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THE PREMIER AUTOMOBILES LTD.

v.

S. N. SHRIVASTAVA & ANR.

October 10, 1968

B [J. C. SHAH, V. RAMASWAMI, G. K. MITTER, K. S. HEGDE AND
A. N. GROVER, JJ.]

Indian Income-tax, 1961, ss. 160, 163, 209, 210, 212—Agent of non-resident whether liable to pay advance-tax payable by non-resident—Provisions creating such liability whether violative of Constitution of India, Art. 14.

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The Income-tax Officer, Companies Circle, Bombay treating the petitioner as an agent of a non-resident issued a notice of demand under s. 156 read with s. 210 of the Indian Income-tax Act, 1961. By this notice the petitioner was called upon to pay advance tax as agent of the foreign principal during the financial year 1964-65. The petitioner filed a petition under Art. 32 of the Constitution challenging the demand. The contentions in support of the petition were : (i) that under ss. 209 and 210 of the Indian Income-tax Act, 1961 no order for payment of advance tax can be made against an agent of a non-resident; (ii) that a provision which authorises collection of advance-tax from an agent of a non-resident infringes the equality clause of the Constitution. In support of the first contention it was urged that since under s. 209(1) the amount of advance-tax payable by an assessee in the financial year is to be computed on his total income of the latest previous year in respect of which he has been assessed by way of regular assessment, an agent cannot be directed to pay advance-tax the liability whereof depends upon the determination of total income of the principal.

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HELD : (i) Sections 207 and 208 which impose liability to pay advance-tax in a financial year, s. 210 which authorises the Income-tax Officer to make a demand for payment of advance-tax from a person who is previously assessed, and s. 212(3) which imposes the duty to make an estimate of the total income likely to be received or to accrue or arise, and to pay advance-tax if the total estimated income exceeds the maximum amount not chargeable to tax in his case by Rs. 2,500/- apply to every person whether he is assessed in respect of his own income or as a representative assessee, and it is not possible to imply in the application of these provisions an unexpressed limitation on the express words of the statute in favour of an agent of a non-resident principal. [358 C—D]

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It is expressly enacted by s. 161 that as regards income in respect of which a person is a representative assessee, he shall be subject to the same duties, responsibilities and liabilities as if the income were income received by or accruing to or in favour of him beneficially. It is clearly implicit therein that a representative assessee is not exempt from liability to pay advance-tax. [357 C]

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Of the liability to pay advance-tax it is not predicated that the previous year should have come to an end before the liability can arise. The previous year of an assessee may in some cases end after the commencement but before the end of a financial year in which advance tax is payable : it may in other cases commence and end with the financial year. But the liability to pay advance tax is not in any manner

affected because the previous year ends before or with the financial year. There is nothing in the Act under which the liability to pay advance tax of a representative assessee depends upon determination of the total for the previous year. [357 C—G] A

Accordingly, it could not be held that the petitioner was not liable to pay advance tax on behalf of his non-resident principal. [358 E—F]

(ii) The plea that the provisions imposing liability to pay advance tax upon an agent of a non-resident infringe the equality clause of the Constitution could not be accepted. The only ground urged, that an assessee may escape liability to pay advance tax when his previous year coincides with the financial year, was without substance. [359 B—C] B

ORIGINAL JURISDICTION : Writ Petition No. 67 of 1965.

Petition under Art. 32 of the Constitution of India for enforcement of the fundamental rights. C

M. C. Chagla, F. N. Kaka, O. P. Malhotra and J. B. Dadachandji, for the petitioner.

B. Sen, T. A. Ramachandran and R. N. Sachthey, for the respondents. D

The Judgment of the Court was delivered by

Shah, J. On February 25, 1965, the Income-tax Officer, Companies Circle I(3), Bombay, directed that for the purpose of the Income-tax Act, 1961, the Premier Automobiles Ltd.—hereinafter called ‘the Company’—be treated as an agent of M/s Dodge Brothers of United Kingdom—a non-resident Company. On the same day the Income-tax Officer issued a notice of demand under s. 156 read with s. 210 of the Act calling upon the Company to pay on or before March 1, 1965, advance-tax of Rs. 11,51,235-91 as agent of the foreign principal during the financial year 1964-65. The Company then moved a petition in this Court for an order quashing and setting aside the order under s. 163 and notice of demand under s. 156 for the assessment year 1965-66 and for an injunction or prohibition restraining the Income-tax Officer from enforcing or implementing the order under s. 163 and the notice under s. 156 read with s. 210 of the Income-tax Act, 1961. The petition was resisted by the Income-tax Officer. E

In support of the petition counsel for the Company raised two contentions : F

(1) that under ss. 209 and 210 of the Indian Income-tax Act, 1961, no order for payment of advance-tax can be made against an agent of a non-resident; and G

(2) that a provision which authorises collection of advance-tax from an agent of a non-resident infringes H

A the equality clause of the Constitution and is on that account void.

Sections 207 and 208 of the Income-tax Act, 1961, insofar as they are material, provide :

B 207—“(1) Tax shall be payable in advance in accordance with the provisions of sections 208 to 219 in the case of income other than income chargeable under the head “Capital gains.””

208—“Advance tax shall be payable in the financial year—

C (a) where the total income exclusive of capital gains of the assessee referred to in sub-clause (i) of clause (a) of section 209 exceeded the maximum amount not chargeable to income-tax in his case by two thousand five hundred rupees; or

(b)”

D Section 209 sets out the rules for computation of amount of advance-tax payable by an assessee in the financial year. Section 210 provides by sub-s. (1)—

E “Where a person has been previously assessed by way of regular assessment under this Act or under the Indian Income-tax Act, 1922, the Income-tax Officer may, on or after the 1st day of April in the financial year, by order in writing, require him to pay to the credit of the Central Government advance-tax determined in accordance with the provisions of sections 207, 208 and 209.”

F Section 207, 208, 209 and 210 prescribe machinery for imposition of liability for and determination of the quantum of advance-tax in respect of income which is chargeable to income-tax in the hands of a person on regular assessment.

G Under the Income-tax Act, 1961 a person is liable to be assessed to tax in respect of his own income, and also in respect of certain classes of income received by or accruing or arising to others. He is also liable to be assessed to tax as a representative-assessee. That is expressly so enacted by s. 161(1) which provides :

H “Every representative assessee, as regards the income in respect of which he is a representative assessee, shall be subject to the same duties, responsibilities and liabilities as if “the income were income received by or accruing to or in favour of him beneficially, and shall be liable to assessment in his own name in respect of

that income; but any such assessment shall be deemed to be made upon him in his representative capacity only,”

A representative assessee by sub-s. (1) of s. 160 includes amongst others, the agent of a non-resident in respect of the income of a non-resident specified in s. 9 (1)(i), and also a person who is treated as an agent under s. 163. By sub-s. (2) a representative assessee is deemed to be an assessee for the purpose of the Act. By s. 162 the representative assessee, who as such pays any sum under the Act, may recover the sum so paid from the person on whose behalf it is paid. Section 163(1) defines for the purposes of the Act an “agent” in relation to a non-resident. Resort to the machinery for assessing a representative assessee is however not obligatory : it is open to the Income-tax Officer to make a “direct assessment of the person on whose behalf or for whose benefit income therein referred to is receivable”, or to recover “from such person the tax payable in respect of such income”.

On regular assessment an agent of a non-resident is, by virtue of s. 160(1) read with s. 163 liable to be assessed to tax and the tax so assessed may be recovered from him. The agent, if assessed to tax, has the right to recover tax paid by him from the person whom he represents : s. 162. Since a non-resident is in respect of income which forms part of his total income liable to be assessed to tax, he may also be called upon to pay advance-tax in respect of the income accruing to or received by him which forms part of his total income chargeable to tax by virtue of ss. 4, 5 and 207. So far there is no dispute. Counsel for the Company however urged that an agent of a non-resident may be assessed in regular assessment in respect of the income accruing or arising to his principal, but he cannot be called upon to pay advance-tax even-though he is by virtue of s. 160(2) deemed an assessee for the purposes of the Act. Diverse reasons were suggested in support of that argument. It was said that since under s. 209(1) the amount of advance-tax payable by an assessee in the financial year is to be computed on his total income of the latest previous year in respect of which he has been assessed by way of regular assessment, an agent cannot be directed to pay advance-tax, the incidence of liability whereof depends upon the determination of total income of the principal. We fail to see any substance in this argument. Section 207 imposes liability for payment of advance-tax, and s. 208 prescribes the conditions of liability to pay advance-tax. Determination of total income of the previous year of the assessee is not made a condition of the liability to pay advance-tax. Advance-tax payable by an assessee is computed in the manner provided by s. 209 when the assessee has been previously assessed to tax. The Income-tax Officer is also enjoined by s. 210 to issue a notice to a person who has been

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A previously assessed "by way of regular assessment" to pay advance-tax for the financial year. If the assessee has not been previously assessed by way of regular assessment, he is required by s. 212(3) to make an estimate of his total income—excluding capital gains—if it is likely to exceed the maximum amount not chargeable to tax by two thousand five hundred rupees. These provisions apply to all assessees. If an assessee is chargeable to tax in respect of his own income or income of others which is chargeable to tax as his own income, those provisions indisputably apply. It is expressly enacted by s. 161 that as regards income in respect of which a person is a representative assessee, he shall be subject to the same duties, responsibilities and liabilities as if the income were income received by or accruing to or in favour of him beneficially. It is clearly implicit therein that a representative assessee is not exempt from liability to pay advance-tax. Of the liability to pay advance-tax it is not predicated that the previous year should have come to an end before liability can arise. The previous year of an assessee may in some cases end after the commencement but before the end of a financial year in which advance-tax is payable : it may in other cases commence and end with the financial year. But the liability to pay advance-tax is not in any manner affected because the previous year ends before or with the financial year. Where an assessee's previous year is the financial year, his total income may not be determined for the previous year before the commencement of the financial year, but on that account no exemption from payment of advance-tax is granted by the Act. On the commencement of a financial year, a person who is previously assessed to tax is liable to pay advance-tax on demand by the Income-tax Officer under s. 210. The quantum of tax will be determined by s. 209 and will be adjusted in the manner provided by s. 210(3). That applies to every assessee whether the tax is liable to be paid by him on his own total income, or on the income assessed in his hands as a representative assessee. If he has not been previously assessed in the character in which he is liable to pay tax, an obligation is imposed by s. 212(3) upon him to make an estimate of his income and to pay advance-tax. That provision also applies to his own income and also to the income in respect of which he is a representative assessee. There is nothing in the Act under which the liability to pay advance-tax of a representative assessee depends upon determination of the total income for the previous year.

H An argument of hardship was also raised. It was said that an agent of a non-resident may not normally have in his possession any materials on which he may estimate the income in respect of which he may be chargeable to advance-tax, if he has not been previously assessed to tax as an agent of a non-resident. That again, in our judgment, is not a ground which exempts an

agent from liability to pay advance-tax on behalf of his principal. Liability to submit an estimate necessarily implies the duty to secure the requisite information from the non-resident for submitting the estimate. The tax, it must be remembered, is assessed on the agent for and on behalf of the principal, and the Act has made an express provision enabling the agent to recover from the principal the tax so paid by him. Once the Income-tax Officer treats a person as an agent of a non-resident, liability to pay tax on regular assessment arises; and his liability as a representative assessee to pay advance-tax is not excluded by any provision of the Act.

In our judgment, ss. 207 and 208 which impose liability to pay advance-tax in a financial year, s. 210 which authorise the Income-tax Officer to make a demand for payment of advance-tax from a person who is previously assessed, and s. 212(3) which imposes the duty to make an estimate of the total income likely to be received or to accrue or arise and to pay advance-tax if the total estimated income exceeds the maximum amount not chargeable to tax in his case by Rs. 2,500, apply to every person whether he is assessed in respect of his own income or as a representative assessee, and we are unable to imply an unexpressed limitation on the express words of the statute in favour of an agent of a non-resident principal.

In the present case by order dated February 25, 1965, for the assessment year 1964-65 the Company was treated as an agent of the non-resident principal. Since the Company was treated as an agent of the non-resident, it became liable to pay advance-tax in the financial year 1964-65. By virtue of s. 207 read with s. 208 the declaration that the Company was an agent involved liability to pay advance-tax as well as tax assessed on regular assessment. We are unable to hold that the liability to pay advance-tax did not arise against the Company.

The plea that the provisions imposing liability to pay advance-tax upon an agent of a non-resident infringe the equality clause of the Constitution has no substance. As already observed, the liability to pay advance-tax arises under ss. 207 and 208 and its quantum is determined by ss. 209, 210 and 212(3), and it is not predicated of the accrual of liability that the total income of the previous year should be ascertained or precisely ascertainable when demand is made by the Income-tax Officer under s. 210, or when the assessee is required to make an estimate. The assumption that an assessee whose year of account coincides with the financial year is not in respect of that year liable to pay advance-tax is not warranted. The computation of advance-tax is not dependent upon the completion of the previous year : it depends upon the rules prescribed by ss. 209, 210 and 212. Every person who has been previously assessed to tax is liable when ordered

- A by the Income-tax Officer to pay advance-tax, subject to the right to make an estimate under s. 212(1). A person who has not been previously assessed but whose income is likely to exceed the specified amount is also liable to pay advance-tax. The Act does not accord discriminatory treatment between different assesseees. Payment of advance-tax is on account and is always liable to be adjusted against the tax assessed on regular assessment. That again applies to all assesseees. It is then difficult to appreciate the grounds on which the plea of denial of equal protection may be sustained. The only ground urged, that an assessee may escape liability to pay advance-tax where his previous year coincides with the financial year, is without substance, and no other ground is set up in support of the plea of violation of the guarantee of equality under Art. 14 of the Constitution.
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The petition therefore fails and is dismissed with costs.

G.C.

Petition dismissed.