

## REFERENCE BY THE BOARD OF REVENUE.

Before Woodroffe, Greaves and B. B. Ghose JJ.

IMPERIAL TOBACCO COMPANY OF INDIA, LD.

v.

THE SECRETARY OF STATE FOR INDIA.\*

1922

Jan. 17.

*Super-Tax—Company—Liability to assessment with super-tax as agent of share-holders, residing outside British India—Income-Tax Act (VII of 1918), ss. 31, 33, 34.*

Where a company was assessed with super-tax, as the agent of its shareholders under the provisions of the Indian Income Tax Act, because it paid dividends to them :—

*Held* (B. B. GHOSE J. dissenting), that the Company was not an agent for those shareholders, as there was no receipt of income within the terms of s. 31 of Act VII of 1918. S. 34 merely defines who may be included as an agent under s. 31 and therefore there must be receipt of income within the terms of s. 31.

*Per* B. B. GHOSE J. S. 34 should be read in connection with s. 33 rather than with s. 31; the agent of the non-resident person need not be in receipt of the income of such person to make him liable under s. 33. S. 34 merely gives an extension to the meaning of the term "agent" as including persons who are treated as such, and who may be assessed under s. 33.

This was a reference by the Board of Revenue regarding the assessment of super-tax against the Imperial Tobacco Company, Limited, as agent for some share-holders of the Company, residing outside British India; the income on which the assessment was made arose and accrued in British India, but as the Company denied liability on the ground that it was not an agent within the meaning of the Indian Income Tax and desired a reference under section 51

\* Special Bench. [Reference under s. 51 (1) of the Income Tax Act, 1918.]

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of Act VII of 1918, a reference of the following two points was made to the High Court for its decision :

(i) Whether the Collector of Income Tax is right in holding that the Company is agent for these shareholders under section 34, Act VII of 1918, and

(ii) if so, whether the Company has rightly been assessed to super-tax on their account.

*Mr. Langford James* and *Mr. T. Ameer Ali*, for the applicant. The question is whether the Company which pays dividends to shareholders is their agent and can be assessed under the Indian Income Tax on that account. Under section 31 of Act VII of 1918 the agent has got to be in receipt of income, it cannot be said that the Company was in receipt of income on behalf of the shareholders. Unless the dividend is declared, the shareholders have nothing to be assessed upon, as soon as it is declared, the Company is a mere debtor and not an agent that has *received* any money for payment. Section 34 is to be read with section 31, so that receipt of money is necessary in either case.

*The offg. Standing Counsel (Mr. B. L. Mitter)*, for the opposite party. Under the Articles of Association, the Company has got to dispose of the money in accordance with the directions of the shareholders, and so holds the money for them, that is, receives the money for them although the money does not come from outside. In any event the Company would be liable under section 34; though it may not be an agent legally, the Collector, who is the determining authority, may treat it as agent if certain conditions are fulfilled, it is not necessary that the agent should be in receipt of the income under section 33.

*Mr. Langford James*, in reply. Section 34 cannot be read disjointly with section 31; section 34 defines

the agents mentioned in section 31, it only describes the class of persons who may be agents for the purpose of section 31.

*Cur. adv. vult.*

WOODROFFE J. In this case the applicant company has been assessed to super-tax as agent for six gentlemen mentioned in the Reference. All these gentlemen are non-residents of British India. They are shareholders in the company and the assessment has been made in regard to the dividends payable to them by the company. The company is an Indian Limited Company and the income on which assessment was made, arose and accrued in British India. The question is whether the company is an agent for these gentlemen as defined in the Indian Income Tax Act VII of 1918. It is their contention that they are not such agents, and that they are not in any receipt of any income of the persons whose agents they are alleged to be.

The Board has held that they were such agents and the matter has been referred to us upon the application of the Company. One substantial question is whether sections 31 and 34 of the Indian Income Tax Act are to be read together or disjointly, in which latter case it would not be necessary in all cases that the agent should be in receipt of the income. On a consideration of this matter, I am of opinion that section 34 merely defines who may be included as an agent under section 31. If so, the agent whether we look to section 31 or 34 must be in receipt of income within the terms of the former section.

I do not think that the circumstances of this case show a receipt within the terms of the section. Though this is sufficient to determine the matter I may add that I am not satisfied that even if sections

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31 and 34 be read disjointly, the company was under the circumstances of this case an agent within the terms of the Act. The answer, therefore, to the first question, namely, whether the Collector of Income Tax is right in holding that the Company is an agent for these shareholders, is answered in the negative. The second question, namely, if so, whether the company has rightly been assessed to super-tax on their account, does not arise. A copy of this judgment is directed to be given to the Revenue Authority.

GREAVES J. I agree.

GHOSE J. I regret very much that I am unable to concur in the judgment just pronounced. I think it necessary that I should state as clearly as I am able the reasons for which I have arrived at a different conclusion.

This is a reference made by the Chief Revenue Authority under section 51 (1) of the Income-tax Act, 1918, on the application of the Assessee, the Imperial Tobacco Company of India, Limited. Six persons who are all residing out of British India are shareholders in the Company. They are entitled to certain dividends for their shares in the Company, the profits of which accrued in British India, and there is no question that the shareholders are liable to pay super-tax on their income so derived. The profits due to those shareholders were sent to them by the Company to their residence outside British India. The Company was assessed for the super-tax due on the incomes of those six shareholders, as agent of the non-resident persons under the provisions of the Income-tax Act and the Company has raised the objection that it cannot be so assessed. The questions on which the decision of this Court is sought are (i)

whether the Collector of Income-tax is right in holding that the Company is agent for those shareholders under section 34, Act VII of 1918, and (ii) if so whether the Company has rightly been assessed to super-tax on their account.

A company incorporated according to law is an artificial legal person having an existence separate from its incorporators. There is therefore no legal impediment to a company being agent for any of its shareholders. The contention on behalf of the company in this case is that it cannot be held to be agent of the non-resident shareholders so as to be liable to be assessed for income-tax for those shareholders by the procedure taken by the Collector under section 34 of the Income-tax Act. It is urged that section 34 should be read along with section 31, and unless a person receives income on behalf of another residing out of British India, he cannot be deemed to be an agent under section 34, and although the company has the income of those persons it is not in receipt of such income. Assuming that the company is not in receipt of the income, in order to see whether the company may be treated as agent, the provisions of the Income-tax Act commencing from section 31 should be examined. Under section 31 an agent of any person residing out of British India being in receipt on behalf of such non-resident person of any income chargeable under the Act, is held liable for the tax. If he is actually an agent and in receipt of income on behalf of the principal, nothing more is necessary in order to render him liable, but the tax is to be levied upon and recoverable from him under section 31 irrespective of any other provision in any other section of the Act. It is not necessary in such a case for the Collector to give the agent so liable any notice under section 34 of his intention of treating him

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as agent of the non-resident person, because he is in fact the agent. Section 32 refers to the case where the income chargeable is received by the Court of Wards and certain other persons. This section has no direct bearing on the present question, but it is noticeable that the income chargeable must be 'received' by the Court of Wards or other persons in order that the tax may be levied upon them. Then comes section 33, sub-section (1) of which has an important bearing on the present question. Under this section any person residing out of British India whose income accrues or arises within British India "shall be chargeable to income-tax in the name of the agent of any such person and such agent shall be deemed to be for all the purposes of the Act, the assessee in respect of such income-tax." As I read this section the agent of such a non-resident person need not be in receipt of the income on behalf of such person there being no such provision in it as in the preceding sections. The mere fact of agency is sufficient to make him liable to be assessed in respect of the income of the principal. Coming to section 34, it seems to me that it gives merely an extension of the meaning of the term "agent" as including persons who are treated as such, and who may be assessed under section 33 (1) although such persons are not really agents. Section 34 should be read in connection with the preceding section rather than with section 31. Section 34 refers to cases where the non-resident person has no agent in British India appointed by himself, and therefore it becomes necessary to find a person who should be "deemed to be an agent" only for the purpose of the Income-tax Act, and that can be done by the Collector acting in accordance with the provisions of this section. Section 34, in my opinion, was enacted for the purpose of assessing the incomes of persons

residing outside British India who are chargeable with Income-tax here but who have not appointed any agents residing in British India who might be assessed under section 33 (1). To hold otherwise, it seems to me, would be to support an anomaly that a person receiving his income through an agent in this country would be assessed, but if he asks his debtor to remit the income direct to him he would escape liability to pay the tax, a thing which this section was intended to remove. It is only necessary that the person on whom the Collector has served a notice under section 34 is a "person employed by, or on behalf of, a person residing out of British India or having any business connection with such person," and if that condition is satisfied the person on whom such notice has been served shall for the purposes of the Income-tax Act be deemed to be the agent of such person. The question whether the company is a person coming within the description of section 34 presents to my mind very little difficulty.

The company remits the incomes of the persons resident outside British India and should be held to have been employed to do so by or on behalf of the non-resident persons. The company again has without doubt 'connection' with the shareholder, and what can that connection be but business connection? The company itself states in its letter to the Collector that on the declaration of a dividend the company is in the position of debtor to the shareholders. Therefore, the company also comes within the description of "having any business connection" with a non-resident person. To say that such person should also be in receipt of income on behalf of the non-resident person would be to make the enactment of the section unnecessary, because a person in receipt

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of income is liable to be assessed under section 31 ; also it would not be necessary to give him notice of the Collector's intention to treat him as agent, for a person receiving income for another would be an agent, under the general law. It was urged on behalf of the company that to make one person liable to income-tax for another resident abroad, although he might not receive any income on behalf of such a person, might in some cases cause great hardship. The answer to this is twofold: (i) it is a well established rule that Courts ought not to be influenced by any notion of hardship in exceptional or individual cases in interpreting a statute, and (ii) in order to prevent any case of hardship the proviso to section 34 has been enacted and the Collector may be trusted to give effect to any reasonable objection before treating a person as agent under this section. In the present case, however, there can be no such question of hardship. It may be observed that under section 21 of the repealed Income-tax Act (II of 1886) the tax was chargeable in the name of the agent where the income was received through the agent, and there was no provision corresponding to section 34 of the present Act. The alterations in the present Act were, in my opinion, made to remove an anomaly as I have already indicated.

I would, therefore, answer the first question in the affirmative. The answer to the second question depends upon the first and no argument was addressed on it. Therefore, the answer to it should also be in the affirmative.

A. S. M. A.

Attorney for the applicant: *N. G. Morgan.*

Attorney for the opposite party: *G. C. R. Taylor*  
*offg. Solicitor to Government of Bengal.*