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MUHARRAM ALI v. BARKAT ALI.

On the findings given above it is not necessary to examine the plea of the defendants that no part of the house in question belonged to Muhammad Ali at the time of his death, but that in a private partition it had been allotted to Ahmad Ali, who had gifted it to Barkat Ali, and that the latter had been dealing with it as full owner since 1906.

TEK CHAND J

In my opinion the decision of the Lower Court is correct and I would dismiss the appeal with costs.

AGHA HAIDAR J.—I agree.

AGHA HAIDAR J

A. N. C.

Appeal dismissed.

CIVIL REFERENCE.

Before Tek Chand and Agha Haidar JJ.

HARKISHEN LAL (ASSESSEE) PETITIONER

versus

COMMISSIONER OF INCOME TAX, PUNJAB, RESPONDENT.

1930

April 24.

Civil Reference No. 31 of 1929.

Indian Income-tax Act, XI of 1922, Section 10 (2)—Deductions—extent to which allowable on profits accrued abroad and brought into British India.

Held, that interest paid in British India on capital which had been borrowed in British India for the purpose of a business conducted by an assessee in foreign territory is a permissible deduction under section 10 (2) of the Act, if the profits or gains of such business are brought into British India in the year in which they accrued or arose or in the three succeeding years. In order to claim this deduction, it is not necessary that the profits or gains made in the year in question or in the three preceding years should have been brought into British India *in their entirety.* The only limitation is that the amount of the interest sought to be deducted should not exceed the sum actually brought into British India and taxed in the accounting year.

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HARKISHEN LAL v. COMMISSIONER OF INCOME TAX.

Case referred by A. Raisman, Esquire, Commissioner of Income Tax, Punjab, N.-W. F. and Delhi Provinces, with his No. 218-B/25-26 of 26th September 1929, for orders of the High Court.

C. B. PETMAN and MADAN GOPAL, for Petitioner.

JAGAN NATH AGGARWAL, for Respondent.

TEK CHAND J.

TEK CHAND J.—The assessee-petitioner is a resident of Lahore and has several sources of income in British India. He also owns a flour-mill, known as the Bhupindra Flour Mills, at Bhatinda in the Patiala State territory. This mill was burnt down some years ago but was renovated with money borrowed by the petitioner from the Punjab National Bank, Ltd., Lahore. From 1921 onwards the petitioner has, from time to time, brought into British India a part, but *not* the whole, of his earnings from the mill. The amount so brought within a particular year has been included in his assessable income for that year and to this the assessee did not—as he could not—raise any objection. He has, however, been claiming a deduction of the amount of interest paid by him during the " accounting period " to the Punjab National Bank on the loan above-mentioned. The question appears to have first arisen in connection with the petitioner's assessable income in the calendar year 1921 which was the basis of the assessment for 1922-23. On a reference by the Assistant Commissioner, the then Income Tax Commissioner (Mr. Darling) allowed the deduction holding that " expenses incurred outside British India may be set off against income taxable within British India; but it has to be remembered that under section 10 (2) (*iii*) an interest charge is only liable as a deduction in respect of capital borrowed for the

purpose of a business that is taxable. In this case, the income of the Bhupindra Mills is only taxable in so far as it is brought into British India within the statutory period. I think, therefore, that the interest allowed should not exceed the income taxed in British India, and it must of course have been paid in the 'accounting year' in question."

Similar deductions were admittedly allowed by the Income-tax authorities on the assessments for the years 1923-24 and 1924-25, which were made on the amount of profits of the mill brought into British India in the calendar years 1922 and 1923, respectively. When the assessment for 1925-26, came to be made, the assessee again claimed a deduction for interest paid to the Punjab National Bank in the calendar year 1924, but the Assistant Commissioner disallowed the claim on the ground that the allowances enumerated in section 10 (2) of the Act could not be allowed against the income of a business situate outside British India. Against this order the petitioner moved the Income Tax Commissioner, who disagreed with the Assistant Commissioner in his view of the applicability of section 10 (2), and held that there was no reason why the method of computing the profits and gains of a business should be different for a business situated in British India and liable to tax under section 4 (1) of the Act from that of a business situated outside British India and liable to tax under section 4 (2). But while conceding this proposition in favour of the assessee, the Commissioner refused to allow the petitioner to deduct the amount of interest paid by him to the Bank in 1924 on the ground that under section 4 (2), such a deduction could only be made if *all* the profits of the Bhupindra Flour Mills made *during the accounting period as*

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well as within three years immediately preceding that period had been remitted to British India. As it was admitted that the profits which had been made by the petitioner from the mill in the calendar years 1921, 1922, 1923, and 1924 had not been received or brought into British India *in their entirety*, though during each of these years he had so brought more than the amount of interest paid to the Bank in that particular year, the learned Commissioner disallowed the deduction.

Thereupon the petitioner moved this Court under section 66 (3) and Zafar Ali and Addison JJ. after stating the facts, passed an order requiring the Commissioner to state the case on the following question of law:—

"Should the amount of interest so paid be deducted from the profits received in British India, by virtue of clause (2) of section 10 of the Income Tax Act, though the whole of the profits made (in the previous year as well as in the three preceding years) may not have been brought into British India?"

We have examined the statement of the case submitted by the Commissioner and have also heard both counsel at length. After consideration I am of opinion that the law had been correctly laid down by Mr. Darling in his order dated the 11th of June 1924 and that the contrary view taken by his successor (Mr. Raisman) in the order under reference is not warranted by the provisions of the Indian Income Tax Act and cannot be sustained.

On behalf of the Income Tax Department, it is conceded that interest paid in British India for

capital borrowed here for the purposes of a business, conducted by the assessee in foreign territory, is a permissible allowance under section 10 (2), if the profits or gains of such business are brought into British India. It is, however, contended that this deduction can be allowed only if *all* the profits earned by the assessee from such business in the accounting year and the three preceding years are brought in, and for this contention reliance is placed on clause (2) of section 4 of the Act, which runs as follows :—

" Profits and gains of a business 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 and received or brought, notwithstanding the fact that they did not so accrue or arise in that year, provided that they are so received or brought in within three years of the end of the year in which they accrued or arose."

Before the enactment of this clause it had been held that profits, which had arisen or accrued to a British Indian resident from a business outside British India, but which had been subsequently transmitted to British India, were not his " income " assessable under the Act, as a person could not receive his income twice over, and that the receipt in British India of such amount must be presumed to be that of capital. *Sundar Das* v. *Collector of Gujrat* (1). The Legislature considered this state of the law to be unsatisfactory and amended the Act by enacting that if profits of such business, earned in foreign territory, are brought into British India

(1) (1922) I. L. R. 3 Lah. 349 (F.B.).

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within three years from the end of the year in which they accrued or arose, the amount so brought shall be liable to assessment. The practical effect of this provision is to lay down that the profits of a foreign business brought into British India shall be deemed to be his *assessable income* if they are brought within three years of the end of the year in which they are earned, but they will be treated as *capital* (and therefore immune from assessment) if they are so brought after the expiry of that period. By fixing this arbitrary limit of three years the Legislature has, on the one hand, provided against evasion of the law by the assessee bringing in his foreign income at intervals and urging that it was not received in British India in the year in which it was earned and had thus become his capital; and on the other, it has recognized the principle that if foreign profits are not brought into British India within a reasonable period (*i.e.*, three years from the end of the year in which they were earned) they shall be treated as having become his savings or capital, and not liable to assessment, if brought after the expiry of that period. The clause does not, however, lay down expressly, or by necessary implication, that any allowances, which might be permissible, under section 10 (2), in determining the amount of these profits or gains, should be given credit for only if *all* the profits made by foreign business in the accounting period and the three years immediately preceding thereto are transmitted to British India.

It must be remembered that by the law of India a person resident in British India cannot be taxed in respect of his earnings from a trade or business carried on abroad, irrespective of whether such earn-

ings have or have not been brought *into* British India; but it is only that portion of such earnings which is *actually brought* into British India during the period mentioned above, which is to be deemed to be his "profits and gains," and as such liable to be taxed. If in determining the "profits" of such business any allowances are permissible under section 10 (2), I cannot see why the assessee should lose his right to claim them, merely because he has not brought into British India his foreign profits for the accounting period or for the three preceding years *in their entirety*. After carefully considering the provisions of the Act, I have no doubt in my mind that the permissible deductions should be allowed subject, of course, to the limitation pointed out by Mr. Darling in his order referred to above, that the amount so set off does not exceed the amount brought into British India and taxed in the accounting year.

It is admitted by both parties that during the accounting period in question (which is the calendar year 1924) the mill made a total profit of Rs. 47,040 only, but during this period the assessee remitted to British India from Bhatinda Rs. 78,300, comprising the entire earnings of that year as well as Rs. 31,260 out of the savings of the previous years, and that this sum of Rs. 78,300 has been included in his assessable income. As against this he claimed a deduction of Rs. 20,450 only, being the amount paid by him to the Punjab National Bank during the same period as interest on the loan which has been raised for the purposes of the mill.

The amount of foreign profits brought into British India in the accounting period is thus far in excess of the amount of interest paid during the

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period, and, therefore, the latter amount is a permissible allowance under section 10 (2) and the assessee is entitled to deduct it from his assessable income.

I would, therefore, answer the question in favour of the assessee and allow him his costs in this Court.

GHA HAIDAR J. ACHA HAIDAR J.—I agree.

N. F. E.

Reference answered in the affirmative.

REVISIONAL CRIMINAL.

Before Tek Chand J.

1930

June 27.

SHARAF DIN AND ANOTHER, Petitioners

versus

GOKAL CHAND, Respondent

Criminal Revision No. 562 of 1930.

Criminal Procedure Code, Act V of 1898, section 517—Order disposing of property—regarding which offence committed—Property pawned by accused (Manager of branch firm)—validity of pledge—Indian Contract Act, IX of 1872, section 178.

The petitioners, the proprietors of the complainant firm, had a branch of their business at Pind Dadan Khan, where *N. A.* was the manager. *N. A.* pawned a number of ornaments belonging to the firm with one *G. C.* for Rs. 1,000, and misappropriated the proceeds. He was tried and convicted of an offence under section 408, Indian Penal Code. At the conclusion of the trial the Magistrate passed an order under section 517, Criminal Procedure Code, to the effect that the ornaments which were produced by *G. C.* before the Police during the investigation be made over to the complainant firm. On appeal by *G. C.*, the Sessions Judge set aside this order and directed the ornaments to be returned to *G. C.*

Held, (affirming the order of the Sessions Judge) that in order to determine whether a particular transaction where-