Privy Council Appeal No. 54 *of* 1947

The Commissioner of Income Tax, Bombay City - - *Appellant*

v.

The Great Eastern Life Assurance Company Limited - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 14TH OCTOBER, 1948

Present at the Hearing:

LORD SIMONDS
LORD OAKSEY
LORD MACDERMOTT
SIR MADHAVAN NAIR
SIR JOHN BEAUMONT

[*Delivered by* SIR JOHN BEAUMONT]

This is an appeal from a judgment and order of the High Court of Judicature at Bombay, dated the 6th October, 1944, upon a reference made to that court under section 66 (1) of the Indian Income Tax Act, 1922, raising two questions relating to the computation of the profits and gains of the Bombay branch of the respondent company (hereinafter called " the assessees ").

The assessees are a company incorporated in the Straits Settlement having their head office at Singapore and carrying on life insurance business in British India through their branch office at Bombay. It is therefore a company not resident in British India. The year of assessment is the year 1939-1940, and the previous year, that is the year of charge, is the calendar year 1938. The amendments to the Indian Income Tax Act, 1922, made by the Indian Income Tax (Amendment) Act, 1939, which came into force on the 1st April, 1939, apply to the year of assessment. The Act of 1922 as so amended by the Act of 1939 will hereinafter be referred to as " the Act ".

It follows from the above that the problem for determination relates to the proper method of computing the profits and gains of the Indian branch of a non-resident life insurance company, and such problem arises, not under Rules 25 and 35 of the old Indian Income Tax Rules, but under the Rules contained in the schedule to the Amending Act of 1939.

Section 3 of the Act which is the charging section draws no distinction between resident and non-resident assessees. Section 4 (1) provides that the total income of any previous year of any person includes all income, profits and gains from whatever source derived which (*a*) are received or are deemed to be received in British India in such year by or on behalf of such person, or (*c*) if such person is not resident in British India during such year, accrue or arise or are deemed to accrue or arise to him

in British India during such year. Income is deemed to accrue or arise under the provisions of section 42 of the Act. Section 10 (7) of the Act enacts that:

> " Notwithstanding anything to the contrary contained in sections 8, 9, 10, 12 or 18, the profits and gains of any business of insurance and the tax payable thereon shall be computed in accordance with the rules contained in the Schedule to this Act." The rule making power is contained in section 59 of the Act.

The Schedule is headed " Rules for the computation of the profits and gains of insurance business " and the following rules or portions of rules are relevant in this appeal:

> " 1. In the case of any person who carries on, or at any time in the preceding year carried on, life insurance business the profits and gains of such person from that business shall be computed separately from his income, profits or gains from any other business.
>
> 2. The profits and gains of life insurance business shall be taken to be either—
>
> (*a*) the gross external incomings of the preceding year from that business less the management expenses of that year, or
>
> (*b*) the annual average of the surplus arrived at by adjusting the surplus or deficit disclosed by the actuarial valuation made for the last inter-valuation period ending before the year for which the assessment is to be made, so as to exclude from it any surplus or deficit included therein which was made in any earlier inter-valuation period and any expenditure other than expenditure which may under the provisions of section 10 of this Act be allowed for in computing the profits and gains of a business,
>
> whichever is the greater:
>
> 3. In computing the surplus for the purpose of rule 2,—
>
> (*a*) one-half of the amounts paid to or reserved for or expended on behalf of policy-holders shall be allowed as a deduction: "

The provisos to this Rule are not relevant.

> " 4. Where for any year an assessment is made in accordance with the annual average of a surplus disclosed by a valuation for an inter-valuation period exceeding twelve months, then, in computing the tax payable for that year, credit shall not be given in accordance with sub-section (5) of section 18 for the tax paid in the preceding year, but credit shall be given for the annual average of the income-tax paid by deduction at source from interest on securities or otherwise during such period."

Rule 5 contains various definitions including definitions of " gross external incomings " and " management expenses ".

> " 8. The profits and gains of the British Indian branches of an insurance company not resident in British India, in the absence of more reliable data, may be deemed to be the proportion of the total world income of the company corresponding to the proportion which its British Indian premium income bears to its total premium income. For the purpose of this rule, the total world income of life insurance companies not resident in British India whose profits are periodically ascertained by actuarial valuation shall be computed in the manner laid down in these rules for the computation of the profits and gains of life insurance business carried on in British India."

Before the Income Tax Officer the assessees produced exhibit T-A which is headed " Consolidated statement of Indian Fund for the Triennium commencing 1st January, 1935 to 31st December, 1937, showing the actuarial surplus for the said triennium of the Indian business separately prepared at Singapore ". This document will be referred to as " the

triennial valuation ". The assessees also produced exhibit T-C which is headed " Revenue account for Indian business for the year ended 31st December, 1938 ", and which contained on the credit side an item " Interest Rs.4,57,424." The Income Tax Officer held that the triennial valuation provided " more reliable data " for the purposes of Rule 8 and he calculated the profits and gains of the Indian business under Rule 2 (*b*) on the basis of this document. He then calculated the profits and gains under Rule 2 (*a*) by reference to the proportionate rule laid down in the latter part of Rule 8. Finding the profits and gains under Rule 2 (*a*) greater than the profits and gains under Rule 2 (*b*) he based his assessment on the former. No-one supports the method adopted by the Income Tax Officer for computing the profits and gains under Rule 2 (*a*) and his order need not be further discussed.

The assessees appealed to the Appellate Assistant Commissioner who agreed with the Income Tax Officer that the triennial valuation provided " more reliable data " within Rule 8 for calculating the profits and gains under Rule 2 (*b*), and that was not disputed. The Assistant Commissioner however disagreed with the method adopted by the Income Tax Officer for calculating the profits and gains under Rule 2 (*a*) and held that the Revenue Account, exhibit T-C, provided " more reliable data " within Rule 8 for calculating the income under Rule 2 (*a*) since he considered that the item of Interest Rs.4,57,424 could be accepted as the gross external incomings for the purpose of Rule 2 (*a*). As the amount of profits and gains calculated under Rule 2 (*a*) was greater than that calculated under Rule 2 (*b*) the Assistant Commissioner based the assessment on the figures arrived at under Rule 2 (*a*).

The assessees then appealed to the Appellate Tribunal. In the memorandum of appeal objection was taken to the figure of Rs.4,57,424 being treated as gross external incomings and it was alleged that that figure in the Revenue Account did not represent an actual receipt of income, and complaint was further made that the Appellate Assistant Commissioner did not inform the assessees that he was proposing to assume the item of Interest appearing in the Revenue Account as the gross external incomings of the Indian business.

The Appellate Tribunal disagreed with the view taken by the Appellate Assistant Commissioner as to his construction of Rule 8, and held that if there were " more reliable data " available within the meaning of that Rule a computation under Rule 2 (*a*) or Rule 2 (*b*) was not called for. After a full discussion of the facts and the law the Tribunal held that the triennial valuation provided " more reliable data " in terms of Rule 8 and that the assessment must be computed upon the data given in that statement. The Tribunal considered that Rule 2 applied to all insurance companies whether resident or non-resident so far only as related to adjustments and allowances envisaged in that Rule.

At the request of the Commissioner of Income Tax, Bombay, Sind and Baluchistan the Tribunal referred two questions for the opinion of the High Court at Bombay under section 66 (1) of the Act. The questions were (1) Is the scope of the expression " more reliable data " occurring in Rule 8 of the Schedule to the Income Tax Act, confined to the higher of the two computations under Rule 2 (*a*) and Rule 2 (*b*) of the said Schedule? or (2) Whether the separate actuarial valuation statement for the Indian business has rightly been held by the Tribunal to contain " more reliable data " for the purpose of Rule 8 of the said Schedule?

The reference was heard by a Bench consisting of Sir Leonard Stone, C.J. and Mr. Justice Kania (as he then was). The court made some verbal alterations in the first question as mentioned later, and as so amended answered the first question in the negative, and the second question in the affirmative.

The learned Chief Justice thought that the application of Rule 2 should be excluded altogether and continued:

> " In my judgment, the ' reliable data ' referred to in Rule 8, is the data necessary to assess the profits and gains of a branch business by

some recognised business method which can be applied having regard to the manner in which the insurance company conducts its affairs."

Such a method of assessment ignores section 10 (7) of the Act which requires the profits and gains of any business of insurance to be computed in accordance with the rules. Nor do their Lordships think that there is any recognised business method of ascertaining the profits derived from life assurance business, the liabilities of which must necessarily depend on actuarial calculations and valuations. The learned Chief Justice agreed with the Appellate Tribunal in thinking that the triennial valuation afforded " more reliable data " within the meaning of Rule 8, and that the profits and gains should be computed on the basis of that document. But it is to be observed that if Rule 2 is not applicable there is no authority for computing the profits of 1938 on the figures of a period which expired before that year.

Mr. Justice Kania was not prepared to say that Rule 2 never applied to non-residents, but he thought that it could not be applied to the Indian branch of a non-resident insurance company. He pointed out that the gross external incomings and the management expenses as defined in Rule 5 are not in terms confined to the incomings and expenses of the Indian branch of a non-resident assessee. Whilst this is perfectly true their Lordships think that the application of the Rules in the Schedule must of necessity be controlled by reference to the subject-matter to be taxed. A non-resident is only liable to tax in respect of profits and gains which are either received or deemed to be received in British India, or which accrue or arise or are deemed to accrue or arise in British India. Their Lordships think that in calculating the profits and gains of the Indian branch of a non-resident company under Rule 2 (*a*) the gross external incomings and the management expenses are confined by the context to those of the Indian branch. In this connection reference may be made to section 42 (3) of the Act. Cases may well arise in which it proves impracticable to supply the necessary data relating to an Indian branch with the result that in such cases there may be no " more reliable data " to take the case out of Rule 8.

In their Lordships opinion in assessing the profits and gains of the Indian branch of an insurance company not resident in British India recourse must be had in the first instance to Rule 8 which is the only Rule dealing specifically with that subject. In the absence of " more reliable data " the profits and gains must be computed on the proportionate basis laid down in the Rule. In that case no other Rule is relevant, except for the purpose of computing the total world income which has to be apportioned. If there is " more reliable data," that is data more reliable for computing the profits and gains of the Indian business of the assessee than those on which the proportionate rule is based, then Rule 8 passes out of the picture and by virtue of section 10 (7) of the Act the computation of profits and gains must be made under the other Rules in the Schedule which are appropriate. Their Lordships feel no doubt that Rule 2 extends to the life insurance business of all persons whether or not resident in British India. Rule 2 (*b*) replaces the old Rule 25 which was confined to life insurance companies incorporated in British India, but there is no such limitation in Rule 2 which in terms draws no distinction between residents and non-residents. Unless the Rule applies to non-residents they would lose the valuable privilege conferred by Rule 3; nor would Rule 4 apply. Furthermore Rule 2 (*b*) is the only Rule which enables profits and gains to be computed on the annual average disclosed by an actuarial valuation made for the last inter-valuation period ending before the year in which the assessment is to be made. Insurance companies usually get out an actuarial valuation for a quinquennial or triennial period which is all that they are required to do by section 13 of the Assurance Act, 1938, and some statutory authority for treating the triennial or quinquennial valuation as the basis for computing the profits of a particular year seems essential. Without Rule 2 (*b*) it would seldom be possible in the case of a life insurance business to find " more reliable data " within Rule 8.

Their Lordships think that the view taken by the Appeliate Assistant Commissioner was correct. The triennial valuation afforded " more reliable data " for computing profits and gains under Rule 2 (*b*) and the Indian revenue account, exhibit T-C, (subject to the question of figures mentioned below) afforded " more reliable data " for computation under Rule 2 (*a*), and the greater of the two computations can be accepted by the revenue authorities. As already noted the assessees in their appeal to the Appellate Tribunal challenged the figure of Interest in the Revenue Account as representing gross external incomings. In the view which the Tribunal took of the case it was not necessary to decide this point. Mr. Tucker on behalf of the Commissioner agreed that it would be open to the assessees to raise this matter when the case is referred back to the Tribunal under section 66 (5) of the Act. Their Lordships will only say therefore that they think that the revenue authorities are entitled to accept the figure of Interest in the revenue Account as representing the gross external incomings for the year unless the assessees produce satisfactory evidence to show what the true figure of gross external incomings should be.

The first question for determination as amended by the High Court reads:

> " Is the scope of the expression ' more reliable data ' occurring in Rule 8 of the Schedule to the Income Tax Act confined to the data required for arriving at the higher of the two computations under Rule 2 (*a*) and 2 (*b*) of the said Schedule? "

Their Lordships think that the question is not happily expressed and does not admit of a simple answer in the affirmative such as the appellant claims. Rule 8 extends to British Indian branches of any insurance company not resident in British India, whilst Rule 2 is confined to life insurance business. It is obvious therefore that " more reliable data " under Rule 8 might have to be employed in cases altogether outside the scope of Rule 2. Their Lordships propose to answer question one by saying:

> " The more reliable data referred to in Rule 8 are to be employed for the computation of the profits and gains of the British Indian branches of a non-resident Insurance Company in accordance with the Rules in the Schedule appropriate to the case, including, in the case of a life insurance business, Rule 2."

The second question does not call for an answer. Their Lordships' views on the matter sufficiently appear in this judgment.

For these reasons their Lordships will humbly advise His Majesty that this appeal be allowed and that the first question referred to the High Court be answered in the manner above indicated. The respondents must pay the costs of the hearing in the High Court and of this appeal.

(62527) Wt. 8462—[illegible] D.L. G.[illegible]

In the Privy Council

THE COMMISSIONER OF INCOME TAX, BOMBAY CITY

v.

THE GREAT EASTERN LIFE ASSURANCE COMPANY LIMITED

DELIVERED BY SIR JOHN BEAUMONT

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