mr. Kolah has not attempted to dispute before us; but he says that

by reason of subsequent events that position does not now survive.

9. We will, next, therefore, proceed to consider what happened after the A. A. C. had disposed of the assessee's appeal. The Tribunal in its turn also dismissed the appeal of the assessee; and here again, if the Tribunal had come to the conclusion that the A. A. C. was wrong in the view that he took that the income from gross sales of Rs. 6,02,911/- were taxable on the accrual basis, then the same situation would have arisen as would have arisen before the A. A. C. if he had come to a similar conclusion, namely, that there could have been a fresh assessment on the footing of receipt of any part of these total sale proceeds in India. But the Tribunal in this case did not take the view that the assessment on the accrual basis was wrong. There was a reference to the High Court and the High Court took that view, and it appears to us that the moment the High Court took that view, the necessary corollary followed that the Tribunal's view was wrong and the A. A. C.'s view was wrong with regard to the taxability of the income arising from the total sales of Rs. 6,02,911/- on the accrual basis. It appears to us, therefore, that we go back to a situation where the A. A. C.'s finding that the income from the total sales of Rs. 6,02,911/- on the basis of accrual was, or must by reason of our answers to the questions referred to us, be deemed to be that it was not taxable on the accrual basis. If it was not so taxable, then obviously the situation arises which would have arisen if the A.A.C himself had taken that view, that to the extent of this amount of Rs. 6,02,911/- the assessment must be set aside and the Income-tax Officer directed to consider whether any portion of these sale-proceeds were received in British India. That precisely is the order which the Tribunal has made, and in making that order the Tribunal has been extremely fair to the assessee in that they have provided that, as the I.T.O. may not have in the first instance made as thorough an enquiry as he should have for the purpose of determining what part of Rs. 6,02,911/- was received in British India, he should determine this matter afresh and assess such portion of the amount as may have been received in British India. In doing so, no doubt, the Income-tax Officer will also have to take into account any argument advanced on behalf of the assessee that a realisation in British India is not necessarily a receipt in British India so as to attract the provisions of Section 4 (1) (a).

10. In our opinion, therefore, the Income-tax Tribunal acted within jurisdiction in making the order that they did.

11. The result is that the petition fails and the rule will be discharged with costs.  
Petition dismissed.