Privy Council Appeal No. 19 *of* 1939

The Commissioner of Income-tax, Bombay Presidency, Sind and Baluchistan - - - *Appellant*

v.

The Ahmedabad Advance Mills Ltd. - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 14TH NOVEMBER, 1939

Present at the Hearing:

LORD THANKERTON
LORD ROMER
SIR GEORGE RANKIN

[*Delivered by* LORD ROMER]

The respondents, who carry on the business of cotton spinners and weavers in British India, are the owners of certain sterling bonds of the Government of India the interest on which is payable in England.

In the year ending the 31st March, 1936, interest on such bonds was paid in sterling in England to certain agents of the respondents, the amount of such interest expressed in rupees being Rs.18,333. This sum was expended by such agents in the purchase in England on behalf of the respondents of certain mill stores and machinery which were then sent to the respondents in British India and there used by them for the purposes of their business.

In these circumstances the Income-tax officer in assessing the respondents to income tax for the year of assessment 1936-7 included in their income for the year 1935-6 the sum of Rs.18,333 as being income "brought into British India" within the meaning of section 4 (2) of the Indian Income-tax Act, 1922.

It will be convenient at this stage to set out section 3 of the Act and the material portions of section 4 as these sections stood in the year of assessment.

> *Section* 3.—Where any Act of the Indian Legislature enacts that income tax shall be charged for any year at any rate or rates applicable to the total income of an assessee, tax at the rate or those rates shall be charged for that year in accordance with, and subject to the provisions of this Act in respect of all income profits and gains of the previous year of every individual Hindu undivided family, company, firm and other association of individuals.

Section 4 (1).—Save as hereinafter provided, 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 or deemed under the provisions of this Act to accrue, or arise, or to be received in British India.

(2) Income profits and gains accruing or arising without British India to a person resident in British India shall, if they are received in or brought into British India, be deemed to have accrued or arisen in British India and to be income profits and gains of the year in which they are so received or brought notwithstanding the fact that they did not so accrue or arise in that year.

The respondents in due course appealed to the Assistant Commissioner against the assessment in respect of the Rs.18,333, but he dismissed the appeal and confirmed the assessment.

The respondents then applied to the Commissioner of Income-tax, Bombay Presidency, to refer a question of law with respect to their liability to be assessed to income tax in respect of the amount in question to the High Court under section 66 (2) of the Act. The Commissioner accordingly made a reference of the following question:—

"Whether in the circumstances of the case the Income-tax officer has rightly included in the income liable to tax the amount of Rs.18,333 on account of interest on sterling securities on the ground that though the said income accrued or arose in England it was received or brought into British India within the meaning of Section 4 (2) of the Act."

In making the reference the Commissioner, as required by the Act, expressed his own opinion upon the question referred. His opinion was that the answer to the question should be in the affirmative.

The reference in due course came before the High Court before Beaumont C.J. and Blackwell J. and on the 27th September, 1937, the Court gave judgment answering this question that had been referred to them in the negative.

In so doing the High Court was, in their Lordships' opinion, plainly right. What the Act charges with tax is income and nothing but income, whether that income accrues or arises or is received in British India or is deemed so to arise or accrue or be received by reason of being brought into British India. But if income arising or accruing without British India is spent or otherwise so dealt with that it ceases to be income instead of being brought into British India, it is not, in their Lordships' judgment, chargeable under the Act merely because the thing upon which it has been expended or into which it has been turned is subsequently brought there. It is not necessary, of course, in order to attract tax that income received abroad should be brought into India in the exact form in which it has been received. As was said by Beaumont C.J. in his judgment in the present case:

"Foreign income may be received in sterling or francs or dollars and may be brought into India in the form of rupees or income received abroad may be remitted to India by means of a banker's draft. To use Lord Brampton's phrase in Gresham Life Assurance Society Ltd. *v.* Bishop [1902] A.C. 287, the income may be received 'in specie or in any form known to the commercial world for the transmission of money from one country or place to another.'"

Much to the same effect was said by Lord Lindley in the same case.

> " A sum of money " [he said] " may be received in more ways than one, e.g., by the transfer of a coin or a negotiable instrument or other document which represents and produces coin, and is treated as such by business men. Even a settlement in account may be equivalent to a receipt of a sum of money although no money may pass."

Other examples can readily be imagined. Beaumont C.J. indeed suggested the case of an assessee, who was desirous of bringing into British India foreign income for use there as income, purchasing bonds with the foreign income, bringing the bonds to India, and then selling them and applying the proceeds as income. It is possible that such a case might occur, although it would give rise to the question among others whether the sum to be brought into tax in India should be the sum expended on the bonds in the foreign country or the proceeds of the bonds received in India. That question can be dealt with when it arises. It does not arise here. It is not and cannot be suggested in the present case that the mill stores and machinery were purchased in England and shipped out to India as a method of bringing over the sterling interest that had been received in this country. No one in his senses would think of employing such a method of transmitting money. But apart from the inherent improbability of the thing it is found as a fact by the Commissioner that the mill stores and machinery were required by the respondents for their business in India and it is not suggested that they will be sold or will be employed otherwise than in and for the purposes of the respondents' mills.

It is, however, contended on the part of the appellant that the use to which the stores and machinery are put in India is immaterial. They were bought, says the appellant, with the sterling equivalent of Rs.18,333 and whatever their value, whatever the intention with which they were bought, whatever the purpose to which they are now being put, their arrival in India resulted in Rs.18,333 foreign income being brought into British India.

Their Lordships are not prepared to accept so extravagant a contention. To show how extravagant it is many illustrations might be given. It will be sufficient to take one suggested by Mr. Hills in the course of his argument before their Lordships. A resident in British India when on a visit to this country receives here the sum of £500 sterling as interest on British Government Stock. He expends it here in replenishing his wardrobe and in purchasing a motor car. At the end of two years he returns to British India taking with him the garments and the motor car. The garments have been worn for two years and the car in that time may have been driven 40,000 miles or more. Yet if the appellant is right the person in question will on his return to India be deemed to have brought back with him the £500 interest that he received in this country. The truth of the matter is that in such a case he does not bring back into India a penny of the £500. He has spent it all in England. If upon his return to India the question were put to him, " How much have you

left of the £500?" his answer would be "none," and the answer would be a true one whether addressed to a casual enquirer or to the Income-tax officer. What he has taken back to India are some much worn clothes and a car much depreciated in value. But these things can in no sense be described as income; and it is only income that can be taxed under the India Income-tax Act.

For these reasons their Lordships are of opinion and will humbly advise His Majesty that this appeal should be dismissed. The respondents' costs of the appeal must be paid by the appellant.

(20955—3A) Wt. 8075—41 190 11/39 P. St. G. 338

In the Privy Council

THE COMMISSIONER OF INCOME-TAX, BOMBAY PRESIDENCY, SIND AND BALUCHISTAN

v.

THE AHMEDABAD ADVANCE MILLS LTD.

DELIVERED BY LORD ROMER

Printed by HIS MAJESTY'S STATIONERY OFFICE PRESS,
POCOCK STREET, S.E.1.

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