Privy Council Appeal No. 104 *of* 1934

The Commissioner of Income Tax, Bombay Presidency and Aden - - - - - - - - *Appellant*

v.

Currimbhoy Ebrahim and Sons, Limited (as Agent of H.E.H. the Nizam of Hyderabad), now in liquidation - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 28TH OCTOBER, 1935

Present at the Hearing:

LORD THANKERTON

SIR LANCELOT SANDERSON

SIR GEORGE RANKIN

[*Delivered by* SIR GEORGE RANKIN]

This appeal arises out of an assessment order made by the Income Tax Officer of A. Ward, Bombay, on the 7th August, 1931, against the respondent company Messrs. Currimbhoy Ebrahim and Sons, Limited, as agents of His Exalted Highness, the Nizam of Hyderabad. The order was made in respect of income tax for the year of assessment 1931-1932, but was based upon the acounting period being the year 1930-31. Two items only were included in the order, first, the sum of Rs.27,960 being income tax claimed to be due from the Nizam under the head " property " in respect of house property in Bombay of which he is the owner; secondly, a sum of Rs.3,15,214 being the amount received in the year of account by the Nizam from the respondent company as interest due upon a loan of Rs.50,00,000 made by the Nizam to the respondent company upon the terms of a written instrument dated 16th August, 1929. The latter claim was laid under the heading " Other Sources " as defined by Section 12 of the Act.

This assessment of the respondent company in respect of income tax claimed to be due from the Nizam was based upon proceedings taken under Section 43 of the Indian Income-tax Act (Act XI of 1922), a notice having been issued upon the respondent company to the effect that the Income

Tax Officer intended to treat them as agents of the Nizam. Notice having been issued on the 7th May, 1931, and the respondent company having appeared and objected, the Income Tax Officer on the 5th June, 1931, made an order in writing holding that a business connection existed between the respondent company and the Nizam, and that the word " property " appearing in Section 42, Sub-section 1 of the Act includes movable property and investments. The final conclusion of this order was that there was income chargeable to income tax under Section 42 (1) of the Act and that Messrs. Currimbhoy Ebrahim and Sons, Limited, might be deemed to be the agent of His Exalted Highness the Nizam.

As already mentioned, the Assessment Order of the 7th August, 1931, included income tax in respect of house property in Bombay. This was property with which the respondent company had nothing whatever to do. It appears from the Assessment Order itself that it was included, not because income tax under the head " property " had not been paid by the person managing the property, but because the Income Tax Officer considered that income of an assessee from all sources must be included in one assessment, and that there cannot be two or more assessments against one assessee for the different sources of income.

The respondent company appealed from the Assessment Order to the Assistant Commissioner of Income Tax, Bombay, taking objection not only to the claims themselves, but also to the right of the Income Tax Officer to treat them as agents of the Nizam. The appeal was dismissed by the Assistant Commissioner who upheld the findings of the Income Tax Officer under the first sub-section of Section 42 in respect of the interest upon the loan. He also upheld the assessment in respect of the house property, on the ground that it was within the right of the Income Tax Officer to select any agent as the *principal* agent and to bring all items of income into one assessment.

The respondent company thereupon applied under Section 66 of the Act to the Commissioner of Income Tax to make a reference to the High Court of Bombay regarding certain questions of law arising out of the Assessment Order, and by Letter of Reference dated the 30th November 1932, the Commissioner submitted five questions formulated by the respondent company. The questions were as follows :—

> " (1) Whether the facts of the case constitute a business connection between the Applicants and His Exalted Highness the Nizam within the meaning of Section 42 of the Income-tax Act.
>
> " (2) Whether the interest earned by His Exalted Highness the Nizam on the loan made to the Applicants constitutes Profit or Gain accruing or arising to His Exalted Highness the Nizam directly or indirectly through or from any business connection or property in British India chargeable to Income-tax in the name of the Applicants.

" (3) Whether the Assessee can in law be deemed to be agent of His Exalted Highness the Nizam under Section 43 of the Income-tax Act.

" (4) Whether the Applicants are liable to be assessed as Agent for His Exalted Highness the Nizam in respect of :—

(A) Interest on the loan above referred to,

(B) Property income above referred to.

" (5) Whether the assessment levied on the Applicant is valid in law."

The opinion of the Commissioner submitted as required by Sub-section 2 of Section 66 of the Act was to the effect that the interest income arose from a business connection in British India within the meaning of Section 42, Sub-section (1). He also found that the respondent company were liable to be deemed the Nizam's agents for all the purposes of the Act by reason of the fact that they had a business connection with the Nizam.

The High Court of Bombay answered all the questions propounded in the negative, holding that there was no business connection between the Nizam and the respondent company, that the interest income did not arise to the Nizam through or from any property in British India, and that the respondent company is not hit by Section 43 of the Act either as having any business connection with the Nizam or as being persons through whom the Nizam is in receipt of any income, profits or gains. It is from this decision that the present appeal has been brought to H.M. in Council by the Commissioner for Income Tax.

The loan in question was a loan of Rs.50,00,000 and the instrument of agreement in respect thereof was executed in Bombay. Apart from the respondent company who were the borrowers, and the Finance Member of the Government of the Nizam (the lender), there were four other parties to the agreement who joined for the purpose of recording the deposit of title deeds made by them as security for the repayment of the loan by the borrowers. The security consisted both of shares in joint stock companies, and of immovable properties, and the mortgage was a mortgage by deposit effected in the usual manner by blank transfers in the case of shares and by deposit of title deeds in the case of land. Interest was to be paid at the rate of $7\frac{1}{2}$ per cent. per annum and it was to be paid to the Nizam of Hyderabad through the Imperial Bank of India, Hyderabad Branch. The loan itself was to be repaid by five annual instalments of Rs.10,00,000 each, exclusive of interest, such instalments to be paid in like manner in Hyderabad. There was a covenant by the borrowers to keep the mortgaged properties in repair and a provision that in default the lender should be entitled to repair and to add the cost to the principal debt. By another provision the Nizam was to be entitled to appoint one or more representatives to look

after and protect his interests in connection with the securities, and the respondent company was to pay a remuneration to such representative or representatives not exceeding in the aggregate R.6,000 per annum. The respondent company was also to furnish the Nizam in each year with a certified copy of the balance sheet and profit and loss acount of their own business. Although nothing turns upon the clause, it may be mentioned that the respondent company agreed to pay income tax if leviable in British India upon the interest. The actual advance of the Rs.50,00,000 was made by this sum being paid by the Nizam into the Hyderabad branch of the Imperial Bank of India on behalf of the respondent company.

It is not the contention of the appellant that the interest income now in question did in fact accrue or arise in British India or was in fact received in British India within the meaning of these words as they appear in Subsection (1) of Section 4, but it is said that by virtue of the first sub-section of Section 42 this income is *deemed* to be income accruing or arising in British India within the meaning of the concluding words of Section 4. Whether or not the income is to be deemed to accrue or arise in British India and so to be chargeable to income tax in British India, depends upon the two questions, (*a*) Did it accrue or arise to the Nizam through or from any business connection in British India? (*b*) Did it accrue or arise to the Nizam through or from any property in British India. In their Lordships' opinion both of these questions have been correctly answered in the negative by the learned Judges of the High Court of Bombay.

It was contended on behalf of the respondents that the words " business connection " and " property " in Section 42 (1) are intended as repetitions of the expressions " business " and " property " appearing in Section 6 to describe " heads of income ", and that the interest income now in question, being admittedly taxable under the 6th heading " other sources ", cannot be said to accrue or arise through or from any business connection or property in British India within the meaning of the Sub-section. In support of this argument their Lordships were referred to certain observations in the case of *Rogers Pyatt Shellac & Co.* v. *Secretary of State for India* I.L.R. 52 *Cal.* 1 and *The Commissioner of Income Tax, Burma* v. *Messrs. Steele Brothers & Co. Ltd.* (1925) I.L.R. 3 Ran. 614. This contention, however, does not appear to their Lordships to be valid. The phrase " business connection " is different from, though doubtless not unrelated to, the word " business " of which there is a definition in the Act. The word " property " when used in Section 6 to describe a head of income is not defined by the statute, but by Section 9 it is provided that

under this head tax shall be payable in respect of the bona fide annual value of property consisting of any buildings or lands appertaining thereto. In their Lordships' opinion the word " property " as it occurs in the Sub-section (1) of Section 42 cannot be given so special a colour, but is used as an ordinary English word to be taken in its usual signification subject to the context provided by the rest of the Sub-section. There is nothing in the Sub-section to exclude from its scope any of the six classes of income mentioned in Section 6 of the Act.

Upon the question whether the interest income arose to the Nizam through or from any business connection in British India, their Lordships observe that so far as appears from the facts found in the Letter of Reference, the loan made by the Nizam to the respondent company on the 16th August, 1929, was an isolated transaction between the parties. It is not shown that the Nizam has at any time had an interest direct or indirect in the respondent company. There is no evidence of a course of dealing between the parties such as might fairly be described as a business connection previously subsisting between them. There is no element in the present case which justifies a comparison on the facts with the position of the parties in the case of *The Bombay Trust Corporation* (1928) I.L.R. 52 B. 702 (1929) 57 I.A. 49.

If the words " accruing or arising to such person whether direct or indirect, through or from any business connection in British India " are not to be deemed satisfied in every case in which a single monetary transaction by a non-resident with a resident produces gain to the former, it is difficult to see in the facts of this case any distinguishing element of business connection which the legislature has chosen as the test for rendering chargeable to British Indian income tax income which has not accrued in British India. There is no proof that the Nizam is carrying on business of money lending either in Hyderabad or British India. So far as appears he invested some surplus capital in making a loan to the respondent company taking security therefor. That the respondent company doubtless used the borrowed money in connection with their own business is not a fact which brings the Nizam any nearer to being a person who has a business connection in British India. The circumstance that the repayments of the loan are contemplated to extend over a period of five years, and that the interest would be payable from time to time during this period, is equally ineffective to bring the case within the words of Sub-section (1) of Section 42.

Upon the question whether the interest income accrued or arose to the Nizam through or from property in British India, their Lordships agree with the view expressed by

the learned Chief Justice of Bombay that the word " property " as used in Sub-section (1) of Section 42 means something tangible; though, for reasons already given, they cannot accept his suggestion that it is confined to immovable property or to buildings or lands appertaining thereto. The phrase to be construed is " property in British India " and it seems to their Lordships that the plain implication is that the property is to be situated in British India. No doubt for purposes of administration or succession, or for purposes of jurisdiction to attach a debt, a chose in action is treated notionally as situated in a particular country or district. The statute, however, does not intend to import questions of this character as the test whether income which does not accrue within British India shall be deemed so to accrue. In their Lordships' opinion the phrase is to be taken literally and simply. It is applicable for example, in a case where furniture situated in British India has been hired under an agreement whereby the hire is payable outside British India.

In the result, therefore, their Lordships come to the conclusion that the interest income in respect of which the respondent company has been assessed to tax as agent for the Nizam, is not to be deemed to have accrued or arisen within British India at all, and is, therefore, not liable to tax. The Income Tax Officer's order of the 5th June, 1931, whereby the respondent company was deemed to be an agent of the Nizam and liable to be made assessee in respect of these monies is without foundation and altogether invalid. In these cirumstances it does not appear to their Lordships to be necessary that they should discuss any of the questions raised under Section 43 of the Act. It would indeed be strange if the respondent company as mere debtors to a non-resident paying him outside British India monies which are not assessable to Indian income tax at all, could be made liable for the income tax due on the non-resident's house property in Bombay with which they had no concern, and this notwithstanding that tax had hitherto been duly assessed upon and paid by the person managing the property on behalf of the non-resident. No such opinion was given by the Commissioner in his Letter of Reference and no such contention has been raised by learned counsel for the appellant before this Board. It appears to their Lordships to be sufficient to say that as regards questions (1), (2) and (5) answered by the High Court of Bombay in the negative their Lordships agree with the High Court, and that their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.

(32140—3A) Wt. 8034—41 190 11/35 P. St. G. 338

In the Privy Council

THE COMMISSIONER OF INCOME TAX, BOMBAY PRESIDENCY AND ADEN

v.

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DELIVERED BY SIR GEORGE RANKIN

Printed by HIS MAJESTY'S STATIONERY OFFICE PRESS,
Pocock Street, S.E.1.

1935