

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

v.

The Remington Typewriter Company (Bombay), Limited - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 16TH DECEMBER, 1930.

Present at the Hearing :—

LORD ATKIN.

LORD RUSSELL OF KILLOWEN.

SIR JOHN WALLIS.

[*Delivered by* LORD RUSSELL OF KILLOWEN.]

The dispute in this appeal has, by reason of a recent decision of their Lordships' Board, been reduced to small compass.

A statement of the relevant facts is, however, necessary.

Assessments, in respect of the two financial years 1924-1925 and 1925-1926, were made under the Indian Income Tax Act, 1922 (hereinafter referred to as the Act), upon the Remington Typewriter Company (Bombay), Limited, as agent for the Remington Typewriter Company of New York. This last-mentioned company is a company incorporated in the United States of America and carries on the business of manufacturing and selling the well-known Remington typewriting machine. These two Companies may be conveniently referred to as the Bombay Company and the American Company respectively.

The assessments were made in respect of (1) dividends paid by two Indian Companies, viz., the Remington Typewriter Company (India), Limited and the Remington Typewriter Company (Madras), Limited, to the American Company in respect of its shareholding in the two Indian Companies; (2) dividends paid by the Bombay Company to the American Company in

respect of its shareholding in the Bombay Company; and (3) profits presumed to have been made by the American Company on the sales of its typewriters to the other three companies.

The Bombay Company was registered under the Indian Companies Acts on the 19th December, 1921, with a capital of 600,000 rupees, divided into 60,000 shares of 10 rupees each, its principal object being to enter into and carry into effect the agreement next mentioned. By an agreement dated the 18th January, 1922, the Bombay Company bought from the American Company the goodwill of its business in a territory therein defined, which included the Bombay Presidency, Central Provinces and certain other adjoining portions of India. The consideration for the sale was the sum of six lakhs to be paid and satisfied by the allotment to the American Company or its nominees of 60,000 fully-paid shares in the Bombay Company. The purchase was duly completed, and the American Company holds all the shares of the Bombay Company with the exception of three shares, each of which stands in the name of a nominee of the American Company.

As regards the other two Indian Companies the position as between them and the American Company is in substance the same, their respective business territories between them covering the rest of India.

The sections of the Act with which this appeal is principally concerned are the sections which constitute Chapter V of the Act dealing with "Liability in Special Cases"; in particular, sections 40, 42 and 43.

Section 40 deals with the case of a guardian trustee or agent of any person being a minor, lunatic or idiot or residing out of British India being in receipt on behalf of such person of any income, profits or gains chargeable under the Act.

Section 42 (1) deals with the case of profits and gains accruing or arising to a person residing out of British India directly or indirectly through or from any business connection or property in British India. It provides that such profits and gains shall be deemed to be income accruing or arising within British India and that they shall be chargeable to income tax in the name of the agent of any such person.

Section 42 (2) deals with the case of certain persons not resident in British India carrying on business with persons resident in British India, where the course of business between the two is so arranged that the business done by the resident in pursuance of his connection with the non-resident produces to the resident either no profits or less than the ordinary profits which might be expected; and it provides that the profits derived therefrom or which might reasonably be deemed to have been derived therefrom shall be chargeable to income tax in the name of the resident.

Section 43 provides (amongst other things) that any person having any business connection with a person residing out of

British India, upon whom the Income Tax Officer has caused a notice to be served of his intention of treating him as the agent of the non-resident person, shall for all the purposes of the Act, be deemed to be such agent.

The Bombay Company, under section 66 of the Act, required the Commissioner of Income Tax, Bombay, to refer to the High Court certain questions of law. The Commissioner accordingly drew up a statement of the case and referred it, with his own opinion thereon, to the High Court.

The questions so referred were in the following terms :—

1. Whether the profits of the Remington Typewriter Company of New York upon goods exported to British India are or can be held to be chargeable to income tax and super-tax under section 42 (1) of the Act or otherwise.

2. Whether super-tax upon dividends received by the Remington Typewriter Company of New York from the Remington Typewriter Company (Bombay), Limited, the Remington Typewriter Company (India), Limited, and the Remington Typewriter Company (Madras), Limited, can under section 42 (1) of the Act or otherwise be charged against and collected from an agent.

3. Whether the Remington Typewriter Company (Bombay), Limited, is or can be held to be the agent of the Remington Typewriter Company of New York under section 43 of the Act.

In answer to the reference, the High Court (Marten C.J. and Kemp J.) on the 20th March, 1928, made the following order :—

For the reasons stated in the accompanying Judgment, the Court gives the following answers to the questions submitted to it.

Questions I and II.—The Bombay Company, though an Agent of the American Company within the meaning of section 43 of the Act, cannot be assessed to income-tax or super-tax under section 42 (1) of the Act or otherwise in respect of any profits made by the American Company on the sale of its goods to the Bombay Company, inasmuch as the Bombay Company was not in receipt on behalf of the American Company of the profits in question as is requisite under section 40. For similar reasons, the Bombay Company is not liable to be assessed to super-tax upon dividends paid to the American Company by the Calcutta Company or the Madras Company ; nor upon dividends of its own shares paid by it to the American Company. Super-tax upon dividends in the Bombay Company can be recovered by deduction by the Principal Officer of the Bombay Company under sections 57 and 58 of the Act.

Question III.—Yes.

From this it appears that the High Court's view was that the Bombay Company, although an agent of the American Company within the meaning of Section 43 of the Act, could not be assessed in respect of profits or gains accruing or arising to the American Company, and covered by the description used in Section 42 (1) of the Act, unless the Bombay Company had been in receipt thereof on behalf of the American Company. In other words, the High Court held that the word "agent" in section 42 (1) was used in the same sense as that in which the word "agent" is used in section 40, viz., a person who receives the profits and gains. In adopting this view, the High Court followed

an opinion which they had already expressed in a previous reference made to them at the requirement of the Bombay Trust Corporation Limited (*see* I.L.R. 52, B. 702).

In that case a Hong Kong Company had advanced to the Bombay Trust Corporation, Limited, large sums on deposit at interest. The Corporation was assessed as agent of the Hong Kong Company in respect of the payments of interest on the sums advanced. The High Court, while holding that the interest paid was a profit or gain accruing or arising to the Hong Kong Company from a business connection in British India within section 42 (1), also held that though the Corporation was to be deemed the agent of the Hong Kong Company under section 43, it could not be assessed in respect of the interest because it had not been in receipt of it as required by section 40.

This view of sections 42 (1) and 43 must now be treated as erroneous. An appeal from the order of the High Court in the last-mentioned case was brought before their Lordships' Board last year, and the appeal was allowed upon the ground that any person who comes within the terms of section 43 is put by that section artificially into the position of agent and assessee under section 42 (1). (*Commissioner of Income Tax v. Bombay Trust*, 57, I.A. 49.)

That decision of the Board concludes the present appeal if the facts of this case establish (a) that the profits or gains in question accrued or arose to the American Company "directly or indirectly through or from any business connection . . . in British India," and (b) that the Bombay Company had "any business connection" with the American Company.

Upon this part of the case the affirmative answer given by the High Court to Question III was based upon the view that the necessary business connection existed in the present case.

Although no appeal was lodged by the respondents against that part of the High Court's order, their Lordships took the view that the appellant's appeal raised for consideration the correctness of every part of the High Court's order. The question whether the necessary business connection existed was accordingly argued before the Board.

As a result of that argument their Lordships feel, no doubt, that the answer given by the High Court to Question III was correct.

The Bombay Company was formed for the express purpose of acquiring from the American Company and carrying on in a particular area the American Company's business of selling the American Company's manufactures.

Although no contractual obligation exists by which the Bombay Company is compelled to purchase any of the manufactures of the American Company, the flow of business between the two companies is secured by the fact that the ultimate and complete control of the Bombay Company is vested in the American Company which owns all its shares.

It is not a question whether the Bombay Company is in law the agent of the American Company. The question is whether the facts of the case are such that the Bombay Company can properly be deemed to be such agent, under section 43. The answer depends upon whether in this case a business connection exists within the meaning of that section. For the reasons appearing above their Lordships are of opinion that it does.

For the same reasons their Lordships think that a business connection exists in the present case within the meaning of section 42 (1), not only between the Bombay Company and the American Company, but also between the American Company on the one hand and each of the two other Indian Companies on the other hand.

The necessary business connection having thus been established, there can in their Lordships' opinion be no doubt that the profits and gains in question accrued or arose to the American Company "directly or indirectly through or from a business connection in British India."

For these reasons their Lordships are of opinion that the appeal succeeds, and in their Lordships' view, the correct form of order to make in this and similar cases is to amend the order of the High Court so as to bring it into conformity with the decision of the Board.

The order of the High Court should be amended so as to run thus :—

"The Court gives the following answers to the questions submitted to it :—

" Question I.—Yes, under section 42 (1) of the Act.

" Question II.—Yes, under section 42 (1) of the Act.

" Question III.—Yes.

"The Court directs that the Commissioner do recover the costs of this Reference and that the costs be taxed by the Taxing Master as on the original side scale."

The respondents must pay the costs of this appeal. A petition by the appellant for the admission of a supplemental record was not opened before their Lordships. This will be dismissed with costs to be set off against the costs of the appeal.

Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

THE COMMISSIONER OF INCOME TAX,
BOMBAY PRESIDENCY,

vs.

THE REMINGTON TYPEWRITER COMPANY
(BOMBAY), LIMITED.

DELIVERED BY LORD RUSSELL OF KILLOWEN

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