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Court : Kolkata

Decided On : Mar-20-1937

Reported in : [1937]5ITR397(Cal)

Appellant : The Phoenix Assurance Co.

Respondent : Re.

Judgement :

DERBYSHIRE, C.J. - The questions of law submitted in this case are identical with the first three questions submitted in the case of the North British and Mercantile Insurance Company which have been answered by my in the affirmative. The facts, however, in this case are somewhat different.

The Phoenix Assurance Company carries on business throughout the world as well as in India. In the return for which assessment was made for the year 1934-35 the Company did not submit a balance-sheet dealing with its separate insurance activities in India, but submitted a statement purporting to be under rule 35 of the Rules under Sec. 59 of the Income Tax Act, showing the total profits of the Company in respect of all its Life Assurance activities throughout the world, based on a quinquennial valuation for the five years ending December 31, 1930 (A). It is also showed the total premiums received by the Company as a whole in respect of that period (C) and also premiums received in India in respect of the same period (B). The profits of the Indian Company were then calculated to be $B/C \times A$ - Rs. 15,65,974, giving an average annual profit of the Life Assurance Business of Rs.

3,13,195. This purported to be in accordance with rule 35. The Company claimed that the said annual average net profits included an item of interest derived from tax-free securities of the Government of India and that in consequence of the proviso to Section 3 of the Income-tax Act, 1922, no income-tax was payable on such item of tax-free interest. The Assistant Commissioner gave the Company an opportunity of proving that the average annual net profits included this item of tax-free interest and the Company submitted a certificate from its London actuary to the following effect :-

'I hereby certify that the undermentioned amounts of interest totaling Rs. 1,56,311 were received from Indian income-tax free securities and were included in the fund in arriving at the net profits disclosed by the Companys actuarial valuation for the quinquennium ended December 31, 1930, and by that of its British Empire and Positive Funds for the quinquennium ended December 31, 1931.'

[The British Empire and Positive Funds are the funds of subsidiary companies controlled by the Phoenix. The case throughout has been treated as if all the profits and tax-free interest were made and (or) received by the Phoenix Company during the quinquennium ending December 31, 1930].

The Assistant Commissioner held that the certificate in question did not prove that any income from tax-free securities was included in the actuarial surplus and he dismissed the assessee's claim to have the above amount of tax-free interest deducted from the total profits and gains and so exempted from tax. Beyond the Actuary's certificate there is no proof that the tax-free interest in question is included in the actuarial surplus. The evidence was offered, however, in such a form as is usual in cases where various items go to make an aggregate income. If the Assistant Commissioner in this case not satisfied with the evidence, he could have called for further evidence. He has not done that, but dismissed it forthwith. To prove a matter of this kind strictly in accordance with the rules of evidence might be a difficult matter, but if the Income Tax authorities wish to have the matter strictly proved they should, in my opinion, give the assessee a further opportunity of bringing proof. That was not done in this case.

The case was argued before us on the basis that the tax-free interest above-mentioned was actually received by the Company in India, and that the Companys Indian income is simply the proportion of the Companys whole world-wide income that the Indian premiums bear to the world-wide premiums. If in fact the tax-free interest has been received by the Company, it must have gone into the funds of the Indian branch of the Company and then reckoned in the total of the world-wide funds of the Company. The only effect of this tax-free interest has been to increase the world-wide funds of the Company without increasing its liabilities. The tax-free interest has, therefore, contributed to the world-wide surplus and it seems to me that the Indian proportion, B/C of the world-wide surplus must of necessity contain the same proportion B/C of the tax-free interest. I am of the opinion, therefore, that the assessee in this case, once they have satisfied the Income Tax authorities that they have received the interest on Government Securities tax free above mentioned, and that it has been reckoned in the world-wide funds of the Company, are entitled to have the same proportion of that tax-free interest that the Indian premiums bear to the world-wide premiums deducted from the income, profits and gains assessed under rules 25 and 35 and exempted from tax.

The answers to questions (1), (2) and (3) are, for the reasons given in the case of the North British and Mercantile Insurance Company, in the affirmative, subject to what I have stated above.

The assessees are entitled to their costs in these proceedings.

COSTELLO, J. - With regard to the case of the Phoenix Assurance Company, Limited, I agree with the judgment delivered by my Lord the Chief Justice and I do not think it necessary that I should add any words of my own.

PANCKRIDGE, J. - In my opinion, the answers which have been given to the questions propounded in the case of the North British and Mercantile Insurance Company, Limited, must be given to the same questions propounded in the case of the Phoenix Assurance Company, Limited.

Solicitors : Sandersons & Morgans for the Assesseees; R. C. Pal for the Income Tax Authorities.

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