PETITIONER:
P. V. RAGHAVA REDDI AND ANOTHER

Vs.

RESPONDENT:
COMMISSIONER OF INCOME-TAX

DATE OF JUDGMENT:
16/01/1962

BENCH:
HIDAYATULLAH, M.
BENCH:
HIDAYATULLAH, M.
SINHA, BHUVNESHWAR P.(CJ)
KAPUR, J.L.
SHAH, J.C.
MUDHOLKAR, J.R.

CITATION:
1962 AIR 977 1962 SCR Supl. (2) 596
CITATOR INFO :
D 1981 SC 148 (5,8,11)

ACT:
Non-resident company-Commission due to-Received by Indian firm and paid directly or through others to the non-resident company-If statutory agent-Income, if received in taxable territory-Indian Income-tax Act, 1922 (11 of 1922), ss. 4(1)(a), 4(1)(c), 43.

HEADNOTE:
The appellant is a firm which was doing business in mica. To negotiate for orders and to handle its other affairs the appellant engaged a company in Japan which is admitly a "non-resident" company. By agreement between the
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two firms, during the years of account the amount of commission payable to the Japanese company was received by the appellant. But this amount could not be sent, due to the exchange control restrictions, to the Japanese company. The amount was kept under the instructions of the Japanese company in a separate account to be held on its behalf to be applied as instructed. Some of the amount was later paid to the Japanese company either directly or through others. Treating the appellant as 'statutory agent' of the Japanese company the Income-tax authorities assessed the appellant on the amount received for the two account years. The appeal to the Commissioner failed. But on further appeal the Tribunal ordered the cancellation of the assessment. The Commissioner of Income-tax obtained a reference to the High Court and the High Court answered the question "whether the aforesaid sum of Rs. 26,255-0-0 and Rs. 11,272-0-0 being selling commission credited to the aforesaid non-resident company's account in the books of the assessee are

chargeable in the hands of the assessee under s. 4(1) (a) for the assessment years 1949-50 and 1950-51 ?" in favour of the Department. The assessee thereupon filed an appeal before the Supreme Court on a certificate granted by the High Court.

The two main questions before the Supreme Court were whether the appellant was a 'statutory agent' for purposes of s. 43 and whether the income was received by Japanese company in 'the taxable territory'.

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Held, that there was a business connection between the assessee and the Japanese company sufficient in law for treating the assessee as an agent for purposes of s. 43, and the appellant was rightly treated as a 'statutory agent'. Before the money was entered into the account in the name of the Japanese company and held on its behalf there might be a relation of debtor and creditor between the assessee and the Japanese Company; but after the money was credited in the books of account in the name of the Japanese company it belonged to it because it was held for and on behalf of that company and was at its disposal. Therefore the income was received in the taxable territory within the meaning of s. 4(1) (a) of the Indian Income Tax Act, 1922.

Held, further, that cls. (a) and (c) of s. 4(1) can be read disjunctively and that it is not necessary that the income must not only be received in the taxable territories but also must accrue or arise in the taxable territories.

Turner Morrison & Co. Ltd. v. Commissioner of Income-tax [1953] 23 I.T.R. 152, followed.

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JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 325 and 326 of 1960.

Appeals from the judgment and order dated February 21, 1956, of the former Andhra High Court in case Referred No. 50 of 1954.

R. Ganapathy Iyer, R. Thiagarajan and G.Gopalakrishnan, for the appellants.

H. N. Sanyal, Additional Solicitor General of India, K. N. Rajagopala Sastri and P. D. Menon, for the respondent.

1962. January 16.-The Judgment of the Court was delivered by

HIDAYATULLAH J.-The appellant is a firm at Gudur (Andhra Pradesh), which was doing busines Mica under the name and style of the Continental Export and Import Company. During the years of account, 1948-49 and 1949-50 (corresponding to the assessment years, 1949-50 and 1950-51), the assessee firm exported Mica to Japan. Mica was not directly exportable to Japanese buyers during these years, as Japan was under military occupation, but to a State Organisation called Boeki-Cho (Board of Trade). To negotiate for order and to handle its other affairs in Japan in connection therewith, the assessee firm engaged

San-Ei Trading Co. Ltd., Tokyo, as its agents. The Japanese Company was admittedly a 'non-resident' Company. Two agreements were entered into by the assessee firm and the Japanese Company, the first for the quarter, July to September 1948, during which period a commission of 4 per cent on the gross sale proceeds was payable to the Japanese Company, and the second, for an indefinite period, with the commission reduced to 2 per cent.

During the years of account the amount commission due to the Japanese Company was respectively Rs. 26,254-9-1 and Rs. 11,272-8-8. These amounts (included in the price of Mica exported) were received by the assessee firm in India, but due to

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the restrictions imposed by the Exchange Control laws, they could not be sent to the Japanese Company The agreements between the assessee firm and the Japanese Company, therefore, provided for this contingency by the inclusion of the following term:

> "In view of the difficulties in this country it is requested that the first party credits all these amounts to the account of the second party with them without remitting the same until definite instructions are received by the first party."

During the two account years, a total amount of Rs. 13, 319-12-4 was paid to the Japanese Company either directly or through others, to whom the assessee firm was instructed by the Japanese Company to pay the amount. The Income-tax authorities treated the assessee firm as the 'statutory agent' of the Japanese Company, and assessed tax on the two amounts in the respective years of assessment. The order of the Income-tax officer was confirmed on appeal; but the Tribunal set aside the order on the ground that the income to the Japanese Company had accrued or arisen in Japan and could not be said to have been received by the Japanese Company in the taxable territories, since s. 4(1)(a) was subordinate to s. 4(1)(c). The Tribunal thus concluded:

> "The reference in section 4(1)(a) to income 'received in India' can, in our opinion, refer only to the situation more specifically provided for in section 4(1)(b) as sub-section(a) provides a general cover for both the immediately following sub-sections (b) and (c). Section 4(1)(a) cannot therefore by itself add a new liability to non-residents the extent of which is clearly delimited under section 4(1) (c) of the Act "to only incomes that accrue to them within the taxable territories. To read

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> any further in section 4(1)(a) will totally nullify the effects of section 4(1)(c).
>
> Income that has accrued once abroad cannot by any means accrue again in India. If such income is later remitted to India and received by or on behalf of such non-residents in India such subsequent receipt cannot be chargeable under the Act."

The assessment was, therefore, ordered to be cancelled. The Commissioner of Income-tax, however, obtained a reference to the High Court of Madras on the question:

> "Whether the aforesaid sum of Rs. 26,255-0-0 and Rs. 11,272-0-0 being selling commission credited to the aforesaid non-resident company's account in the Books of the assessee are chargeable in the hands of the assessee under s. 4 (1)(a) for the assessment. years 1949-50 and 1950-51?"

The High Court answered the question against the assessee firm. The High Court observed that the learned advocate for the assessee firm "confessed his inability to support the decision of the tribunal on the grounds on which it rests". The High Court further observed that the answer to the question did not "admit of any doubt or difficulty". The High Court, however, granted a certificate, and these appeals have been filed. In our opinion, the High court was right in the answer it gave to the question, for reasons which we shall persently indicate.

Under s. 42, all income, profits or gains accruing or arising, whether directly, or indirectly through or from any business connection in the taxable territories are deemed to be income accruing or arising within the taxable territories, and if the person entitled to the income, profits or gains is not resident in the taxable territories, it is chargeable to income-tax either in his name or in the name of his
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agent, and in the latter case, such agent is deemed to be, for all the purposes of the Act, the assessee in respect of such income-tax. The provisos to the section enable the application of s. 18, and the tax may be recovered by deduction under that section and the agent or any person who apprehends that he may be assessed as such an agent is also enabled to retain out of the money payable to the non-resident person a sum equal to his estimated liability. The section thus creates a vicarious liability, in so far as the agent is concerned, for the tax which the non-resident has to pay; but as a safeguard for him, he is enabled to retain from the money he has to pay, a sum equal to his own liability in the event of his being treated as the assessee. Section 43 lays down who can be deemed to be an agent, and it is provided that any person having any business connection with a nonresident person or through whom the non-resident is in receipt of any income, profits or gains is to be deemed to be such an agent, if the Income-tax Officer has caused a notice to be served of his intention of treating him as the agent of the nonresident person. Such persons are conveniently described as "statutory agents."

In the present case, there is no doubt that the assessee firm must be treated as a statutory agent. In Turner Morrison & Co. Ltd. v. Commissioner of Income-tax (1), this Court held that a person who is not an agent of the non-resident person can be appointed an agent for the

purposes of s. 43, provided there subsists a 'business connection' between him and the non-resident person. It was also held that such agent was vicariously liable for the tax on income described in ss.40 and 42. There can be no question in this case that a 'business connection' subsisted during the years in question, and the appellant firm could be treated as an assessee for purposes of s. 42. What was contended was that
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the view of the Tribunal of s. 4(1) is the right view of the law. Section 4(1), prior to its amendment in 1950 by the Adaptation of Laws Order, 1950, read:

"4. (1) Subject to the provisions of this Act, the total income of any previous year of any person includes all income, profits and gains from whatever source derived which-

(a) are received or are deemed to be received in British India in such year by or on behalf of such person, or

(b) if such person, is resident in British India during such year,-

(i) accrue or arise or are deemed to accrue arise to him in British India during such year, or

(ii) accrue or arise to him without British India during such year, or

(iii) having accrued or arisen to him without British India before the beginning of such year and after the 1st day of April, 1933, are brought into or received in British India by him during such year, or

(c) if such person is not resident in British India during such year, accrue or arise or are deemed to accrue or arise to him in British India during such year :"

The contention is that this come cannot be deemed to be received in the taxable territories (then British India) in the years of account. It is urged that the Japanese Company did not actually receive it in British India, and that there was only a relation of debtor and creditor between the assessee firm and the Japanese Company. Till the money was actually paid over to the Japanese
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Company, a mere entry in the account books of the firm was not a receipt by the Japanese Company, and a mere entry of an item in the account books has not been deemed to be a receipt by any provision of the Act, which, it is said, always states clearly when a fiction is to be applied. It is also argued that cl. (a) of s. 4(1) is delimited by cl.(c).

Clauses (a) and (c) of s.4(1) are not interdependent. In Turner Morrison's case (1), it

was observed by this Court that,

> "the whole object of that section (s.42) is to make certain income, profits and gains to be deemed to arise in India so as to bring them to charge. The receipt of income, profits and gains being one of the tests of liability, where the income, profits and gains are actually received in India it is no longer necessary for the revenue authorities to have recourse to the fiction."

After referring to certain authorities in which this was so held, this Court pointed out:

> "Section 4(1)(a) in terms is, unlike Section 4(1)(b) or 4 (1)(c), not confined in its application, to any particular category of assessees. Section 4 (1)(a) is general and applies to a resident or a non-resident person."

It was rightly pointed out by the High Court in judgment under appeal that;

> "Actual or deemed receipt, of income in the taxable territories by or on behalf of nonresidents attracts tax under section 4(1)(a) even though the income may not be chargeable under section 4(1)(c) by reason of its having accrued or arisen outside. Receipt of income within the taxable territories by itself attracts tax whether the recipient is a resident or non-resident and whether the income

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> accrued or arose within the taxable territories or outside. So much is plain on the language of section 4(1) (a) and (c)."

In our opinion, clauses (a) and (c) of s.4(1) can be read disjunctively, and cl.(a), which provides for receipt of income, profits and gains in the taxable territories cannot be subjected to the limitation that the income must also accrue or arise in the taxable territories. To make cl.(a) depend on cl. c is to make the "accrual" the test, while cl. (a) only considers receipt in the taxable territories sufficient. The clauses are capable of being read independently, though, sometimes, they may operate together.

This leaves over the question which was earnestly argued, namely, whether the amounts in the two account years can be said to be received by the Japanese Company in the taxable territories. The argument is that the money was not actually received, but the assessee firm was a debtor in respect of the amount and unless the entry can be deemed to be a payment or receipt cl. (a) cannot apply. We need not consider the fiction, for it is not necessary to go to the fiction at all. The agreement, from which we have quoted the relevant term, provided that the Japanese Company desired that the assessee firm should open an account in the name of the Japanese Company in their books of account, credit the amounts in that account, and deal with those amounts according to the instructions of the Japanese Company. Till the money was so credited, there might be a relation of debtor and creditor; but after the amounts were credited, the money was

held by the assessee firm as a deposited. The money then belonged to the Japanese Company and was held for and on behalf of the Company and was at its disposal. The character of the money changed from a debt to a deposit in such the same way as if it was credited

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in a Bank to the account of the Company. Thus, the amount must be held, on the terms of the agreement, to have been received by the Japanese Company, and this attracts the application of s.(4)(1)(a). Indeed, the Japanese Company did disposes of a part of those amounts by instructing the assessee firm that they be applied in a particular way. In our opinion, the High Court was right in answering the question against the assessee.

The appeals fail, and are dismissed with costs, one hearing fee.

Appeal dismissed.