SUTLEJ COTTON MILLS LTD.

*v.*

COMMISSIONER OF INCOME TAX, WEST BENGAL III, CALCUTTA

OCTOBER 23, 1990

[T.K. THOMMEN AND S.C. AGRAWAL, JJ.]

*Income Tax Act, 1922: Sections 14(2)(c) and 42(3)—Assessee—Resident in British India—Remittances from native States—Whether liable to be assessed—In addition to assessment of profits from native States as deemed income from British India—Principle of attribution—Applicability of.*

**The appellant, a company resident in British India, had a cotton mill. The cloth manufactured in the mill was sold in British India as well as native States. For the assessment years 1945-46, 1946-47 and 1947-48, the company was assessed under Section 14(2)(c) of the Income Tax Act, 1922, in respect of certain sums remitted to British India from native States, in addition to the assessment under Section 42(3), deeming 1/3rd of the profit from the sales effected in native States, as having accrued from the manufacturing part of business in British India.**

**The assessee's contention that 1/3rd of income having been assessed under Section 42(3), as income deemed to have accrued in British India, no further assessment should be made under Section 14(2)(c) was rejected by the Income Tax Officer, the Appellate Assistant Commissioner and the Income Tax Appellate Tribunal. The Tribunal also rejected the assessee's additional contention that if the remittances made to British India in any year exceeded the amount taxed under Section 42(3), then it was only so much of the excess which could be taxed under Section 14(2)(c). However, it reduced the additions made by the Income Tax Officer and affirmed by the appellate authority, by 1/3rd of such remittances. On a reference made under Section 66(1), the High Court confirmed the Tribunal's decision.**

**In the appeal before this Court, on behalf of the appellant-assessee it was contended that where there was a mixed fund, as in the instant case, consisting partly of taxed and partly of untaxed monies, any remittance made should be deemed to have been paid out of that**

A **part of the money which had suffered tax and that it was the right of the tax payer to attribute the payment to the taxed money so as to obtain the benefit allowed by the law.**

**Dismissing the appeals, this Court,**

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**HELD: 1.1 If there were two funds at the disposal of the assessee—one upon which tax had been already levied and another which was liable to be brought to tax—a presumption, in the absence of evidence to the contrary might arise that the remittance made by the assessee in the course of its business was made out of the fund that was** C **already taxed and not out of the fund that remained to be taxed. [297F]**

*Meyyappa Chettiar* **v.** *The Commissioner of Income-Tax,* **[1933] 1 ITR 37, 45, referred to.**

D **1.2. The tax payer is given the right of attribution in the way most favourable to himself. In the absence of evidence to the contrary, it is presumed that payments are made out of income. This abstract principle of attribution is applicable in certain circumstances. Whether it is applicable in a particular case depends upon the facts of that case and the provisions of the statute. It can be adopted only to the extent that it** E **is consistent with the law and facts. [298E-F]**

*Paton (As Penton's Trustee)* **v.** *Commissioners of Inland Revenue,* **21 Tax Cases 626 and** *The Cape Brandy Syndicate* **v.** *The Commissioners of Inland Revenue,* **12 Tax Cases 359, 366, referred to.**

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**In the instant case, on the facts found the assessee did not have two funds, but only one fund composed of taxed and non-taxed amounts. As one third of this amount had already been taxed under section 42(3) of the Act, 1/3rd of the remittances to British India in a particular year was held to be exempted from levy. The Tribunal hav-** G **ing excluded 1/3rd of the remittances to British India from taxation during a particular year, the High Court was justified in refusing to grant any further relief to the assessee. [297G; 299B]**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. H 1467-69 of 1976.

Appeals by Certificate from the Judgment and Order dated 7.5.1965 of the Calcutta High Court in Income Tax Reference No. 28 of 1954. A

B. Sen, N.B. Singh, Sanjay J. Khaitan, Darshan Singh, B.N. Dhar and Ms. Suman Khaitan for the Appellant. B

S.C. Manchanda, S. Rajappa and Ms. A. Subhashini for the Respondent.

The Judgment of the Court was delivered by

**THOMMEN, J.** These appeals by the assessee arise from the judgment dated 7.5.1965 of the Calcutta High Court. The question relates to the assessment for the years 1945-46, 1946-47 and 1947-48 under the Indian Income Tax Act, 1922 (hereinafter referred to as "the Act"). The assessee was a company resident in British India during the relevant years. It had a cotton mill in British India. The cloth manufactured by the mill was sold in British India as well as in the native States. In the assessment for 1944-45, it had been held that, for the sales effected in the native States, 1/3rd of the profit was, in terms of section 42(3) of the Act, deemed to have accrued to the assessee in British India. This profit was considered as the profit attributed to the manufacturing part of the business carried out in British India, although the sales were effected in the native States. On the same basis, assessment in terms of section 42(3) was made in respect of the assessment years 1945-46, 1946-47 and 1947-48. In addition to the deemed income in British India, the assessee was assessed under section 14(2)(c) of the Act in respect of certain sums remitted to British India from the native States. C D E F

The assessee's contention that 1/3rd of the income having been assessed under section 42(3) of the Act as income deemed to have accrued in British India, no furhter assessment should be made under section 14(2)(c) of the Act with respect to profits brought into British India, was rejected by the Income Tax Officer as well as the Appellate Assistant Commissioner. On further appeal, the Income Tax Appellate Tribunal also held that there was no substance in that contention. The Tribunal stated— G

> ".... the assessment of profits brought into British India from a Native State under Section 14(2)(c) is on a distinct and separate footing from the assessment of Native States H

A profits which are deemed to have accrued in British India under Section 42 ....."

The assessee raised an additional contention for the first time before the Tribunal. That contention was that the remittances made to British India had to be taken as having first come out of profits B "deemed to have accrued in British India" and brought to tax under section 42(3), and only the excess remittances, if any, could be taken as having come out of the remainder profits exempted from tax under section 42. The assessee pointed out that 1/3rd of the profits having been already charged under section 42(3), by reason of the legal fiction contained in that sub-section, any amount brought into British India upto the extent of 1/3rd should be presumed to be that which was C attributable to that 1/3rd which had already suffered tax, and the balance remittance, if any, alone should be taxed under section 14(2)(c) of the Act. In other words, according to the assessee, if the remittances made to British India in any accounting year exceeded the amount taxed under section 42(3) of the Act, then it was only so much D of that excess which could be taxed under section 14(2) of the Act. The Tribunal did not accept this contention. However, it stated:

> "..... it appears to us that the common sense point of view would be that the remittances to British India include both the assessed as well as the exempt profits in the same E proportion in which those existed in the Native State ..... It therefore appears to us that the correct view would be to apportion the remittances over the assessed and the exempt parts in the same proportion as these existed in the total profits made in the Native State. As such proportion was one third and two thirds, the remittances would be simi- F larly split up. Thus 1/3rd of the remittances has come out of profits assessed under Section 42. On this basis, these additions made by the Income-Tax Officer and confirmed by the Appellate Assistant Commissioner will have to be reduced by one third of such remittances."

G On a reference under section 66(1) of the Act, the High Court by its judgment dated 22.7.1957, found that the facts stated were insufficient and that there was an error apparent on the face of the question as framed. The High Court accordingly called for a supplementary statement of the case.

H In its supplementary statement, the Tribunal referred the following question:

"Whether on the facts and in the circumstances of the case, the sums of Rs.50,195 for 1945-46, Rs.76,155 for 1946-47 and Rs.6,00,909 for 1947-48 assessments have been rightly included in the assessable income of the applicant under Section 14(2)(c) of the Indian Income-tax Act as profits brought into British India from Indian States?"

The High Court by its judgment dated 7.5.1965 rejected the assessee's contention that, where there was a mixed fund composed of taxed and non-taxed items and a neutral payment was made i.e. without specifying the exact source of the payment, the taxing authorities, in the absence of any evidence to the contrary, had to proceed on the basis that the payment was made out of that part of the mixed fund which had already borne tax. The High Court, however, observed:

".... in this case the assessee did not have two funds but only one fund composed of taxed and non-taxed amounts and as one third of the entire amount of profits made by the assessee in the Indian States had been subjected to tax the income-tax authorities took a reasonable view in excluding one third of the remit ·nce to British India from taxation in each year. There were sufficient profits in each year out of which remittance could be made even after deduction of the portion which had been taxed .....".

In the result, the question referred was answered by the High Court against the assessee. Hence the present appeals.

If there were two funds at the disposal of the assessee—one upon which tax had been already levied and another which was liable to be brought to tax—a presumption, in the absence of evidence to the contrary, might arise that the remittance made by the assessee in the course of its business was made out of the fund that was already taxed and not out of the fund that remained to be taxed. See *Meyyappa Chettiar* v. *The Commissioner of Income-Tax,* [1933] 1 ITR 37, 45. That was apparently not the case here, for, on the facts found, the assessee did not have two funds, but only one fund composed of taxed and non-taxed amounts. As one third of this amount had already been taxed under section 42(3) of the Act, 1/3rd of the remittances to British India in a particular year was held to be exempted from levy.

Relying on the principle referred to in *Paton (As Penton's Trustee)* v. *Commissioners of Inland Revenue,* 21 Tax Cases 626, Dr.

A B. Sen, on behalf of the assessee, however, submits that where there was a mixed fund, as in the present case, consisting partly of taxed and partly of untaxed monies, any remittance made should be deemed to have been paid out of that part of the money which had suffered tax. It is a right of the tax-payer to attribute the payment to the taxed money, so as to obtain the benefit allowed by the law.

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Lord Wright, M.R. in *Paton (As Penton's Trustee)* v. *Commissioners of Inland Revenue,* 21 Tax Cases 626 at 639), referring to the right of the tax-payer to attribute payment to taxed monies, stated:

> ".....in the ordinary course, a person paying interest does not generally appropriate the payment to income or to any particular piece of income or any specific asset: he has the general body of available funds, say his banking account, if he has only one, and he pays by drawings on that account, which may include income, borrowed money, capital and so forth. This is what is meant by payment out of a mixed fund, or payments made out of the general till, or payments made neutrally. The Revenue authorities have no right in such cases to appropriate those payments to non-taxable rather than taxable moneys. Hence the taxpayer is given the right of attribution in the way most favourable to himself It is presumed, in the absence of evidence to the contrary, that payments are made out of income".

C D E

This principle of attribution is no doubt applicable in certain circumstances, such as those narrated by Lord Wright in *Paton* (supra), although in that case, on the facts found, the principle was not applied.

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Whether that principle is applicable in a particular case depends upon the facts of that case and the provisions of the statute. The abstract principle of attribution, which is applicable in certain circumstances, can be adopted only to the extent that it is consistent with the law and facts. It is well to recall:

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> "..... there is no room for any intendment; there is no equity about a tax: there is no presumption as to a tax; you read nothing in; you imply nothing, but you look fairly at what is said and at what is said clearly and that is the tax".

H [*Per* Rowlatt, J. *The Cape Brandy Syndicate* v. *The Com-*

*missioners of Inland Revenue,* 12 Tax Cases 359, 366]. A

The view taken by the Tribunal, with reference to the facts found and the provisions of the statute, was, in our opinion, reasonable. It was so found by the High Court.

In the circumstances, we hold that the Tribunal having excluded 1/3rd of the remittances to British India from taxation during a particular year, the High Court was justified in refusing to grant any further relief to the assessee. B

Accordingly, we see no merit in these appeals and they are dismissed with costs throughout. C

N.P.V. Appeals dismissed.