INCOME-TAX REFERENCE.

Before Rankin C. J., C. C. Ghose and Buckland JJ.

1932

Feb. 2, 5.

In re PORT SAID SALT ASSOCIATION, LTD.*

Income-tax—Profits of business—Manufacture in foreign country—Profit earned by manufacture, if may be deducted—Indian Income-tax Act (XI of 1922), s. 42.

An assessee, assessed under section 42 of the Income-tax Act, in respect of a business in which the manufacture of a commodity takes place in a foreign country and the sale thereof takes place in British India, is not entitled, in computing the profits and gains of such business, to make a deduction representing the proportion of profits earned by manufacture in the country of origin.

INCOME-TAX REFERENCE at the instance of the assessee.

In November, 1930, the Port Said Salt Association, Limited, a company which manufactures salt in Egypt and exports the manufactured product to various trade centres of the world, made its returns for the two years ending 31st December, 1927 and 1928, respectively.

In both years, the company after working out the consequent proportion of profits attributable to the business connection in British India, proceeded to make a deduction at the rate of three shillings per ton, as claim for manufacturing profit, earned in Egypt. The Income-tax Officer disallowed the claim and the company's appeal to the Assistant Commissioner failed. The Commissioner was moved with regard to three different items of deductions. He stated a case with the following question :

Is an assessee under section 42, in respect of a business in which the manufacture of a commodity takes place in a foreign country and the sale thereof takes place in British India, entitled, in computing the profits and gains of such business, to make a deduction representing the proportion of profits earned by manufacture in the country of origin, or is he bound, in computing such profits or gains, to do so on the assumption that the whole of these are earned in the country of sale ?

Page (with him *Ormond*) for the assessees. Section 10 is not exhaustive. The assessee's agent

*Reference under section 66 (2) of the Indian Income-tax Act, No. 3 of 1931.

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must receive the income on behalf of the non-resident assessee. But I must draw your Lordship's attention to *Commissioner of Income-Tax, Bombay* v. *Remington Typewriter Company* (1).

N. N. Sircar, Advocate-General (with him *R. B. Pal*) was not called upon.

Cur. adv. vult.

RANKIN C. J. This Reference has been made by the Commissioner of Income-tax upon a question arising out of assessments upon the Port Said Salt Association, Ltd., for the years 1928-29 and 1929-30. The assessees have their headquarters in Egypt, where they manufacture salt and export it to various parts of the world including India. They do not contest that they are liable to pay Indian Income-tax under section 42 of the Act (XI of 1922), but they have raised before the Commissioner and he has referred to us the following question :—

> Is an assessee, assessed under section 42 in respect of a business in which the manufacture of a commodity takes place in a foreign country and the sale thereof takes place in British India, entitled, in computing the profits and gains of such business, to make a deduction representing the proportion of profits earned by manufacture in the country of origin, or is he bound, in computing such profits or gains, to do so on the assumption that the whole of these are earned in the country of sale ?

The Commissioner has disallowed any deduction of this character and it appears to me that he is right. By section 4, the tax is charged upon profits "accruing "or arising or received" in British India and if any profit is, or must be deemed to be, of this character it will not be saved by the circumstance that work was done and money spent abroad in order to obtain it. Naturally the cost to the assessees wherever incurred, of producing the article, transporting it and selling it must be deducted from the price obtained before the balance can be called a profit. Again, upon a valuation of stock in hand, the Egyptian business might be well entitled to treat it as an asset for more than the bare cost of production. But profit, though it may be anticipated by valuation or otherwise, is not

(1) (1928) I. L. R. 52 Bom. 726 ; on app. (1930) I. L. R. 55 Bom. 243 ; L. R. 58 I. A. 42.

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realised before price, and, when the article is sold, the whole profit is realised for the first time. Support for the assessee's argument cannot be derived from anything in section 10 of the Act, the principle of which is to permit of allowances for actual expenditure and loss actually incurred for the purpose of earning the profits. The phrase "earning such profits" occurs in clause (*ix*) of sub-section (*2*) of section 10, but the section contains no hint that part of the profits will be exempted, although they arise or are received in British India, because they have been "earned" elsewhere.

The purpose of section 42, in its first sub-section, is to enact that all profits accruing to a person through or from any business connection or property in British India shall be deemed to come within the class of profits taxed by section 4. The third sub-section shows that profits arising from sale of merchandise exported to British India are within the class that has been made taxable under section 4. To permit of the assessee's contention, both sub-sections must be drafted very differently, and the 33rd Rule, which appears to have been applied to the present case, authorises a method of computation by taking the proportion of "receipts so accruing or arising" to the total receipts—a computation which would be radically changed if the claim of the assessees is admitted. An international convention to limit the rapacity of nations towards the nationals of others might listen to the argument of the assessees with great respect, but we cannot make room for it in the Indian Act.

The question referred to us must be answered as to the first part in the negative. The second part need not be answered as it assumes that profits to be taxable must be "earned" in British India, which is to beg the question. The assessees must pay the costs.

GHOSE J. I agree.

BUCKLAND J. I agree.

Advocate for Income-tax Department: *R. B. Pal.*

Attorneys for assessees: *Sanderson & Co.*

S. M.