REFERENCE UNDER THE INCOME-TAX ACT.

Before Costello and Panckridge JJ.

1937

Jan. 27, 28.

In the matter of

MOHANPUR TEA COMPANY, LIMITED.*

Income-tax—British India, Income, profits and gains accruing or arising in—Tea grown and manufactured in Indian State, but sold in British India—Indian Income-tax Act (XI of 1922), s. 4 (1) and (2) provs.

Tea was grown and manufactured on a tea estate situated in an Indian State on land answering the description in the second proviso to s. 4 (2) of the Indian Income-tax Act, 1922.

After manufacture, the tea was sent to Calcutta and sold there, the price being paid in Calcutta.

Held that the profits of the sale accrued or arose in British India within the meaning of s. 4 (1) of the Indian Income-tax Act.

The assesses, *i.e.*, the growers, manufacturers and sellers of the tea, therefore, could not claim to take advantage of the proviso to sub-s. (2) to s. 4 of the Act, as the sub-section deals with income, profits and gains accruing or arising without British India and thereafter received in or brought into British India.

Commissioners of Taxation v. *Kirk* (1) distinguished.

REFERENCE under s. 66 (2) of the Indian Income-tax Act at the instance of the assessee.

The facts of the case and the arguments advanced at the hearing of the Reference appear sufficiently in the judgment.

Prakash Chandra Majumdar (with him *Gunada Charan Sen*) for the assessee.

Sir A. K. Roy, Advocate-General, *Radha Binode Pal* and *Ramesh Chandra Pal* for the Income-tax department.

Cur. adv. vult.

*Income-tax Reference, No. 14 of 1936, under s. 66 (2) of the Indian Income-tax Act.

(1) [1900] A. C. 588.

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PANCKRIDGE J. The assessees are a company incorporated under the Indian Companies Act with their registered office in Calcutta. Their income, profits and gains are derived from the sale of tea grown and manufactured on a tea estate in the Indian State of Tippera, and then sent to Calcutta and sold there. For the year 1935-36 the Income-tax Officer assessed the company on a taxable income of Rs. 1,029 on which an income tax of Rs. 163-10 has been demanded. The assessees claim that 60 *per cent.* of their assessed income is not liable to tax.

The assessees rely on the principle laid down in the *Killing Valley Tea Company, Ld.* v. *Secretary of State for India* (1), where it was held that when tea is grown and manufactured in British India a portion of the income, profits and gains, derived from its sale in British India, must be regarded as "agri-"cultural income" and, therefore, outside the scope of the Indian Income-tax Act by reason of s. 4 (*3*) (viii) of the Act. This principle has subsequently been recognised by Rule 24 made under s. 59 of the Act. The material paragraph of the Rule is as follows :—

> Income derived from the sale of tea grown and manufactured by the seller in British India shall be computed as if it were income derived from business and 40 *per cent* of such income shall be deemed to be income, profits and gains liable to tax.

In the present case, however, the assessees are admittedly not entitled to the exemption provided by s. 4 (*3*) (viii) of the Act, because income derived from tea grown in an Indian State is not "agricultural income" as defined in s. 2, sub-s. (*1*), which limits agricultural income to income derived from land, which is used for agricultural purposes and is either assessed to land revenue in British India, or subject to a local rate assessed and collected by officers of Government as such. Accordingly, if the income of the assessee is income, profits, or gains,

(1) (1920) I. L. R. 48 Cal. 161.

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accruing or arising or received in British India within the meaning of s. 4, sub-s. (*1*), the charging sections of the Act will apply.

The assessees maintain that their income is not income, profits, or gains arising or accruing or received in British India, but they admit that, but for a proviso, with which I shall deal shortly, it would be income, profits or gains deemed under the provisions of the Act to be income, profits or gains received in British India within the meaning of sub-s. (*1*). Sub-section (*2*) defines what income, profits or gains shall be so deemed. The material words are as follows:—

> 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.

As I have said, the assessees admit that these words *prima facie* cover the whole of the income, profits and gains, in respect of which they have been assessed, but they rely on the following proviso to sub-s. (*2*), introduced into the Act by the Indian Income-tax Amendment Act, 1933:—

> Provided further that nothing in this sub-section shall apply to income from agriculture arising or accruing in a State in India from land for which any annual payment in money or in kind is made to the State.

The Commissioner of Income-tax has held that in the circumstances the income, profits and gains accrued or arose or were received in British India within the meaning of s. 4, sub-s. (*1*) and are not merely *deemed* under the Act so to arise or accrue or be received, and that there is, accordingly, no need to consider the meaning of the proviso.

At the request of the assessees, he has referred the question of law involved to this Court under s. 66 (*2*) of the Act in the following form:—

> Whether on the facts and circumstances of this case, the whole of the income of this tea Company has accrued, arisen or been received in British India?

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I am of opinion that the Commissioner is right in his opinion that an affirmative answer must be given to this question. I think that, if one compares sub-s. (*1*) with sub-s. (*2*), it is clear that what sub-s. (*2*) contemplates is a case where income, profits and gains have assumed their form as such outside British India, and are thereafter received in or brought into British India.

In the present case, what was received in or brought into British India was not income, profits and gains, but manufactured tea. Indeed, until the manufactured tea had been sold at a profit in Calcutta it can hardly be said that there were any income, profits and gains. Had the tea been sold in Tippera and the price had either been received in Calcutta, or received in Tippera and subsequently remitted to Calcutta, it would have been a different matter, and it may be that such a case would, *prima facie* fall within sub-s. (*2*) subject to the proviso as to income from agriculture.

The assessees strongly rely on the decision of the Privy Council in the *Commissioners of Taxation* v. *Kirk* (1), and at first sight, it appears to be of considerable assistance to them, but, if the language of the statute which was the subject matter of that decision is compared with the language of the Indian Income-tax Act, the differences are obvious. Under the New South Wales Land and Income-tax Assessment Act, 1895, s. 15, the following classes of income are made liable to tax:—

Sub-s. (1) Arising or accruing to any person wheresoever residing from any profession, trade, employment or vocation carried on in New South Wales, whether the same be carried on by such person or on his behalf wholly or in part by any other person.

(3) Derived from lands of the Crown held under lease or license issued by or on behalf of the Crown.

(4) Arising or accruing to any person wheresoever residing from any kind of property except from land subject to land tax as hereinafter specifically excepted, or from any other source whatsoever in New South Wales not included in the preceding sub-section.

(1) [1900] A. C. 588, 592.

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The assessees were a mining company with mines in the colony of New South Wales. The ore was extracted in New South Wales and was converted from a crude into a merchantable product in New South Wales. The merchantable product was, however, sold and the price paid not in New South Wales but in Victoria. Their Lordships observe at page 592:—

> The word "trade" no doubt primarily means traffic by way of sale or exchange or commercial dealing, but may have a larger meaning so as to include manufactures. But if you confine trade to the literal meaning, one may ask why is not this income derived (mediately or immediately) from lands of the Crown held on lease under s. 15, sub-s. 3, or from some other source in New South Wales under sub-s. 4. Their Lordships attach no special meaning to the word "derived", which they treat as synonymous with arising or accruing. It appears to their Lordships that there are four processes in the earning or production of this income—(1) the extraction of the ore from the soil; (2) the conversion of the crude ore into a merchantable product, which is a manufacturing process; (3) the sale of the merchantable product; (4) the receipt of the moneys arising from the sale. All these processes are necessary stages which terminate in money, and the income is the money resulting less the expenses attendant on all the stages. The first process seems to their Lordships clearly within sub-s. 3, and the second or manufacturing process, if not within the meaning of "trade" in sub-s 1, is certainly included in the words "any other source whatever" in sub-s. 4.

The assessees in the case before us attach great weight to the passage in which it is said that "derived" should be treated as synonymous with "arising" or "accruing". It will be observed, however, that the liability to tax depended not on whether the income arose or accrued in New South Wales, but whether it arose or accrued from a source in New South Wales.

Now the place where income accrues or arises is by no means necessarily the place where the source, from which it accrues or arises, is situated. This is a distinction which the argument of the assessees appears to me to overlook.

In my opinion, in the circumstances of the present case, no income, profits or gains, arose or accrued until the manufactured tea was sold in

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Calcutta which is, therefore, the place where the income, profits and gains arose and accrued. Accordingly, s. 4, sub-s. (2) and the provisos thereto have no application and the question of law propounded by the Commissioner of Income-tax must have an affirmative answer.

The assessees will pay costs of the Reference including the costs of the advocates appearing.

COSTELLO J. I agree.

Question answered in affirmative.

Advocate for assessee: *Prakash Chandra Majumdar.*

Advocate for Income-tax Department: *Ramesh Chandra Pal.*

G. S.