

APPELLATE CIVIL—SPECIAL BENCH.

*Before Sir Walter Salis Schwabe, Kt., K.C., Chief Justice,
Mr. Justice Oldfield and Mr. Justice Coultis Trotter.*

1923,
January 29.

THE SECRETARY, BOARD OF REVENUE, INCOME-
TAX, MADRAS, REFERRING OFFICER,

v.

RIPON PRESS AND SUGAR MILLS COMPANY,
LIMITED, ASSESSER,*

Indian Income-tax Act (VII of 1918), sec. 3 (1)—Company located in British India controlling business situated outside India—Accrual of income outside India—Liability of Company to income-tax.

A Company whose Directors and head office were in Bellary wherefrom the business of the Company was controlled had a factory in Raichur (i.e., in the Nizam's Dominions), earned all its income only in Raichur by pressing cotton for its customers and usually paid its dividends according to its agreement only at that place.

Held, notwithstanding the fact that some money was received in Bellary from Raichur for office expenses and for convenient payment in Bellary of dividends to some shareholders, the Company cannot be assessed to income-tax in British India as no portion of its income "accrued, arose or was received" in British India within section 3 (1) of the Indian Income-tax Act (VII of 1918).

Money remitted to the Company at Bellary is only part of the money already "accrued" to the Company at Raichur and is not income newly "received" by the Company; *In re Aurangabad Mills Limited*, (1921) I.L.R., 45 Bom., 1286, *Board of Revenue, Madras v. Ramanadhan Chetty*, (1920) I.L.R., 43 Mad., 75, and *Sundar Das v. Collector of Gujarat*, (1922) I.L.R., 3 Lah., 349 (F.B.), followed.

CASE stated under section 51, Act VII of 1918 by the Secretary, Board of Revenue (Income-tax), Madras, in I.T.A. No. 28 of 1920-21.

* Referred Case No. 2 of 1922.

The facts are given in the Judgment of the CHIEF JUSTICE.

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C. Sambasiva Rao (with *P. Chenchayya*) for assessee.—The Company is not liable to be taxed. Its business is entirely in Raichur, i.e., in the Nizam's Dominions. There alone all its income accrues and no portion of its income accrues in British India. The fact that some portion of the income already earned in Raichur is sent to Bellary for office expenses and for payment of dividend to some of its shareholders does not make the receipt of that money by the Company a new receipt or a new income. According to the rules dividend was payable only at Raichur. I rely on *In re Aurangabad Mills, Limited*(1), an exactly similar case; *Gresham Life Assurance Society v. Bishop*(2) and *Sundar Das v. Collector of Gujrat*(3). The fact that the place wherefrom the business is controlled is in British India is immaterial; *Board of Revenue, Madras v. Ramadhan Chetty*(4).

[CHIEF JUSTICE referred to *Greenwood v. F. L. Smidth & Co.*(5).]

Government Pleader (*O. Madhavan Nair*) for the Government.—Some profits were received in Bellary for distribution as dividend. That is sufficient to satisfy section 3 (1) of the Act.

[CHIEF JUSTICE.—It was not received in Bellary as income. Even if it was income, how can you assess the whole income?]

Whatever was sent to Bellary must be treated as income remitted to British India, and hence taxable. Moreover the business was controlled from Bellary. I rely on the observations in *Board of Revenue, Madras*

(1) (1921) I.L.R., 45 Bom., 1286.

(2) [1902] A.C., 287.

(3) (1922) I.L.R., 3 Lah., 349 (F.B.).

(4) (1920) I.L.R., 43 Mad., 74.

(5) [1922] A.C., 417.

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v. *Ramanadhan Chetty*(1). *In re Aurangabad Mills, Limited*(2) is wrong.

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C.J.

SCHWABE, C.J.—In this case the facts contained in the original reference and the further report, which is by no means clearly expressed, amount to this : The Company carries on a factory at Raichur in the territory of the Nizam of Hyderabad. At that factory material is pressed. Against persons who bring the material to the factory, a charge is made, and the charge is received wholly in Hyderabad. The Company's head office is in Bellary in this Presidency. There are Directors there and they control the business carried on at Raichur by directing its policy, fixing the rates to be charged for the work done there, examining its accounts and issuing dividend warrants in respect of the profits earned. The only other thing that, it would appear, is done in British India is the receipt of some money for the purpose of the office expenditure at Bellary and possibly, though it is not clear on the statement, the receipt, of some money which is occasionally used for the payment of dividend warrants at Bellary though, by the terms of the dividend warrants, they are payable only at the office of the treasury at Raichur.

The question referred to us is whether the Company can be assessed to income-tax on the whole of its profits for the year, it being claimed that Bellary is the place where the total amount of the profits is paid by the Company to its shareholders by the issue of dividend warrants. The question turns on the interpretation of section 3 (1) of the Income-tax Act VII of 1918 which runs thus :—

“ This Act shall apply to all income from whatever source it is derived if it accrues or arises or is received in British India,

(1) (1920) I.L.R., 48 Mad., 75.

(2) (1921) I.L.R., 45 Bom., 1286.

or is, under the provisions of this Act, deemed to accrue or arise, or to be received in British India.”

Except for the small amount received as the Company's money by the Company in Bellary, in my judgment, there is no income which accrues or arises or is received in British India and there is nothing in the Act to show that such profits earned outside British India are to be deemed to accrue or to arise or to be received in British India.

There is a direct authority on the point in *In re Aurangabad Mills, Limited*(1). In that case the facts were precisely the same as in this case except that the Bombay Directors of the business, which had its factory in Aurangabad, seemed to have controlled the business in Aurangabad more than the Bellary Directors did in this case, and except for the fact that it was admitted in that case, though it is not clear in this case, that money was received in Bombay for the express purpose of paying some of the Bombay shareholders their dividends; and it was held in that case that the general profits of the Company were not liable to income-tax. I agree with that decision, which governs this case, and I have nothing to add to the reasons given by MACLEOD, C.J., in that case. I think that this case really is also covered by the ruling of this Court in *Board of Revenue, Madras v. Ramanadhan Chetty*(2). There is a recent case *Sundar Das. v. Collector of Gujrat*(3) where it was held that where a man carried on business outside the part of India to which the Income-tax Act applies, earned his profits there, and then had them remitted to him in India where he resided, that money was not received in India. It was pointed out that it had been received outside and had remained in the possession, actual or

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(1) (1921) I.L.R., 45 Bom., 1286.

(2) (1920) I.L.R., 43 Mad., 75.

(3) (1922) I.L.R., 3 Lah., 249 (F.B.).

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constructive, of the trader throughout and that it could not be considered to be received again when it was brought into British India, whether brought by him or sent from abroad to him in British India. I point out this because that is a point which may be involved in the event of the question being referred to this Court whether small amounts, received by the Company as stated by me above in Bellary are themselves liable to taxation or not.

I, therefore, answer the question referred to us in the negative. The costs to be assessed by the Registrar are payable to the assessee.

OLDFIELD, J. OLDFIELD, J:—I agree and I only wish to point out that, although the argument as to the receipt by some of the shareholders of dividends in Bombay was available to the Crown in *In re Aurungabad Mills, Limited*(1) it was not thought worth while to make any distinct reference to it in the judgment. I supplement what has been said by my Lord regarding it because it is as well to point out that the terms of the reference of the Board indicate a fundamental misconception on one important point. Mention is made in that reference of the fact that “the majority of the shareholders (who after all form the company) received their dividends in British India.” The identity between the shareholders and the Company is not material for the present purpose, since the assessment is not of the income as the income of the individual shareholders, but as the income of the Company; and we have nothing to do with the shareholders in their individual capacity. So far as the Company is concerned, the only material matter is the receipt of the income and that income was received at Raichur. If some of it came to Bellary and was actually used to pay dividends, that is no reason

why we should assume that what was done in Bellary was anything more than the distribution of what was already the Company's income and was payable as of right in accordance with the arrangement made by the Company to the shareholders only at Raichur outside British territory. It is not necessary for us, and it is not possible on the facts before us, to say whether payment in the cases referred to in the reference was made at Bellary by the officers of the Company to the payees, who took their money there instead of presenting their dividend warrants at Raichur, after the receipt of the money by those officers at the latter place as the payees' agents, or to attempt an exact definition of the legal position. It is sufficient that such payments have nothing to do with the accrual of income to or its receipt by the Company, as such. With these observations, I agree in the negative answer proposed.

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OLDFIELD, J.

COUTTS TROTTER, J.—I agree. Where you have dividend warrants issued to shareholders expressed to be payable at the office of the treasury at Raichur, it is very strong evidence that the income regarded as the Company's income has been received and has accumulated in Raichur. I entirely agree with the decision cited to us in *Sundar Das v. Collector of Gujrat*(1) that you cannot receive the same sum of money *quod* income twice over, once outside British India and once inside it. *In re Aurangabad Mills, Limited*(2) covers the point raised in argument, and I respectfully agree with that decision.

COUTTS
TROTTER, J.

N.R.

(1) (1922) I.L.R., 3 Lah., 349 (F.B.). (2) (1921) I.L.R., 45 Bom., 1286.