

PETITIONER:
COMMISSIONER OF INCOME-TAX, BANGALORE

Vs.

RESPONDENT:
THE UNION OF TILE EXPORTS, BANGALORE

DATE OF JUDGMENT:
10/09/1968

BENCH:
GROVER, A.N.
BENCH:
GROVER, A.N.
SHAH, J.C.
RAMASWAMI, V.

CITATION:
1969 AIR 299 1969 SCR (2) 55

ACT:
Indian Income-tax Act 1922 s. 4(1)(a)-Place of accrual of income-Contracts entered into Bangalore in Part B State and profits received there-Subsequent operations in British India and Ceylon-Concession under Part B States (Taxation, concessions) Order, 1950 whether could be claimed in respect of business activity at Bangalore-Appportionment of profits under Indian Income-tax Act, 1922 s. 42(3).

HEADNOTE:

The assessee firm carried on business at Bangalore in the State of Mysore, which at the relevant time was a Part B State. It was appointed as the sole selling agent for certain areas in Ceylon in respect of tiles and ridges manufactured by the principal at Feroke in British India. According to the agreement between the parties all prices quoted by the manufacturer were to be F.O.B. Beypore Port situated in taxable territory. Chartering and loading of vessels was done by one of the employees stationed at Calicut. The bills of lading were obtained by the assessee's representative at Beypore and sent to Bangalore when the hundis together with the invoices and shipping documents were handed over by the assessee to a bank at Bangalore. Pursuant to the letter of credit opened by the purchaser in Ceylon, payments were made by the aforesaid bank to the assessee. In income tax proceedings for the assessment years 1951-52, 1952-53, and 1953-54 the assessee claimed that since its registered office was in Bangalore and as the agency agreement with the purchaser at Colombo was entered into in Bangalore the entire come should be treated as income accruing or 'arising in Part B State and concession regarding rates and allowances as provided in Part States (Taxation Concessions) Order, 1950 should be allowed to it. The income tax authorities and the Tribunal decided against the assessee. The High Court however held that since the profits were received in Part State at Bangalore, it could not be said that the entire profit accrued or arose within the meaning of el. (a) of sub-s. (1) of s. 4 of the Income-tax Act, 1922 in the taxable territories other than Part B State. According to the High Court the profits arose at Bangalore, Feroke, and Ceylon,

of which only Feroke was in the taxable territories, and therefore, the assessee was entitled to the concession under the order in respect of the profits that could be apportioned under s. 42(3) of the Act to the business operations conducted in Bangalore and Ceylon. The Revenue appealed to this Court contending that hardly any activity took place of such a nature as could be said to give rise to accrual of profits at Bangalore.

HELD: The conclusion which the High Court arrived at must be upheld.

The making of contracts pursuant to which all the subsequent activity in respect of the execution of those contracts took place resulting in profits to the assessee was an integral part of the entire selling operations. The contracts in the present case having been entered into at Bangalore it could not be said that no part of the business activity which produced the profits took place there. [53 H] 56

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1769 to 1771 of 1967.

Appeals from the judgment and order dated December 17, 1963 of the Mysore High Court in I.T.R.C. Nos. 6 of 1959 and 3 of 1960.

C.K. Daphtary, Attorney-General, V.A. Seyid Muhammad, R.N. Sachthey and B.D. Sharma, for the appellant (in all the appeals).

S.T. Desai, Bhuvanesh Kumari and Ravinder Narain, for the respondent (in all the appeals).

The Judgment of the Court was delivered by Grover, J. These appeals are by certificate from the common judgment of the Mysore High Court on the following questions of law which were referred by the Income tax Appellate Tribunal under s. 66(1) of the Income tax Act, 1922, hereinafter called the Act.

"(1) Whether, on the facts and circumstances of the case, the income of the assessee did not arise in Bangalore (Mysore State) in respect of sales effected by the assessee to the Burma Teak Trading Co., Ltd., Colombo ?

(2) If the answer to the above question is in favour of the assessee, then whether, on the facts and circumstances of the case, the assessee is entitled to the concession under Part B States (Taxation Concessions) Order, 1950 ? and

(3) Whether, on the facts and circumstances of the case, the apportionment of profits of business is called for pursuant to assessee's trading activities in Bangalore (Mysore State) ?"

The assessee is a firm carrying on business in Bangalore in Mysore State. It was appointed as the sole selling agent for Ceylon except Jaffna Peninsula and the town of Trincomalee for the purpose of marketing, selling or distributing Lotus Brand tiles and ridges manufactured by M/s. Modern Tile & Clay Works of Feroke.

According to an agreement dated August 10, 1949 between the parties all prices quoted by the manufacturer were to Be F.O.B. Beypore Fort and for loading into country crafts; the right to charter or engage vessels was to be with the

agents. Beypore is in the taxable territory as also Feroke where the tiles manufacturers carried on their business. One of the employees

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of the assessee stayed at Calicut during the season to supervise the operation of delivery of articles and to engage vessels. The bills of lading were obtained by the assessee's representative at Beypore and sent to Bangalore where the hundis together with the invoices and shipping documents were handed over by the assessee to the Indian Overseas Bank Ltd., Bangalore. Pursuant to the letter of credit opened by the Burma Teak Trading Co. Ltd., Colombo, which was the purchaser, payments were made by the aforesaid bank to the assessee. It is unnecessary to state the details about the profits which the assessee made during the relevant assessment years 1951-52, 1952-53 & 1953-54. The assessee claimed that since its registered office was in Bangalore and as the agency agreement with the purchaser at Colombo was entered into in Bangalore the entire income should be treated as income accruing or arising in Part B State and concession regarding rates and allowances as provided in Part B States (Taxation Concessions) Order, 1950, hereinafter called the "Order", should be allowed to it. The income-tax authorities as also the Appellate Tribunal decided against the assessee. It was held that hardly any activity took place at Bangalore in the matter of earning the profits from the transactions in question.

The High Court was of the view that since the profits were received in Part B State, namely, Bangalore, it could not be said that the entire profit accrued or arose within the meaning of cl. (a) of sub-s. (1) of s. 4 of the Act in the taxable territories other than Part B State. After referring to s. 42(3) of the Act and certain decisions of this Court it was observed that the business operations which produced profits were carried out at three different places i.e., Bangalore, Feroke and Ceylon. Therefore the portion of these profits must be held to have accrued in all these places. The only profits which could be deemed to have accrued in the taxable territories other than Part B State were those that could be said to have accrued at Feroke. The profits that could be attributed to the business operations at Bangalore could not be deemed to have accrued in the taxable territories other than the Part B State nor could it be said that the profits that had accrued at Ceylon could be deemed to have accrued in the taxable territories other than Part B State. The answers which were 'returned to the questions were as follows: --

"(1) The profits of the assessee in respect of sales effected by it to Burma Teak Trading Co., Colombo did not entirely arise in Bangalore (then a Part B State), it arose in Bangalore, Feroke and Ceylon.

(2) The assessee was entitled to the concession under the Order in respect of the profits that could be Sup.

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attributed towards business operations conducted in Bangalore and Ceylon.'

(4) Apportionment of profits of business was called for pursuant to the assessee's trading profits.

The sole point which has been raised before us by the learned Attorney General who appears for the appellant is

that hardly any activity took place of such a nature as could be said to give rise to accrual of profits in Bangalore. It is pointed out that admittedly the manufacturing concern from where the tiles had to be sent to Colombo was in Feroke in British India and that the goods were also delivered F.O.R., Beypore which was in British India. The assessee's agent resided in British India and supervised all the operations there.

Our attention has been invited to the findings of the tribunal which inter alia were that the assessee purchased the goods at places outside Bangalore and the sales were also effected in Ceylon; the assessee continued to retain its title to the goods till they were delivered to the Ceylonese buyers on theft accepting the documents and bills of exchange forwarded through the Bank in that country. The sale operations were carried out in Ceylon and the profits attributable to those transactions accrued and arose only in Ceylon which was outside the taxable territories. The essential question, according to the learned Attorney General is, whether any part of income accrued or arose at Bangalore. According to the learned counsel for the respondent it was clear that the profits accrued at Bangalore where the assessee's registered office was situate and where the contracts were entered into by the assessee for the sale and purchase of the goods and where moneys were received. At any rate the profit producing operations could not be said to have been confined only to places in the taxable territories because without the contracts no further steps could be taken in carrying out the transactions and the contracts indisputably were entered into at Bangalore. It is urged that the assessee's business activity came within the scope and ambit of paragraph 4(1) (iii) of the Order and therefore it was entitled to the concessions provided in paragraphs 6, 6A and 7 of that Order. Section 42(3) of the Act lays down that when profits accrue or arise from a business all the operations of which are not carried out within the taxable territories those profits must be deemed to have accrued or arisen in several places where the business operations were carried out and the total profits earned will have to be apportioned on reasonable basis amongst the several operations and tax should be levied only on that portion of the profits which are deemed to have accrued or arisen within the taxable territories.

If it be held, as indeed it must be held, that the making of contracts pursuant to which all the subsequent activity in respect

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of the execution of those contracts took place resulting in profits to the assessee, is an integral part of the entire selling operations, there can be no escape from the conclusion at which the High Court arrived. The appeals consequently fail and they are dismissed with costs. (one hearing fee).

Y.P.

Appeals dismissed.

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