

C.A.P. ANDIAPPAN

v.

C.I.T. MADRAS & ANR

August 9, 1971

[K. S. HEGDE AND A.N. GROVER, JJ.]

Income-tax Act (11 of 1922). s. 49A—Agreement between India and Ceylon, Art 3, item 8—Scope of—Relief under Ceylon Income-tax Ordinance 1932 s. 45(2)—Abatement to which an assessee resident in India and carrying on business in Ceylon is entitled to.

The appellant was a resident in India and was carrying on business in Ceylon. His entire assessable income for the years 1959-60 and 1960-61 was what he earned in Ceylon. He was liable to be assessed as a non-resident, but, in view of s. 45(2) of the Ceylon Income-tax Ordinance, 1932, and of the Agreement for 'Assessment for Relief or for Avoidance of Double Taxation in India and Ceylon' as provided in s. 49A of the Indian Income tax Act, 1922, he was taxed as if he was a resident in Ceylon and assessed to pay a smaller sum as tax. The Income-tax authorities in India computed the tax under the Indian law and gave as abatement, the tax payable by him in Ceylon as per the Agreement, and called upon him to pay the balance.

On the questions: (1) whether he was not liable to be taxed at all in India, and (2) if he was liable to be taxed in India, what should have been the proper abatement, the High Court confirmed the order of the Income-tax authorities.

In appeal to this Court,

HELD: (1) Article 3 of the Agreement begins with the words 'Each country shall make an assessment in the ordinary way under its own laws.' Therefore, the appellant was liable to be taxed in India. [91E-F]

(2) The Article read with item 8 of the Schedule to the Agreement shows that from out of the amount ascertained under the first part of the Article the tax payable by the assessee in the other country in respect of the whole or part of the amount brought to tax under the first part of the Article, should be deducted. The word 'attributable' in the Article means 'payable'. In considering what taxes are attributable to the tax laws of a particular country, one has to take into consideration all the provisions of the statutes levying tax, that is, for determining the tax due from an assessee, one has not merely to look to the charging section, but also to the provisions providing exemptions and allowances. So read, the amount of tax attributable to the Ceylonese law is that which was ultimately actually levied on the assessee and not the leviable in Ceylon on a non-resident. [92B-G]

Ramesh R. Saraiya v. C.I.T. Bombay 55 I.T.R. 699 (S.C.) applied.

A CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1689 and 1690 of 1968.

Appeals from the judgment and order dated January 19, 1967 of the Madras High Court in Writ Petitions Nos. 1030 and 1031 of 1963.

B *T. A. Ramachandran*, for the appellant (in both the appeals).

S. C. Manchanda, R. N. Sachthey, B. D. Sharma and S. P. Nayar, for the respondents (in both the appeals).

C The Judgment of the Court was delivered by

Hegde, J. These appeals by certificate arise from the decision of the High Court of Madras in Writ Petitions Nos. 1030 and 1031 of 1963. Therein the petitioner invoked the extraordinary jurisdiction of the High Court under Article 226 of the Constitution to quash the orders of the Respondents wherein he was not granted the abatement he sought to obtain in the assessment years 1959-60 and 1960-61. The High Court came to the conclusion that the appellant is not entitled to any more abatement than that was given by the authorities under the 'Assessment for Relief or for Avoidance of double Taxation in India and Ceylon' which will be hereinafter referred to as the "agreement". It accordingly dismissed the Writ Petitions but gave a certificate under article 133(1)(c) of the Constitution of India certifying that this is a fit case for appeal to this Court.

The appellant is a resident in this country. But he is carrying on business in Ceylon. During the assessment year 1959-60 he earned a gross income of Rs. 39,473/- and in the assessment year 1960-61 he earned a gross income of Rs. 39,047/-. He had only a house in India whose annual rental value was Rs. 38/-. The entire assessable income of his was that what he earned in Ceylon. On his income in Ceylon, he was taxed in a sum of Rs. 5,919/- for the assessment year 1959-60 and in a sum of Rs. 6,036/- for the assessment year 1960-61. For the same income, in India, under the Indian law his tax was computed for the assessment year 1959-60 at Rs. 10,282.62P and for the assessment year 1960-61 at Rs. 9,521.35P

The tax payable by him in Ceylon was given as abatement and he was called upon to pay only the balance. The tax payable by him in Ceylon as a non-resident would have been Rs. 9,889/- in the assessment year 1959-60 and Rs. 9,983/- in the assessment year 1960-61. But in view of section 45(2) of the Ceylon Income Tax ordinance 1932 and also in view of the 'Agreement' he was taxed as if he was a resident in Ceylon.

Two questions arising for decision are whether he was not liable to be taxed at all in India and if he was liable to be taxed in India, what should have been the proper abatement given to him.

Mr. Ramachandran appearing for the assessee contended firstly that in view of the 'Agreement' entered into between India and Ceylon as provided in section 49C of the Indian Income Tax Act, 1922 he was not liable to be taxed in India at all. In the alternative, he contended that while determining the tax payable by him in this country, the department should have deducted the entire tax that he would have had to pay had been taxed as a non-resident. For this contention also he relies on the terms of the agreement entered into between India and Ceylon. He does not dispute the fact but for the agreement the assessee would have been liable to pay in this country a tax of Rs. 10,282.62 p. in the assessment year 1959-60 and Rs. 9,521.35p. in the assessment year 1960-61.

In order to consider the correctness of the contentions advanced by Mr. Ramachandran, we will now turn to the relevant provisions of the 'Agreement'. That 'Agreement' was notified in Modification SRO 456 dt. the 6th February, 1957. The portion of the notification which is relevant for our present purposes is contained in Article 3 and column 8 of the Schedule to that agreement. Article 3 reads :

"Each country shall make assessment in the ordinary way under its own laws; and where either country under the operation of its laws charges any income from the sources or categories of transactions specified in column 1 of the Schedule to this Agreement (hereinafter referred to as the Schedule) in

- A excess of the amount calculated according to the percentages specified in column II and III thereof, that country shall allow an abatement equal to the lower of the amounts of tax attributable to such excess in either country.”
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SCHEDULE

C	Sources of income or nature of transaction from which income is derived	Percentage of income which each country is entitled to charge under the Agreement.		Remarks
	I	II	III	IV
D	8. Any income derived from a source or category of transactions not mentioned in any of the foregoing items of the Schedule.	100 per cent by the country in which the income actually accrues or arises.	Nil by the other.	

- E The first portion of article 3 says that “each country shall make an assessment in the ordinary way under its own laws.” This means to begin with both India and Ceylon were required to assess the assessee in accordance with law prevailing in each of these countries. Thus far it is plain. From this it is clear that first contention advanced on behalf of the assessee has no basis. Hence it must fail. Now we come to the second part of that article to the extent necessary for determining the second contention. It reads :
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- G “and where either country under the operation of its laws charges any income from the sources or categories of transactions specified in column I of the schedule to this Agreement....in excess of the amount calculated according to the percentages specified in columns II and III thereof, that country shall allow an abatement equal to the lower of the amounts of tax attributable to such excess in either country.”
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The language employed in this part of the article is quite confusing. That part of the article has to be read with the

schedule. On a proper reading of that provision along-
with the schedule, which means in the present case, item
8 of the schedule, it appears to us that what it says is :—

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From out of the amount ascertained under the first
part of the Article deduct the tax payable by the assessee
in the other country in respect of the whole or any portion
of the amount brought to tax under the first part of
article. The word 'attributable' in that Article merely
means 'payable'. Applying the principle mentioned above
to the facts of the present case, the following result is
reached. The tax payable under the Indian law as seen
earlier was Rs. 10,282·62p. in the assessment year 1959-60.
The tax payable under the Ceylonese law in that year was
Rs. 5,919/-. That has to be deducted from the tax
computed under the Indian law. The balance alone is
leviable. Similarly in the assessment year 1960-61 the
tax computed under the Indian law is Rs. 9,521·35 p. and
the tax levied under the Ceylonese is being Rs. 6,036/-.
In levying tax in this country the tax payable in Ceylon
has to be deducted. It was urged by Mr. Ramchandran
that what we have to take into consideration is not the
actual tax levied in Ceylon but the tax leviable in Ceylon
on a non-resident. He says that the deduction given
under section 45 (2) of the Ordinance promulgated in
Ceylon is only an allowance. Hence the same does not
form part of the actual taxation. We are unable to
accede to that contention. In considering what taxes
are attributable to the tax laws of a particular country,
one has to take into consideration all the provisions of the
statutes levying tax. In other words for determining the
tax due from an assessee, we have not merely to look to
the charging section but also to the provisions providing
exemptions and allowances. If so read, it is quite clear
that the amount of tax attributable to the Ceylonese law
is that which was ultimately levied on the assessee.

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The agreement that was entered into between India
and Pakistan is similar in terms with the agreement,
with which we are concerned in these appeals, except
that in article 4 therein which corresponds to article 3
in the agreement before us in the place of the word 'attribu-
table' the word 'payable' is used. But this change does
not make any difference in substance. Interpreting that

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- A agreement this Court in, *Ramesh R. Saraiva v. Commissioner of India Tax, Bombay City-I*¹ held that article IV of the Indo-Pakistan Agreement for the avoidance of Double Taxation clearly shows that each Dominion can make an assessment in the ordinary way regardless of the Agreement. The
- B restriction which is imposed on each Dominion under the Agreement is not on the power of assessment but on the liberty to retain the tax assessed. Nor does the Schedule to the Agreement limit the power of each Dominion to assess in the normal way all the income that is liable to taxation under its laws. The Schedule has been appended only for
- C the purpose of calculating the abatement to be allowed by each Dominion. The ratio of this decision, in our opinion, governs the facts of this case.

We also do not see any reason, for treating the appellant in a manner different from other assesseees, who

D are resident in this country.

In the result these appeals fail and the same are dismissed. No costs.

V.P.S.

Appeals dismissed.

(1) 55 I.T.R. 699.