

CIVIL REFERENCE SIDE.

Before Falshaw and Kapur, JJ.

IN THE MATTER OF INDIAN INCOME-TAX ACT, XI OF 1922, AND IN THE MATTER OF THE INCOME-TAX ASSESSMENT OF MESSRS BHOGI LAL M. SHAH, HOSHIARPUR, FOR THE YEAR, 1944-45.

Civil Reference No. 21 of 1952.

1953

June, 18th

Indian Income-tax Act (XI of 1922)—Sections 4 and 13—Accounting year from 30th October, 1942 to 29th October, 1943—Profits from business up to 29th October, 1942 received by assessee on 2nd November, 1942, by cheque dated 29th October 1942—Whether the receipt of these profits, or any portion thereof, fell to be considered in the assessment for the year 1944-45.

The assessee started business from 27th September, 1942, but started books of accounts as from 11th October, 1942. The assessee received on 2nd November, 1942, a cheque, dated 29th October, 1942, for Rs. 11,651-13-0 on account of profits of business prior to 29th October, 1942. The assessee's year of accounting was fixed as from 30th October, 1942 to 29th October, 1943, for the assessment year 1944-45. The assessee claimed that the amount of the cheque, dated 29th October, 1942, was not income of the accounting year 1942-43 but was the income of the previous accounting year.

He'd., that there were no account books starting from 27th of September, 1942. The books started to be kept from the 11th of October, 1942, and the entries made therein do not show whether the accounting was on the mercantile system or the actual receipt system. No mention is made of these profits at any time before the 2nd of November, 1942, and the books show that for the period from the 11th of October, 1942, to the 29th of October, 1942, the income was nil. According to the statement of the case they were put down as having been received by cheque. It cannot, therefore, be said that there was any method adopted by the assessee and we must take it that the profits from the speculative transactions were rightly shown in the accounts by the petitioner and would fall within the previous year—30th October, 1942, to 29th October, 1943—for the assessment year 1944-45 and this profit of Rs. 11,651-13-0 ought to be in the assessment year 1944-45.

This case was referred by the Income-tax Appellate Tribunal, Bombay, to this Hon'ble Court under Section 66(1), of the Indian Income-tax Act for decision of certain points.

COMMISSIONER, INCOME-TAX, PUNJAB, through S. M. SIKRI, Advocate-General and H. R. MAHAJAN, Advocate.
M/s BHOGI LAL M. SHAH, through Deva Singh, Advocate.

ORDER.

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KAPUR, J. This is a reference made by the Income-tax Appellate Tribunal by their order, dated the 8th of May, 1952, referring the following two questions for the opinion of this Court:—

- (1) Whether, on the facts above-stated, the assessee's proportionate (on time basis) income, profits and gains for 12 months out of the period 11th October, 1942 to 29th October, 1943, was correctly assessed for the assessment year 1944-45 ?
- (2) Whether the receipt of the profits of prior speculation transactions under the cheque, dated 29th October, 1942, received by the assessee on 2nd November, 1942, or of any portion thereof, fell to be considered in the assessment for the year 1944-45 ?

The case was previously stated by the Allahabad Bench in Civil Reference No. 11 of 1949 which was heard by a Bench of this Court and was by an order of this Court, dated the 19th June, 1950, sent back to the Delhi Tribunal for a better statement of the case.

Bhogilal M. Shah, the assessee, was at one time a servant of the Bombay Trading Company, Bombay, but as from the 1st October, 1942, his services were dispensed with by a letter, dated the 20th September, 1942. Bhogilal M. Shah then started an independent business of his own in partnership with his brother which was in the beginning restricted to forward delivery transactions. Two such contracts were entered into on the 27th and 29th September, 1942. No books of account were, however, started. On the 11th October, 1942, these two brothers started yarn business and maintained regular books of account as from the 11th October, 1942. Their accounts were made up for the period from 11th October, 1942 to 29th October, 1943, which showed a total income of Rs. 32,870-3-9. In the books of account that they had started they mentioned a profit of Rs. 11,651-13-0 as having been received on the

2nd of November, 1942. The cheque is dated the 29th of October, 1942.

On the 8th of June, 1944, for the assessment year 1944-45 Messrs Bhogilal M. Shah, voluntarily submitted a return under section 22(1) of the Income-tax Act, showing a total income of Rs. 32,870-3-9. The return was made as a Hindu Undivided Family consisting of Bhogilal and his brother Shantilal and the return was for the year ending 29th October, 1943. Along with this was filed a copy of the profit and loss account in which the following was stated :—

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“ Net income of Rs. 32,870-3-9 is from 11th October, 1942, to 29th October, 1943, (*Asho Sud 1 Samyat 1998 to Asho Vad Amus Samvat 1999 Gujerati*). Income is for thirteen months. I am keeping accounting period from *Dewali* to *Dewali*.”

The assessee was called upon to support his return and the case was fixed for the 21st of February, 1945. On the 16th of February, 1945, the assessee submitted an application that the return should be regarded as a return for two accounting periods. An extract from that application is as follows :—

“ A profit of Rs. 32,870-3-9 is for 13 months, i.e. from *Asuj S. 1, 1998 to Asuj B. 15, 1999*. Assessee is maintaining from *Katak S. 1 to Asuj B. 15*, i.e. from *Dewali to Dewali*. The profit from *Asuj S. 1 to Asuj B. 15, 1998*, is worked out as under :—

* * * * *

Thus for the first period, i.e. from the beginning of the business to *Asuj Vadi 15, Samyat 1998* he claimed his net income to be Rs. 11,651-13-0 which he claimed was assessable income for the assessment year 1943-44 and for the assessment year 1944-45 the income assessable was Rs. 21,218-6-9. On the 21st of February, 1945, he

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made another application stating that he was entitled, in terms of section 2(11) of the Income-tax Act, to exercise an option to have a 'previous year' other than the financial year and that he had decided to adopt the *Dewali* year as the 'previous year' for the business which was started on the 11th of October, 1942. He also stated that although the account books had been formally closed on the 29th of October, 1943, the exact income from his business from the 11th of October, 1942, to the 8th of November, 1942 (*Dewali* 1942) was ascertainable and was Rs. 11,650 (profits of speculating transactions) less expenses which thus came to Rs. 11,628-0-6. The difference between the two applications was the omission of an item of Rs. 23-12-6 as profit in '*Mal Khata*' up to the 8th of November, 1942.

From this the conclusion drawn by the Tribunal in the statement is that there was no sale of yarn up to the 8th November, 1942. The Income-tax Officer did not accept the submission of the assessee and was of the opinion that the assessee started books of the new business from the 11th of October, 1942, and closed them for the first time on the 29th of October, 1943, and he was further of the opinion that under section 2(11) (c) the entire period from the 11th of October, 1942 (the date of commencement of the yarn business), to the 29th of October, 1943 (the date up to which the accounts were made up for the first time), was to be treated as a 'previous year', and he calculated the total profits for twelve months and eighteen days to be Rs. 32,975 and deducted the proportionate income for eighteen days, i.e. Rs. 1,571 from the income shown for this period and assessed the income for the assessment year 1944-45 at Rs. 31,404. He also held that Rs. 1,571 would have to be assessed in the assessment year 1945-46.

An appeal was then taken to the Appellate Assistant Commissioner and the assessee took up the position that the business started not from the 11th of October, 1942 (the date from which the books began), but on the 27th September, 1942 (the date of the first contract). He submitted that

Rs. 11,650 could not be held to have 'arisen' on the 2nd of November, 1942, when it was put down in the accounts and that the income for the first eighteen days should be Rs. 11,628 and not Rs. 1,571. The appellate Assistant Commissioner held that the (previous year) for the assessment year 1944-45 was from the 30th of October, 1942, to the 29th of October, 1943, and therefore the profit of the first eighteen days should be excluded from the assessment for the assessment year 1944-45, but he was of the opinion that no profit accrued or arose during the period 11th October, 1942, to the 29th October 1942, and therefore he directed enhancement of the assessment by a sum of Rs. 1,571.

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An appeal was then taken to the Income-tax Appellate Tribunal which held that new business was started from the 11th of October, 1942, that the assessee closed the accounts of his business on the 29th of October, 1943, that the profits from 'speculative business' done in Bombay were not incorporated in the accounts of any date prior to the 29th of October, 1942, but were incorporated in the accounts as they were finally made up on the 29th of October, 1943, and that the cheque for the profits of the two contracts was dated the 29th of October, 1942, but it was received by the assessee on the 2nd of November, 1942. After referring to section 2(11)(c) of the Income-tax Act, they restored the assessment made by the Income-tax Officer and set aside the enhanced assessment made by the Appellate Assistant Commissioner.

An application was made under Section 66(1) of the Income-tax Act and after a better statement was called for by this court two questions, which have already been given, have been referred to this Court for its opinion.

We thought it proper to take the second question up first because if the profits of the two speculative contracts are to be accounted in the previous year 30th October, 1942, to 29th October, 1943 then in that case the whole of the income

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The assessee submits that his method of accounting is mercantile system and that the profits accrued to him on the 29th October, 1942, when the cheque was drawn by the Bombay firm in favour of the assessee.

Section 4 provided:—

“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 or arise to him in British India during such year, or

* * * *

Section 13 deals with the method of accounting and is as under:—

“13. Income, profits and gains shall be computed, for the purpose of sections 10 and 12, in accordance with the method of accounting regularly employed by the assessee:—

Provided that—

(a) if no method of accounting has been regularly employed, or if the method employed is such that, in the opinion of the Income-tax Officer, the income, profits and gains cannot properly be deduced therefrom, the Income-tax Officer may, after recording the reasons

for his opinion, compute the income, profits and gains on such basis and in such manner as he may determine ;

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(b) where, in computing the income of the third year immediately preceding the previous year, an allowance has been made for any amount due but not actually paid by the assessee in that year and such amount remains unpaid at the end of the previous year, such amount shall be deemed to be income, profits and gains and to accrue or arise in the taxable territories during the previous year;

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(c) where any amount which has been deemed to be income, profits and gains under clause (b) is actually paid by the assessee subsequently, an allowance of the amount so paid shall be made from the income of the year in which it is paid: (d) where, at any time prior to the previous year, an allowance has been made in respect of any trading debt or loss incurred by the assessee, any amount received by him during the previous year in respect of such debt or loss by way of compensation or otherwise, shall be deemed to be the income, profits and gains and to accrue or arise in the taxable territories during the previous year."

There were no account books starting from the 27th of September, 1942. The books started to be kept from the 11th of October, 1942 and the entries made therein do not show whether the accounting was on the mercantile system or the actual receipt system. No mention is made of these profits at any time before the 2nd of November, 1942, and the books show that for the period from the 11th of October, 1942, to the 29th of October, 1942, the income was nil. According to the statement of the case they were put down as

The Commissioner of Income-tax, Punjab, v. Messrs Bhogi Lal M. Shah Kapur, J. having been received by cheque. It cannot therefore be said that there was any method adopted by the assessee and we must take it that the profits from the speculative transactions were rightly shown in the accounts by the petitioner and would fall within the previous year—30th October, 1942, to 29th October 1943, for the assessment year 1944-45. The answer to the second question would, therefore, be in the affirmative, i.e., this profit of Rs. 11,651-13-0 ought to be in the assessment year 1944-45. In view of this answer the other question does not arise in the present case and, therefore, it is not necessary to answer that. As the answer is against the assessee, the Commissioner of Income-tax will have his costs. Counsel's fee Rs. 250.

I must point out that the printed paper-book which has been prepared for the use of Judges in this case is very badly printed and full of mistakes even in regard to figures and it is necessary that paper-books of proper size and proper print should be printed in all Income-tax references.

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Before Falshaw and Kapur, JJ.

THE COMMISSIONER OF INCOME-TAX, PUNJAB,
PEPSU, HIMACHAL PRADESH AND BILASPUR,
SIMLA,—*Petitioner.*

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versus

June, 22nd

M/S HIRA MALL-NARAIN DASS, LUDHIANA,—
Respondent.

Civil Reference No. 4 of 1952

Indian Income-tax Act (XI of 1922)—Sections 4, 6, 10, 14 and 24—Whether the losses suffered by the assessee in transactions in an Indian State in the year of account ending March, 1949, may be deducted from or set off against the profits and gains in British India in the same period in order to arrive at the assessee's taxable income under the Income-tax Act—Computation of tax under the head 'business'—Section applicable—Whether 10 or 24(1)—Interpretation of fiscal statutes—Rule stated.