1960

October 17.

THE COMMISSIONER OF INCOME-TAX, MADHYA PRADESH & BHOPAL, NAGPUR

v.

BHOPAL TEXTILES LTD., BHOPAL.

(S. K. DAS, M. HIDAYATULLAH, and J. C. SHAH, JJ.)

Income Tax—Supply of goods by non-resident company—Place of payment, when place of receipt of money by seller—Bank when agent of seller—Railway receipt, if document of title of goods —Property in goods, when transferred to buyer.

Respondent, a non-resident company, in the accounting year supplied goods which were sent F. O. R. Bhopal to the buyers in British India. The railway receipts were handed over to a Bank in Bhopal with instructions to hand over the railway receipts to the buyers, who were named as consignees, only on receipt of payment of the bill and collection charges. The branches of the Bank within the taxable territory collected the amounts due from the buyers and transmitted them to Bhopal to the credit of the respondent.

The question was whether the profits in the goods were received or deemed to be received in British India.

Held, that the decision of this Court in *Commissioner of Income-tax* v. *P. M. Rathod & Co.* applied to this case; and the income, profits or gain must be deemed to have been received within the taxable territory.

The fact of payment to the agent determines the place where the money can be said to be received by the seller. Since in the instant case the railway receipts were not to be handed over to the buyers by the Bank, as per instructions of the seller, unless payment for the value of the goods were received by the Bank which instructions the buyers could not countermand, this was sufficient to make the Bank an agent of the seller.

Held, also, that a railway receipt is a document of title to goods, and, for all purposes, represents the goods. When the railway receipt is handed over to the consignee on payment, the property in the goods is transferred.

The Commissioner of Income-tax v. *P. M. Rathod and Co.*, [1960] 1 S.C.R. 401, relied on.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 755 of 1957.

Appeal by special leave from the judgment and order dated March 23, 1955, of the former Nagpur High Court in Misc. Civil Case No. 240 of 1953.

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The Commissioner of Income-tax, Madhya Pradesh & Bhopal, Nagpur v. Bhopal Textiles Ltd., Bhopal

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K. N. Rajagopal Sastri, R. H. Dhebar and *D. Gupta*, for the appellant.

Veda Vyasa, S. N. Andley, J. B. Dadachanji, Rameshwar Nath and *P. L. Vohra*, for the respondent.

1960. October 17. The Judgment of the Court was delivered by

HIDAYATULLAH J.—This appeal, with special leave, has been filed against the judgment of the Nagpur High Court in a reference under s. 66(1) of the Indian Income-tax Act, 1922, by which the High Court answered the following question in the negative:

"Whether the proportionate profits on the goods of the value of Rs. 4,10,785 were received or were deemed to be received in British India, in the year of account, by or on behalf of the assessee Company within the meaning of Section 4(1)(a) of the Indian Income-tax Act, 1922".

The Commissioner of Income-tax, Madhya Pradesh and Bhopal is the appellant, and the Bhopal Textiles Ltd., Bhopal, is the respondent. For the assessment year 1944-45, the Company which was non-resident was treated as 'resident and ordinarily resident' under s. 4(1)(c) of the Income-tax Act. In the year of account, it had supplied its manufactured articles either to the Government of India or its nominees at Agra, Allahabad and Delhi. Under the orders of the Government, the goods were sent direct to the persons nominated, who made the payment against the goods. The goods were all sent f.o.r. Bhopal, and the railway freight and other charges were to be borne by the buyers to whom the railway receipts made out in the name of the consignees were sent by the Company through the Imperial Bank at Bhopal. The Bhopal Branch sent the railway receipts to branches of the Bank at Agra, Allahabad and Delhi, which collected the amounts due from the buyers, and transmitted them to the Imperial Bank, Bhopal, to the credit of the Company. On these facts, a total sum of Rs. 4,40,373 was held by the Department to have been received in British India. Of that sum, an amount of Rs. 29,588 which represented the receipts

for supplies direct to Government is no longer in dispute. The balance represents the sum, which was the subject-matter of the reference.

The usual appeals followed, and the contention of the Company that the money was not received in British India was not accepted by the Tribunal. The Tribunal did not decide about the place of accrual. A reference was then made by the Tribunal of the question quoted above. The High Court in deciding the reference went into the question of passing of property under the Indian Sale of Goods Act, 1930, and came to the conclusion that since the property in the goods had passed to the buyers, the Imperial Bank of India, Bhopal, must be "deemed to have received the railway receipts as agents of the buyers". Continuing the reason, the learned Judges observed:

"So also the branches of the Bank at Agra, Allahabad and Delhi acted as the agents of the buyers when they collected the money from them and transmitted it to the Bhopal branch. In this view, the profits cannot be said to be received by the assessee Company in British India. It received the money only when it reached the Bhopal branch as a credit to its own account and that was not in British India at the material time".

The case was not decided by the Tribunal on the basis of accrual of the income, profits or gains to the Company. It was decided on the fact of actual receipt, whether it was in British India or in Bhopal, which was then outside the taxable territories. We need not, therefore, concern ourselves with the problem whether property in the goods could be said to have passed absolutely to the buyers without any right of disposal being reserved by the Company. It is a matter of some doubt whether the goods were absolutely at the disposal of the buyers after the railway receipts were handed over to the Bank. It is in evidence—and has been adverted to by the Income-tax Officer—that the Company, when it handed over the railway receipt to the Imperial Bank at Bhopal, did so along with a covering letter in which it asked the Bank to deliver the railway receipt and the bill to

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the buyers against payment of the bill amount *plus* collection charges. In this view of the matter, though we do not express any final opinion, we doubt whether the right of disposal was parted with by the Company.

A railway receipt is a document of title to goods, and, for all purposes, represents the goods. When the railway receipt is handed over to the consignee on payment, the property in the goods is transferred. In this case, it is a matter of considerable doubt whether the property in the goods can be said to have passed to the buyers by the mere fact of the railway receipts being in the name of the consignees, as has been held by the High Court. Since we are not deciding the question of accrual, we do not elaborate the point.

Coming now to the question as to where the amount was received, we have no doubt that the view of the Tribunal was correct. This income was received at Agra, Allahabad or Delhi from the buyers by the Imperial Bank acting as the agent of the Company. The Company had handed over the railway receipts to the Bank, and asked the Bank not to hand over the railway receipts to the buyers, unless payment was received. This was sufficient to make the Bank an agent of the Company. The buyers could not have countermanded the instructions given by the Company to the Bank, which they would, indubitably, have been able to do, if the Bank was their agent. This was laid down by this Court in *The Commissioner of Income-tax* v. *P. M. Rathod and Company* (1). Mr. Veda Vyasa contends that the case is distinguishable on the ground that the railway receipts there were "to self", whereas here the railway receipts, were made out in the name of the consignee. Nothing turns upon this distinction. The document of title to goods was still the property of the Company till payment for it was received and it was handed over. In this view of the matter, we are of opinion that the ruling in question applies.

Mr. Veda Vyasa finally contended that the agreement between the parties was that the goods were to

(1) [1960] 1 S.C.R. 401.

be sent f.o.r. Bhopal, and that the price was also to be paid there. He contended that the handing over of the railway receipts to the Bank at Bhopal was in furtherance of the agreement, that the money was ultimately obtained by the Bank and handed over at Bhopal also; and that, thus, the money must be deemed to have been received there. This, in our opinion, does not truly represent the character of the transaction. No doubt, under the agreement, payment was to be made at Bhopal; but the circumstances show that that was departed from, and the ordinary mercantile practice of handing over the railway receipts to one's own bankers with a request to hand over the receipts against payment to the buyers was followed. The Bank, as we have shown above, was thus the agent of the sellers, as was laid down in the ruling of this Court, and the fact of payment to the agent determines the place where the money can be said to be received by the Company. That place was at Agra, Allahabad or Delhi. In this view, the income, profits or gains must be deemed to have been received in the taxable territories, and the answer to the question ought to have been in the affirmative.

We accordingly allow the appeal, and answer the question in the affirmative. The appellant will be entitled to his costs here and in the High Court.

Appeal allowed.