E. M. Vs. Muthappa Chettiar V. Commissioner of Income-tax, Madras.

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Court : Chennai

Decided On : Jan-12-1945

Reported in : AIR1945Mad513; [1945]13ITR311(Mad)

Appeal No. : O. P. No. 48 of 1943

Appellant : E. M.

Respondent : Muthappa Chettiar V. Commissioner of Income-tax, Madras.

Judgement :

(Judgment of the Court was delivered by Patanjali Sastri J.)

This is a reference made by the Commissioner of Income-tax, Madras, in pursuance of an order of this Court dated the 26th April 1943 passed in O. P. No. 48 of 1943 under Section 66 (3) of the Indian Income-tax Act, 1922, as it stood prior to the Amendment Act of 1939.

One E. M. V. Muthappa Chettiar (hereinafter referred to as the assessee) was assessed as the manager of his undivided family for the year 1937-38 on a total income of Rs. 2,11,793 of the previous year ended the 12th April 1937, including a sum of Rs. 2,03,823 as income derived from the money-lending business carried on by the assessee at various places in India, Burma and Malaya. The latter sum was reduced on appeal to Rs. 1,85,589 of which Rs. 1,18,118 was said to have been remittances to British India of profits earned in the assessees foreign branches at Klang and Penang, and Rs. 13,247 similar remittances of profits earned at Moulmein. It was found, and the finding was not challenged in these proceedings, that the profits available for remittance at Klang and Penang were respectively Rs. 1,07,238 and Rs. 10,880 and the total remittances in the year of account were $ 1,18,000 from Klang to Penang, $ 99,914 or Rs. 1,55,000 from Penang to Moulmein and Rs. 1,75,990 from Moulmein to Puduvayal, the assessees headquarters.

The assessee raised various objections to the assessment but those material for the purposes of this reference were only the following : (1) that the sum of Rs. 1,18,118 included as remittances of foreign profits to British India represented only repayments of capital originally advanced to the branches at Klang and Penang, (2) that the profits of the E. M. Firm at Moulmein for the year of account, when Moulmein was part of British India, having been assessed in Burma in the year of assessment 1937-38 the sum of Rs. 13,247 found to be the assessees share of such profits should not be assessed once again in the same year as a remittance to British India and (3) that in computing the profits of the Moulmein Firm two sums of Rs. 1,218-7-3 credited to the assessees sister Parvathi and daughter Sigappi as interest accrued due in respect of Rs. 25,000 standing in the name of each of them should have been excluded, as valid trusts in respect of the two sums of Rs. 25,000 had been created in favour of those ladies.

The objections raised by the assessee having been overruled, he applied to the Commissioner of Income-tax to refer certain questions of law to this Court for its decision but the application was dismissed on the ground that no questions of law arose. The assessee thereupon moved this Court under Section 66 (3) of the Act to

require the Commissioner to state the case and refer it and the Court by its order already referred to directed the said Officer to refer the following questions for its decision as points of law were considered to arise in respect of them :

(1) Are there materials on the record which show that the remittance of $ 20,5500 from Penang to Moulmein on the 19th September 1936 was a remittance of capital ?

(2) Was the Income-tax Officer entitled in law to assess the assessee on the sum of Rs. 13,247 remitted from Moulmein to Puduvayal in the year of account 1936-37 ?

(3) Whether in computing the assessees profits earned in Moulmein in the year 1936-37 he was entitled to include the interest which had accrued on the deposits standing in the names of his sister Parvathi and daughter Sigappi ?

In formulating question (1) the Court observed :

'On the 19th September 1936 the Penang branch remitted to the Moulmein branch a sum of $ 80,500. The Income-tax authorities have regarded this remittance as one of profits and assessed the assessee accordingly. The assessee says that it is merely a return of capital and therefore is not taxable. The assessees case is that fifteen years ago the Moulmein branch remitted to Penang Rs. 75,483-9-6 and to the Klang branch Rs. 44,754. That these sums were remitted to those places is admitted. The assessee says that the $ 80,500 represents the return of these sums.'

The Court directed the Income-tax Commissioner to set forth all the evidence on the point which was placed before the Department. The reference has been made accordingly.

On the first question, the Commissioner has elaborately reviewed the evidence furnished by the assessees books of account relating to the business at Klang, Penang and Moulmein, and after pointing out certain gaps in the accounts produced, he has come to the conclusion, firstly, that the sum originally sent to Klang and Penang as capital and working capital in 1919 has been wiped out by November or December 1926 by adjustment against losses sustained by those branches, and that it was impossible to say that any part of those initial remittances existed thereafter in any identifiable form, and secondly, (2) that the profits subsequently earned at those places and lying invested in the business there at the beginning of the year of account 'far exceeded the initial capital and working capital sent there.' In such circumstances, the Income-tax Commissioner of $ 80,500 (or Rs. 1,25,000) in the year of account from Penang to Moulmein (which was included in the remittances subsequently made from Moulmein to Puduvayal) represented the return of the sums originally sent to Penang and Klang.

In the argument before us, the assessee while admitting that the business at Klang and Penang sustained losses exceeding in amount the sums originally sent to those places, contended that the Commissioner failed to consider that these sums were still in existence there in the shape of the assets with which the business of the new partnership was carried on subsequently in those places. Apart from the fact that this contention would open up new lines of enquiry as to whether any and how much of the old assets were available to be utilised in the new business, which the Commissioner was not called upon to make, it is to be remembered that this Court cannot go into the correctness or otherwise of the finding of fact arrived at by the Commissioner but can only see if there is any evidence to support such finding. On the evidence reviewed by the Commissioner it cannot be said that there are no materials to support his conclusion on the point. We find the first point accordingly in favour of the Commissioner.

On the second point, as pointed out by the Commissioner although the Income-tax Officer has purport to assessed the sum of Rs. 13,247 which is the assessees share of profits of the E. M. Firm at Moulmein, as profits remitted to British India, no question of remittance of foreign profits to British India could arise as Moulmein was part of British India in the year of account 1936-37. The assessment, however, must stand as it

has been held by this Court that income accruing or arising in British India in the 'previous year' is assessable under the Income-tax Act though the place of accrual has ceased to be part of British India in the year of assessment (vide Commissioner of Income-tax, Madras v. Valliammai Achi.) It was said that the E. M. Firm was taxed in respect of the whole of its profits in Burma for the same year 1937-38, and that an assessment of the assessees share of the same profits once again in British India is opposed to the rule against double taxation. This argument overlooks that the assessment in Burma was taxation by a foreign State, as Burma was separated from British India with effected from 1st April 1937 and is now answer to the claim of the Government under the Indian Income-tax Act. The assessee may be entitled to relief against double taxation under the special provisions made in that behalf but whether he is so entitled or not can make no difference. We answer the second question in the affirmative.

The third question arises out of the disallowance of the assessees claim to a deduction of two sums of Rs. 1,218-7-3 credited as interest to his sister and daughter respectively, in computing the profits of the Moulmein Firm. Two sums of Rs. 25,000/- had been credited in the name of each of these ladies and interest on these sums was calculated and credited to them in the year of account. The assessee claimed that the moneys belonged to the ladies and that the interest credited in their account should be allowed as a legitimate expense, being interest paid on borrowed capital. The Income-tax authorities held that no immediate gift or irrevocable trust of the moneys was established, and refused to deduct the interest credited to the ladies as an expense in computing the profits at Moulmein. To show that a valid trust was credited in favour of each of the ladies in respect of the sum of Rs. 25,000 credited to her, the assessee relied on his fathers will dated 27-10-1934 and a deed of declaration executed by his father and himself on 29th September 1936. The will recites the crediting of the two sums of Rs. 25,000 in the names of the two girls and provides that the amount 'should under the control and supervision of Muthappa Chettiar be augmented and utilised for marriage, stridhanam and seermurai etc., expenses of the two girls.' The relevant clause in the deed states : 'The amounts credited in the names of (1) V. Lakshmi Achi of Puduvayal, (2) V. Parvathi of Puduvayal and (3) M. Sigappi of Puduvayal in E. M. Firm, Moulmein, being their ceremonial presents, we have no connection with that.' It is however admitted that no assets or funds corresponding to the credit entries in the accounts were actually set apart of allocated at any time at Moulmein for the purposes mentioned in the will, but the whole funds of the firm were used in the business as before. It has been recently held by this court after reviewing the earlier cases that mere credit entries in books of account without allocation of specific assets or funds corresponding to such entries cannot operate as valid gifts or trusts of the sums credited. (Ramanathan Chettiar v. Palaniappa Chettiar and Others) The terms of the will referred to above are only precatory and seem to contemplate contingent and future gifts to be made by the assessee rather than a testamentary disposition of the two sums in favour of the ladies, which, indeed, the assessees father was not competent to make as a member of the joint family in respect of family property. The deed of declaration cannot carry the matter any further in the absence of any fund set apart or appropriated for the purposes mentioned in the will. The third questions is accordingly answered in the affirmative.

The assessee will pay the Commissioner of Income-tax Rs. 250 as costs of this reference.

Reference answered accordingly.