

BOMBAY HIGH COURT

The Commissioner of Income Tax

Vs.

New Citizen Bank of India

Income-tax Reference No. 72 of 1961

(Tambe and V.S. Desai, JJ.)

14/15.01.1965

JUDGMENT

V.S. Desai, J.

1. The question which is raised on this reference under section 66(1) of the Indian Income Tax Act, at the instance of the department, relates to the double Income Tax relief, to which the assessee has been held entitled by the Income Tax Appellate Tribunal.
2. The relief has been allowed in respect of four assessment years commencing from 1945-46, the previous years for the same being the corresponding calendar years. The assessee is a banking concern, having its head office in Bombay and branches at other places including Miraj, Sangli and Kolhapur, which were the erstwhile Indian States. The assessee maintained a consolidated account at the head office incorporating all branch profits including those of the branches located in the aforesaid Indian States. Now, in the relevant assessment years, with which we are concerned, the assessee had made profits in its banking business in its branches in the three Indian States of Miraj, Sangli and Kolhapur. It had sustained losses in its Bombay business and the business in the branches in British India, and, even after the inclusion of the profits of the business in the States, the resultant figure was a loss. The assessee had income from interest and securities, and its total income was computed after setting off the loss under the head of "business" against its income under the head of "Investments and securities", and the assessee paid a tax on the said computed income. Now, on its income from "business", in the native States of Miraj, Sangli and Kolhapur, the assessee had paid the State Income Tax according to the Income Tax law prevailing in the States. The assessee, therefore, claimed double Income Tax relief under section 49A of the Indian Income Tax Act, in respect of the income on which tax had been paid by it in the Indian States. The Income Tax Officer disallowed the claim on the ground that the State Income Tax paid by the assessee was on its income from business while the Indian Income Tax paid by it was on the income from securities and dividends - income from business

even after the inclusion of the business income from the States being a resultant loss - and the assessee therefore, could not be regarded as having paid double Income Tax in respect of the same income so as to be entitled to double Income Tax relief under section 49A of the Indian Income Tax Act. In an appeal by the assessee, to the Appellate Assistant Commissioner, the Appellate Assistant Commissioner took the view that the assessee was entitled to the relief since the same income had been doubly taxed both in India under the Indian Income Tax Act, and in the States under the taxation law of the States. He accordingly set aside the order of the Income Tax Officer, and allowed the appeal of the assessee. The department appealed to the Income Tax Appellate Tribunal against the decision and order of the Appellate Assistant Commissioners. The Tribunal confirmed the decision and order of the Appellate Assistant Commissioner holding that since the same part of the income of the assessee had suffered tax under the State Income Tax laws and at the same time entered into the computation of total income for the purpose of the Indian Income Tax Act prevalent in British India in those years, the assessee was entitled to the double taxation relief under section 49A read with the relevant rules made thereunder. The department applied for a reference under section 66(1) of the said Act, and on the said application, the Tribunal has drawn up a statement of the case and referred to us the following question of law as arising out of its order :

"Whether, on the facts and in the circumstances of the case, the respondent is entitled to double Income Tax relief under the Indian Income Tax Act for the assessment years in question ?"

3. A preliminary contention has been urged by Mr.Kolah, learned counsel who appears for the respondent-assessee, that the reference is not legally competent and it should not, therefore, be entertained. It is argued that the application which was made by the department to the Appellate Tribunal under section 66(1) was beyond limitation, and the Tribunal had no jurisdiction to entertain it. The reference made by the Tribunal, therefore, is one which it had no jurisdiction to make, and consequently, should not be entertained by this court.

4. The order in appeal was passed by the Tribunal on 21st November, 1960, and the copy of the order was served on the Commissioner on 1st December, 1960. The application for reference under section 66(1) was filed by the Commissioner on 30th January, 1961. Mr.Kolah's argument is that under section 66(1), an application for reference is required to be made within 60 days of the date upon which a notice of the order of the Tribunal made under sub-section (4) of section 33 is served on the Commissioner. In the present case, the order was served on 1st December, 1960, and the period, which is within 60 days of that date, expires on 29th January, 1961. The application, therefore, which is filed by the Commissioner on 30th January, 1961, is beyond time by one day, was not capable of being entertained by the Tribunal.

5. Mr. Joshi, learned counsel for the department, has raised an objection to the preliminary point itself, his argument being that the question whether the application before the Tribunal was

within limitation or not, or the question whether the Tribunal was right or wrong in entertaining the said application, are not questions which arise on this reference. Mr. Joshi argues that if the assessee wanted to complain about the entertainment of the application of the department for reference by the Tribunal, it could have adopted an appropriate remedy for that purpose. On a reference to this court under section 66(1), the jurisdiction of this court, which is advisory, only relates to the answering of the questions which are raised in the reference. No question has been raised in this reference relating to the legality of the action of the Tribunal in entertaining the application.

6. We do not want to enter into this controversy as to whether the preliminary objection which is raised by Mr. Kolah is competent or not, because, in our opinion, even if it is competent, it is not sustainable on merits. The period of limitation, which is allowed by section 66(1) for the making of an application for reference by the Commissioner gives him sixty days commencing from the date on which the order of the Tribunal is served on him. The period allowed thus being sixty days and not short of sixty days from the said date, both under section 12 of the Indian Limitation Act, as well as section 9 of the General Clauses Act, in counting the said 60 days the date on which the notice of the order is served on the Commissioner will have to be excluded. If 1st December, 1960, on which the said order was served on the Commissioner, was excluded in computing the period, the 60 days' period will end with 30th January, 1961, on which date the application for reference was actually filed. In our opinion, therefore, the application filed by the Commissioner in the present case was not beyond time.

7. Mr. Kolah has argued that section 12 of the Limitation Act cannot be availed of in the present case because, in the first place, applications under section 66 of the Indian Income Tax Act are not governed by the provisions of the Limitation Act, but by special provisions as to limitation prescribed by the Income Tax Act itself, and secondly, by reason of the provisions of section 67A of the Indian Income Tax Act, which only provide for the exclusion of the date on which the order complained of was made and the time requisite for obtaining a copy of such an order, the other exclusions which are permitted under section 12 of the Limitation Act will not be available. He has, therefore, contended that the expression "within 60 days of the date on which the notice of the order is served on the Commissioner" must be understood as including the date on which the order is served as the first day in the computation of the said period. Mr. Kolah has argued that the expression "within 60 days of the date of the service of the order" would be 60 days inclusive of the day on which the order is served, and will not be 60 clear days after the service of the order, and in support of his submission, he has relied on the decision in *Commissioner of Income Tax v. Ekbal & Co^l.*, Now, although the Limitation Act does not prescribe the period of limitation for an application under section 66(1), and the said period is provided by the special Act, viz., the Income Tax Act itself, under section 29 of the Indian Limitation Act, the provisions contained in sections 4, 9 to 18 and 22 of the Limitation Act will apply though, of course, the application will be only to the extent to which it is not expressly excluded by the special law. There is no section in the Income Tax Act, which expressly excludes the operation of section 12

of the Indian Limitation Act. Mr. Kolah has argued that the effect of section 67A is that except for the purpose of getting an exclusion of time requisite for the purpose of obtaining a certified copy of the order, the rest of the provisions of section 12 of the Limitation Act must be taken to have been excluded by the Income Tax Act. As we have already pointed out, the exclusion must be express and not by necessary implication, even if Mr. Kolah is right in his submission that there is such exclusion by necessary implication by reason of section 67A. Moreover even apart from the provisions of section 12 of the Limitation Act, under section 9 of the General Clauses Act, when a statute states that a certain thing is required to be done within a given number of days from a particular day, the use of the word "from" will be enough to exclude in the computation of the days the first day. The principle is that when a statute requires a person to do a thing within a given number of

¹(1944)13 I.T.R. 154

days, that number of days is allowed to him to do the thing and hence, in order to secure that he gets the said number of clear days, the first day from which the period commences has to be excluded in the computation of the number of days. Mr. Kolah has argued that section 66(1) of the Income Tax Act has not used the word "from", but has used the words "within 60 days of the date of the order." In our opinion, the expression "within sixty days of the date of the order" has the same meaning and effect as "within sixty days from the date of the order". What is intended by the legislature under section 66(1) is that there should be a clear 60 days' time within which an application for reference should be made. The present application, therefore, which was made by the Commissioner on 30th January, 1961, is not barred by time and was properly entertained by the Tribunal. The case referred to by Mr. Kolah has no application to the present case. The court in that case was not considering the provision of a statute prescribing limitation but the question before it was whether the notice given by the Income Tax Officer to the assessee to furnish a return within thirty days was in proper compliance with the provision of section 22(2) which required the notice to give the assessee a period of not less than thirty days to submit a return. The court took the view that not even thirty clear days were allowed since the return was required to be submitted within thirty days and the notice therefore was not legal. It may be remembered that the period which the court was considering was not the period prescribed by a statute and neither section 12 of the Limitation Act nor section 9 of the General Clauses Act could be considered in computing that period.

8. Coming now to the merits of the question, it may be desirable first to reproduce the provisions of section 49A as they were at the relevant time :

"49A. (1) The Central Government may, by notification in the official Gazette, make provision for the granting of relief in respect of income on which have been paid both Income Tax (including super-tax) under this Act and either Dominion Income Tax in one or more countries or Burma Income Tax.

(2) For the purposes of this section 'Dominion income-tax' means any Income Tax or super-tax charged under any law in force in any Indian State or in any part of His Majesty's Dominions (including the United Kingdom) where the laws of that State or part

provide for relief in respect of tax charged on income both in that State or part and in the taxable territories which appears to the Central Board of Revenue to correspond to the relief which may be granted by this section."

9. The material rule in the Rules called Income Tax (Double Taxation Relief) (Indian States) Rules, 1939, which were formulated by the Central Government by a notification under this section, is as follow :

"3. If any person who has paid by deduction under section 18 of the Indian Income Tax Act, 1922, or otherwise, Indian Income Tax for any year on any part of his income proves to the satisfaction of the Income Tax Officer that he has paid for the corresponding year by deduction or otherwise State Income Tax in respect of that part of his income, he shall be entitled to the refund of Indian Income Tax calculated on that part of his income at a rate bearing to the Indian rate of tax or the State rate of tax, whichever is the lower, the same proportion as the Indian rate of tax bears to the sum of the Indian rate of tax and the State rate of tax...."

10. On an examination of the provisions of section 49A, it will be seen that in order to be entitled to the double taxation relief, the Indian Income Tax as well as the State Income Tax must have been paid on the income in respect of which the relief is claimed. Under the rule, relief is allowed on any part of the income of the assessee for any year which he has paid the Indian Income Tax, if he satisfies that he has paid for the corresponding year on that part of his income, the State Income Tax also. It will, therefore, be seen that in order to get the double taxation relief, two conditions are required to be satisfied. In the first place, Income Tax must have been paid by the assessee, both under the Indian Income Tax Act as well as under the State Income Tax Act, for the same year. Secondly, the part of the income on which the Indian Income Tax has been paid must be the same part on which the State Income Tax is also paid. In other words, if the same part of the income of the assessee has been subjected to tax and tax has been paid by the assessee on that income, both under the Indian Income Tax Act and under the State Income Tax Act, he is entitled to the double taxation relief. The question to be considered is what is meant by the same part of the income on which the assessee has paid both Indian Income Tax and the State Income Tax ? It is contended for the department that in order to obtain the double taxation relief, the part of the income must be the identical income both with regard to the source of the income in the sense of the head of income as well as the numerical identity of the income. It is argued that in order that this identity with regard to the source as well as to the quantum of the income should be established, it must be shown that tax has been paid on the income from the identical source, that is, the head of income both under the Indian Income Tax Act as well as the State Income Tax Act, and in respect of the same identical amount. It is not enough, it is stated, that the State income on which the State Income Tax has been paid has entered to the extent of the whole of it in the computation of the total income under the Indian Income Tax Act and it is also not enough that the total income on which Indian Income Tax has been paid exceeds the amount on which

the State Income Tax is paid; what is further necessary to see is whether the total income on which the Indian Income Tax is paid contains as a positive part of it an income which is under the same head or heads and of the same numerical identity as the income on which the State Income Tax is paid. It is contended by the assessee, on the other hand, that if any part of the income of the assessee has borne tax on the computation of the total income of the assessee under the Indian Income Tax Act as well as the State Income Tax Act, in respect of that part of the income, he is entitled to double taxation relief.

11. Before proceeding to consider these rival contentions, we will set out the factual position, which being substantially the same for all the four assessment years, will be properly brought out by stating the facts for the first assessment year, which is 1945-46. During this year, the assessee had a loss in its Indian business to the extent of ₹ 1,15,380. It has a profit of ₹ 20,512 in its business in the three States, which it brought to India and was taken into the computation of its total income under the Indian Income Tax Act, by reason of section 14(2)(c). Even after the addition of this profit from the said business, the assessee's income under the head "business" was a total loss of ₹ 94,768. The interest on securities received by it during this year was ₹ 1,23,326. Under section 24 of the Indian Income Tax Act, the assessee was entitled to set off its loss under the head "business" against its profit under the head "Interest on securities". The result, therefore, was that the total income of the assessee for the purposes of assessment of Indian Income Tax was a net figure of ₹ 28,458. The assessee was assessed to tax on this amount of total income and it paid the tax. It is assessee's contention that the total income of ₹ 28,458 on which the Indian Income Tax is paid includes the State income of ₹ 20,512 on which the State Income Tax is also paid for the corresponding year. The part of the total Indian income, namely, the part represented by ₹ 20,512 out of the total amount of ₹ 28,458, on which the Indian Income Tax is paid is that part on which the State Income Tax is paid for the corresponding year and the assessee therefore is entitled to get double Income Tax relief in respect of that part of the income, that is, in respect of the amount of ₹ 20,512. The argument of the department, on the other hand, is that the assessee has not paid Indian Income Tax on any part of its income in respect of which it has also paid the State Income Tax for the corresponding year. The State income on which tax was paid in the States was income from business. The assessee's income in India on which the Indian Income Tax was paid contained no income from business. The assessee's income from business even after the inclusion of the profit from the States was a resultant loss which was set off against income from the other heads. The total income of ₹ 28,458 was made up entirely of the income from investments and securities and that too after it was reduced by being set off against the losses from business. No part of the income on which Indian Income Tax was paid was capable of being identified as that part on which the State Income Tax was paid and the assessee, therefore, was not entitled to the relief claimed by it. It is argued by the department that

the language used in section 49A and in the relevant rule made thereunder and particularly the use of the words "any part" and "that part" in the rule involve both identity as to the source and numerical identity of the two incomes and in order to be entitled to the relief granted by the said provisions it must be shown in the first place that a part of the income on which Indian Income Tax is paid comes from the same source from which the State income arises and if that condition is satisfied the relief will be obtained only in respect of that numerically identical amount on which are paid both the Indian Income Tax and the State Income Tax. And for this argument, support is sought to be derived from the English cases, namely, *The Assam Railways & Trading Co. v. Commissioners of Inland Revenue*², and *Rolls Royce Limited v. Short*³, (H. M. Inspector of Taxes).

12. The total income, as defined in section 2(15) of the Indian Income Tax Act, is the total amount of income, profits and gains referred to in sub-section (1) of section 4 computed in the manner laid down in the Act. Under section 3, which is the charging section, what is charged to tax is the total income of the previous year at the rate applicable for that year. Section 4 of the Act specifies what goes to make the total income of the assessee, or, in other words, defines the range of the total income. Section 6 classifies the income under different heads, and the subsequent sections from section 7 onwards give the method of computing the income under these several heads. The total income, therefore, which is the subject of charge to tax under the Indian Income Tax Act, is as computed under the Act. It must, however, be remembered that although income is classified under different heads, and the income under each head is separately computed

by the rules laid down for the computation of that particular class of income, the income

²(1934)18 T.C. 509

³(1925)10 T.C. 59

which is the subject-matter of tax under the Indian Income Tax Act is one income and the Income Tax is also a single tax. The Income Tax is only one tax levied on the sum total of the income classified and chargeable under the various heads. It is not a collection of distinct taxes levied separately on each head of income. In other words, assessment to Income Tax is one whole and not group of assessment of different heads or items of income : see *London County Council v. Attorney-General*⁴, As has been observed in *Kamdar (B. M.), In re*⁵, under the Income Tax Act, the income and not several incomes, is taxed. It seems to us, therefore, that when it is said that a man has paid Income Tax on his income, the reference is to the total income. Similarly, when it is said that a man has paid Income Tax on any part of his income, the reference would also be to the total income. When section 49A speaks of tax having been paid in respect of an income both under the Indian Income Tax Act and under the law in force in the State, the income referred to is the income on which tax is charged, namely, the total income. Similarly, under the relevant rule, with which we are concerned, the expression "part of the income" as used there would again have reference to the income which is the subject-matter of the tax, namely, the total income. In order to see, therefore, whether the assessee will be entitled to double taxation relief in respect of any income, what will have to be seen is whether the same income has gone to make up the total income, on which tax has been paid by the assessee in India and in

the State. If the identity of the income on which tax has been paid in the State is capable of being established with any part of the total income on which tax is paid under the Indian Income Tax Act, the assessee, in our opinion, will be entitled to obtain double taxation relief. Now, in the present case, the assessee had paid tax on the total income of ₹ 20,512 in the States. In the computation of its income under the Indian Income Tax Act, the same identical amount has been included and the resultant total income of ₹ 28,458 has been due to the inclusion of the said amount of ₹ 20,512. Tax has been paid by the assessee on the amount of ₹ 28,458, which is inclusive of this amount of ₹ 20,512. It is contended by Mr. Joshi that the State income of ₹ 20,512 does not form part of the total income of ₹ 28,458 computed under the Indian Income Tax Act. The entire amount of ₹ 28,458 comes from ₹ 1,23,326 which is interest on securities. The amount of ₹ 20,512, says Mr. Joshi, has already been wiped out by the loss in Indian business which was more than that amount, and consequently, does not form part of the amount of ₹ 28,458, on which tax has been paid. The argument of Mr. Joshi, however, does not impress us. Tax, under the Indian Income Tax Act, is not paid head-wise though the income for the purposes of computation of total income is computed head-wise. Tax is paid on the total income which is the aggregate of several incomes computed under different heads. When Income Tax is paid on the total income, it is on one income that the tax is paid, not on different incomes from different heads. Profits and losses under the different heads all go to make up the total income and if the total income is a positive figure, tax is paid on that. In order to see, therefore, whether any part of the income has borne double taxation, what is necessary to be seen is whether any part of the total income in the same corresponding year has been subjected to tax in India as well as in the States. If the State income of ₹ 20,512 was not included in the computation of the total

⁴(1900)4 T.C. 265

⁵(1945)14 I.T.R. 10, s.c. 47 Bom. L.R

income in India the income on which Indian Income Tax would have been paid by the assessee would have been reduced by that amount and he would have paid Indian Income Tax not on ₹ 28,458 but only on ₹ 7,946 (₹ 28,458 minus ₹ 20,512). The reason why he has paid tax on a larger amount is because the State income forms part of the income on which he had paid tax in India. In our opinion, therefore, the same income to the extent of ₹ 20,512 has been subjected to both the Indian Income Tax as well as the State Income Tax, because the amount of ₹ 20,512 which is undoubtedly a part of the total income of the assessee in India on which he has paid the Indian Income Tax has also been subjected to tax in Indian States, and the assessee, therefore, is entitled to the double taxation relief in respect of that amount.

13. In *Assam Railways & Trading Co. Ltd. v. Commissioners of Inland Revenue*, the appellant-

company, which was incorporated and controlled in the United Kingdom, carried on the business of running a railway, working coal mines, etc., in Assam in India. The whole of its income, with the exception of a small amount arising from investments in England, arose in India, and the Indian income, after computation under the Income Tax Act, was brought to tax in India. The computation of the income under the Indian Income Tax Act was pounds 129,365. The income was taken over to England by the assessee, and was computed for the purposes of the United Kingdom Income Tax at pounds 186,750, the difference between the two figures arising because of the fact that in the computation in India certain debenture interest was allowed as a deduction from the gross profit, and the profits from certain tea gardens were excluded from the account, while that course was not allowed in England. The assessee claimed double taxation relief in respect of the entire income of Pounds 186,750 on the ground that the whole of its income had been taxed in India. It was held by the House of Lords that the assessee was not entitled to relief in respect of the entire amount of Pounds 186,750, but only in respect of the amount of Pounds 129,365, which had been subjected to Indian Income Tax. It was held that the part of the income which consisted of the amounts employed in payment of debenture interest, and of the tea garden profits, was excluded in the computation of the total income under the Indian Income Tax Act, and was not, therefore, subjected to double taxation since no tax in respect of the same had been paid by the assessee in India, and consequently, the assessee was not entitled to get the relief for that part. It was argued that the entire income from the same source was subjected to tax in India although in the computation of that income the assessee had been allowed certain deductions; the same income having been brought to tax under the United Kingdom Income Tax Act also, the assessee was entitled to relief in respect of the whole amount. It was contended, on the other hand, on behalf of the revenue, that was charged to Income Tax in India was only an amount of Pounds 129,365 and not the whole amount, and it is only in respect of the amount of Pounds 129,365 and not the whole amount, that the relief could be claimed. Lord Blanesburgh was of the opinion that by the use of the expressions "the part" and "the same part", it was no doubt indicated that there should be an identity of source. Identity of source was not, however, enough to obtain the relief in respect of the entire income proceeding from that source, because relief was available only in respect of that part of the income on which both taxes were paid. Lord Wright in his speech observed as follow :

"The rival contentions may be thus summarized. The appellants claim that, though the Indian assessment is only at the figure of Pounds 129,365, it is an assessment on the whole amount of the profits of Pounds 186,75 : in other words, it exhausts the taxable capacity in India of the whole of those profits, so that the appellants have paid Indian Income Tax on the whole of that sum and hence are on that footing entitled to Income Tax relief under section 27 of the Act of 1920 on the whole of that sum. The respondents, on the other hand, contend that double Income Tax has only been paid on Pounds 129,365, and no more, within the meaning of the section, and hence that is only on that sum that relief is claimable."

Proceeding to deal with these contentions, he observe :

"The section required that the taxpayer should prove (1) that he has paid tax in the United Kingdom for any year on a certain sum which is part of his income; in this connection, I do not think that the word 'part' is used to exclude the whole but merely to point to an ascertainable sum of income which is brought into question; (2) that he has paid tax in the Dominion 'in respect of' the same part of his income for that year : here the words 'in respect of' as contrasted with 'on' do not, I think, involve any latent distinction, since the word 'on' would be inapplicable to the 'same income' which becomes a separate taxable subject in the Dominion. The taxpayer then becomes entitled to relief. It seems clear that there must be a definite part of income brought into question, and that can only be expressed in a sum of money. As income *ex vi termini* must be expressed in a sum of money, the words 'the same part of his income' must involve a comparison between two sums of money which prove to be the same. The contention of the appellants is to the contrary : it is said on their behalf that the words 'the same part of his income' refer solely to what is called the source, and that identity of amount is immaterial and does not come into question except for the purpose of ascertaining the rate of tax to be allowed for. I cannot agree with this argument. No doubt questions of source, as it has been called, that is, such questions, as where the income comes from, are essential to identify, so far as that aspect goes, what is taxed in the United Kingdom with what is taxed in the Dominion, but, in addition, the income itself, that is, the amount of money, must also be identified. I think the words 'the same part of his income' are apt to include both elements of comparison and identification."

14. Mr. Joshi has relied on this decision for the purposes of his submission that in order to get the double taxation relief in respect of any income, what has got to be established is that the income from the same source and of the same quantum has been subjected to both the taxes. It is not enough that only the quantum is the same. Unless the income is capable of being identified with reference to the source also, no double taxation relief can be claimed. Mr. Joshi argues that unless tax has been paid on the income from the source of business both under the Indian Income Tax Act as well as under the State Income Tax Act, the assessee is not entitled to obtain double taxation relief. Since under the Indian Income Tax Act, the assessee has not paid any tax on its income from the source of business, as there was no income from that source, there was no question of its getting double taxation relief. We do not think that the English case can be pressed into service to support the argument advanced by Mr. Joshi. It is no doubt true that the said case holds that in order to obtain double Income Tax relief in respect of any part of the total income of the assessee in the United Kingdom, the identity of source as well as the numerical identity of that part of the total income must be established with the income on which tax is paid in the Dominion. But in considering the aspect of the identity of source, the word "source" has been used as denoting the origin of the income "as where it came from so as to identify what is taxed in the United Kingdom with what was taxed in the Dominion" or as denoting a "compartment of

the total income of the assessee" which was the same as the Dominion income on which he had paid the Dominion tax. It may be seen that there was no difficulty as to the identity of source in that case. The Dominion income in its entirety was taken into account in the computation of the total income of the assessee in the United Kingdom on which the United Kingdom tax was charged. The argument was that the use of the words "part" and the "same part" in the relevant section of the English statute required only the identity of source to be established so that when that was done the entire income from that source which had gone to make up the total income of the assessee in the United Kingdom would be entitled to double tax relief irrespective of whether the same numerically identical amount or less than that had paid the Dominion tax. That argument was negatived and it was held that identity of source having been established the assessee would be entitled to obtain double tax relief but the amount in respect of which the relief would be obtained would be that amount of his total income which was numerically identical with the amount on which he had paid the dominion tax and on no more. Identity of source and the numerically identity considered by the House of Lords in that case was with reference to the total income of the assessee in the United Kingdom and the total income in the Dominion. We do not think that it is possible to contend on the authority of the said decision that in order to establish the identity of source it is necessary to show that the total income of the assessee contains as a positive part of it income under the identical head under which the said income has arisen in the State. Nor do we think that such a conclusion is warranted by the provisions of section 49A of the Indian Income Tax Act or the relevant rule made thereunder. Section 49A speaks of income on which both Indian Income Tax and Dominion Income Tax are paid. Having regard to the scheme of the Indian Income Tax Act, income on which tax is paid is the total income had although for the computation of the total income it is classified into several heads, tax is not paid on the separate incomes under the different heads but on one computed total income at a rate applicable to the total income. The expression "income" on which have been paid both Indian Income Tax and Dominion Income Tax would ordinarily and reasonably mean total income and the scrutiny which the provision requires to be made would be to find out whether a part or whole of the total income on which Indian Income Tax is paid, Dominion Income Tax has also been paid. That appears to us to be the plain and reasonable construction of the section and there is nothing in it which would indicate that the identity of the two incomes contemplated by the section is not only with reference to the total income in the sense that the Dominion income has entered into the computation of the total income in India and has formed a part of it but goes further and requires that the total income which has paid tax in India contains as a positive part of it income under the same identical head under which the Dominion income has arisen. Mr. Joshi has argued that such a meaning should be given to the language of the section because of the relevant rule made there under. Mr. Joshi argues that the said rule has been made to give effect to what is intended by the section and would, therefore, be helpful in ascertaining the true meaning and intent of the section. The words "any part of his income" and "that part of his income" used in the rule are crucial and important words and when understood in their proper import and significance lead to the conclusion that in order to obtain double Income Tax relief in respect of any part of the Indian income on which Indian Income Tax is paid that

part must consist of income arising under the same head and of the same numerical identity as the State income on which the State Income Tax is paid for the corresponding year. Apart from the question whether the rule yields to the conclusion such as is claimed for it by Mr. Joshi, the course which he suggested, namely, to construe section 49A, in the light of the rule made thereunder is the reverse of the usual and normal course. It is the section which must control and govern the rule and the rule must be construed in the light of the section and not vice versa. Secondly, we do not think that the rule on its proper construction leads to the conclusion suggested by Mr. Joshi. Section 49A intends to give double tax relief in respect of the income on which both Indian Income Tax and State tax have been paid. What is intended by the section is that the same income which is taxed both in India and in the States will be entitled to the relief. The section has left it to the Central Government to make appropriate provision to give the relief which it has intended and the relevant rule has been made accordingly by the Central Government to provide for that relief. The rule having been made to give effect to the section its object and purpose is to specify and identify the income which is entitled to relief under the section and this it has done by using the words "any part of his income" and "that part of his income". The words, undoubtedly, are capable of creating some difficulty in arriving at the true meaning of the rule but having regard to the scheme of the Indian Income Tax Act and the intent and purpose of section 49A what the rule means, in our opinion, is that if any part of the total Indian income on which Indian Income Tax is paid consist of the State income on which the State Income Tax is paid for the corresponding year, double tax relief will be available in respect of that numerically identical amount in respect of which both taxes have been paid. What the rule requires is : (1) Income Tax has been paid both in India and in the States for the same corresponding year; (2) State income on which the States tax has been paid has entered into the computation of the Indian income and has augmented the Indian income by its inclusion. The test would be to find out what the Indian income would be but for the inclusion of the State income; and (3) Relief is available in respect of that numerically identical amount by which the State income on which State Income Tax has been paid has entered into the computation of the Indian income and by which the Indian income on which Indian Income Tax has been paid is augmented. The words "any part of his income" and "that part of his income" are no doubt used for identifying the income which has borne double tax, but identity is contemplated with regard to the income which has paid tax, i.e., the total income, and not with reference to the heads of income under which the two incomes have arisen as contended by Mr. Joshi.

15. The other case referred to by Mr. Joshi is *Rolls Royce Limited v. Short* (H. M. Inspector of Taxes). What had happened in that case was that for certain incomes of the assessee in India, the assessee had paid tax as computed under the Indian Income Tax Act in India. The income was taken over to England, but in the computation of the income under the English Income Tax Act, it did not survive as income, because the method of computation was on the average of last three years, and since for the previous years, the business in India has suffered loss, the average was a loss even for the corresponding assessment year in England. No part of the assessee's income in India, therefore, went into the computation of the total income in England. On the other hand, it

being a loss under the rules of computation in England, it reduced the other income. The claim of the assessee for double taxation relief was negated by the court. Pollock M.R. observe :

"The sum on which tax was paid did not contain any Indian profits, but was reduced by deduction from it of losses in India."

He also observe :

"The basic condition is that a person has paid tax on his income over here - then, if some part of that income so charged and assessed to tax in the United Kingdom can be identified and proved to have paid Dominion tax, that same part which has suffered dual taxation can be relieved of the tax paid here, up to the measure of relief given by the section... It is clear from the presentment of the facts stated above that on no part of the income of the company for the two years 1920-21 and 1921-22 the company has paid income tax in India, and there is no part of it which has paid a dual tax".

Lord Justice Warrington observe :

"Having regard to the different modes of assessment prevailing in England and India respectively, the profits of the Indian business chargeable in the two countries can never be identical in amount, and it is, therefore, clear that in separating from the entire income the part of the income to which section 27 is applicable, regard must be had to the source from which it is derived and not to its amount. In this case the part of the income to be considered is the profits of the Indian branch. But the amount in money of those profits becomes material when the extent of relief is to be ascertained, for it is 'relief from United Kingdom income tax paid or payable by him on that part of his income at a rate thereon to be determined as provided' by the Act. In the present case in each of the three years there is no sum to which a rate of relief can be applied, for the reason that there was on respect of income from the particular source no sum on which tax was payable.

The fact is that no tax has been paid in the United Kingdom on any part of the Indian profits in either of the two years, and that being so the section is not applicable, one essential condition of its application being absent and there being no sum which can be reduced at a statutory rate calculated thereon."

16. It must be remembered that in that case no profit from the Indian business had entered into the calculation of the total income computed under the English Act. That, however, is not the case here. In the case before us, the profits of business in the States has actually entered into the calculation in the computation of the total profit of the assessee, and it is because of this profit having entered into the calculation that the total income of the assessee chargeable to tax under the Indian Income Tax Act has increased. Lord Atkin in English case observed as follow :

"... the question is what United Kingdom income tax have the appellants paid in respect of the Indian profit of Pounds 4,120 in the year of assessment 1921, and in respect of the Indian profit of Pounds 14,543 in the year 1922. The answer is nothing, for owing to the operation of the three years' average computation the sum paid or payable in the United Kingdom for the years in question in respect of the Indian profits was nothing. The amount of relief must be quantified and can only be ascertained by computing how much of the whole of the United Kingdom income tax is to be attributed to the income in respect of which Dominion tax has been paid."

17. It appears to us that applying the test laid down by Lord Justice Atkin to the facts of the case before us, there is no doubt that the part of the Indian Income Tax paid by the assessee which corresponds to the tax on the amount of ₹ 20,512 is attributable to the income in respect of which the State Income Tax has been paid. The cases referred to by Mr. Joshi, therefore, do not support the contentions which he has raised.

18. The result, therefore, is that our answer to the question which has been referred to us in the affirmative. The Commissioner will pay the costs of the assessee.

Answer accordingly.