

CLAGGETT BRACHI CO. LTD., LONDON

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v.
COMMISSIONER OF INCOME-TAX, A.P.

APRIL 26, 1989

[R.S. PATHAK, CJ AND RANGANATH MISRA, J.]

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Indian Income Tax Act, 1922/Income Tax Act 1961: Section 23(3)/Section 147-149—Reassessment consequent on change in method of computation of profits—Whether permissible—Original assessment made on agents—Reassessment—Whether could be initiated against assessee.

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The appellant-assessee, a non-resident sterling company, carrying on business of purchase and sale of tobacco, on its own and for commission, effected purchases through its Indian agents. The agents filed returns of income on behalf of the assessee for the assessment years 1959-60 and 1960-61. The Income-tax Officer completed the assessment to tax under s. 23(3) of the Indian Income-tax Act, 1922.

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However, in the course of assessment proceedings for the assessment year 1962-63, the Income-tax Officer noticed that there was a mistake in computing the overhead expenditure. Therefore, in the opinion that income had escaped assessment for the two assessment years he issued notices to the statutory agents, under s. 148 of the Income-tax Act, 1961, but dropped the proceedings, upon the agents' objection to the issue of the notice of reassessment on the agent of a non-resident assessee after the expiry of two years from the end of the relevant assessment year.

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Thereupon the Income Tax Officer issued notice directly to the assessee. The assessee filed returns for both the years under protest. Rejecting the assessee's contention that it could not be served with the notices since its agents had already been proceeded against, the Income Tax Officer made reassessments on the assessee for the two assessment years.

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The appeals filed by the assessee were dismissed by the Appellate Assistant Commissioner. In second appeal, the Income-Tax Appellate Tribunal held that the reassessments were without jurisdiction, as they were proceeded on a mere change of opinion of the Income Tax Officer and that the assessee could not be proceeded against directly as the

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A assessments were made originally on the agents.

On a reference made at the instance of the Revenue, the High Court held that reassessments were not made due to a mere change of opinion of the Income Tax Officer, but pursuant to information received subsequent to the original assessments from the records of the

B subsequent assessment year that the overhead expenses related to the entire business, including the business as commission agents, and not merely to the business of purchase and sale of tobacco, and that there was nothing to prevent the Income Tax Officer from proceeding directly against the assessee and re-assessing it for the two assessment years, when he found that reassessment proceedings could not be taken against the agents.

In the appeal before this Court, on behalf of the assessee, it was contended that the Income Tax Officer had no jurisdiction to take proceedings under ss. 147 and 148 of the Income-tax Act because the conditions pre-requisite for making the reassessments were not satisfied,

D and it was not open to the Income Tax Officer to take assessment proceedings against the assessee when he had taken assessment proceedings against the Indian agent.

Dismissing the appeals,

E HELD: 1. The Income Tax Officer came to realise that income had escaped assessment for the two assessment years when he was in the process of making assessment for a subsequent assessment year. While making that assessment, he came to know from the documents pertaining to that assessment that the overhead expenses related to the entire business, including as commission agents, and not confined to the business of purchase and sale. The attention of the Income Tax Officer was not directed by anything before him at the time of original assessment to the fact that the overhead expenses related to the entire business. In the circumstances, there is no doubt that the case falls within the terms of cl. (b) of s. 147 of that Act and there was justification for initiating the proceedings for reassessment for the two assessment years in question. [736A-D]

2. It is open to an Income Tax Officer to assess either a non-resident assessee or the agent of such non-resident assessee. But if an assessment is made on one there can be no assessment on the other. [736E]

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Therefore, in the instant case, if the assessment had been made on the Indian agent, the assessment could not have been made on the assessee. However, the reassessment proceedings commenced on the agent were barred by time by reason of s. 149(3) of the Act. The issue of notice under s. 148 of the Act to the agent after the expiry of two years from the end of the relevant assessment year is prohibited by the statute. Hence, the assessment proceedings against the agent have to be ignored, and cannot operate as a bar to assessment proceeding directly against the assessee. [736F-G]

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 208 and 209 (NT) of 1975.

From the Judgment and Order dated 4th August, 1971 of the Andhra Pradesh High Court in Reference Case No. 12 of 1968.

K.B. Rohtagi for the Appellant.

V. Gauri Shankar and Ms. A. Subhashini for the Respondent.

The Judgment of the Court was delivered by

PATHAK, CJ. These appeals by special leave are directed against the judgment of the High Court of Andhra Pradesh answering the following two questions of law in favour of the Revenue and against the assessee:

1. Whether the Tribunal was right in holding that the re-assessments being only consequent on a change as to the method of computation of the profits the initiation of proceedings under s. 148 for each of the assessment years 1959-1960 and 1960-61 was justified?
2. Whether the Tribunal was right in law in holding that the original assessment for each of the years having been made on the agents, the re-assessment proceedings could not be initiated against the assessee direct?

The appellant assessee is a non-resident sterling company whose business consists in the purchase of tobacco from India and its sale outside. The tobacco is sold directly on the assessee's own account and for commission on behalf of others. The purchases of tobacco were

- A effected through the British India Corporation Ltd., Guntur, who were appointed agents of the assessee under s. 43 of the Indian Income-tax Act, 1922. For the assessment years 1959-60 and 1960-61, the agents filed returns of income on behalf of the assessee. The Income-tax Officer, Guntur, after examining the balance-sheet and profit and loss account of the assessee for the relevant previous years,
- B the calendar years 1958 and 1959, completed the assessments under s. 23(3) of the Indian Income-tax Act, 1922. For the year 1958 the gross profit on the sale of Indian tobacco, including commission, was shown in the balance-sheet and profit and loss account of the assessee at £11,108. As the assessee carried on business not only in India but in other places, the Income Tax Officer worked out the proportionate overhead expenses of the assessee for its business in India at £16,760
- C taking the total sales of tobacco at £534031 and the sales of Indian tobacco at £448590. The Income Tax Officer computed the loss at £5652, and one-half of this amount namely £2826 (Rs.37680) was taken as the adjusted loss, being the percentage attributable to the purchasing operation in India. On the same basis for the assessment year
- D 1960-61, after setting off the income against the previous loss, the total loss was found to be Rs.96,482.

- E Subsequently, in the course of assessment proceedings for the assessment year 1962-63, the Income Tax Officer appears to have noticed that a mistake had been committed in the computation of the over-head expenditure. The return filed on behalf of the assessee for that year had disclosed that the over-head expenses were attributable to the entire business of the assessee, including the business as commission agents, and not merely for the business of purchase and sale of tobacco. The Income Tax Officer believed that he ought to have first computed the proportionate overhead expenses in relation to the total profits by taking the proportion which the profits bore to the total of profits and commission, and then worked out the proportionate overhead expenses for the profits arising out of the Indian sales. On that basis he determined that the adjusted profits would be £160 (Rs.2253), and this would have to be substituted in place of the loss of Rs.37,680 arrived in the original assessment. Similarly for the assessment year 1960-61 the Income Tax Officer realised that the original assessment would have to be varied accordingly. In the opinion that income had escaped assessment for the two assessment years 1959-60 and 1960-61, he issued notices on 18 January, 1964 under s. 148 of the Income Tax Act, 1961 to the statutory agents. The agents contested the validity of the notices and contended that in view of s. 149(3) of the Act no notice of re-assessment could be served on the agent of a non-resident assessee after the expiry of two years from the end of the relevant assess-
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ment year. The Income-Tax Officer upheld the objection and dropped the proceedings.

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Thereupon the Income Tax Officer issued notice under s. 148 for the two assessment years directly to the assessee to their London address on 29 February, 1964. The assessee filed returns on 19 August, 1964 for both the years under protest, contending that it could not be served with those notices inasmuch as the Income Tax Officer had already proceeded against its agents. The Income Tax Officer rejected the objections and made re-assessments on the assessee for the two assessment years.

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The appeals filed by the assessee before the Appellate Assistant Commissioner were dismissed, but in second appeal the Income-Tax Appellate Tribunal took the view that the re-assessments proceeded on a mere change of opinion on the part of the Income Tax Officer and, therefore, were without jurisdiction, and further as the assessments had been made originally on the agents it was not open to the Income Tax Officer to proceed directly against the assessee. Accordingly, the Appellate Tribunal allowed the appeals and set aside the re-assessments made on the assessee.

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At the instance of the Revenue, the Appellate Tribunal referred the two questions of law set forth earlier to the High Court of Andhra Pradesh for its opinion. On the first question the High Court held that it was not a mere change of opinion on the part of the Income Tax Officer pursuant to which he made the re-assessments, but that the Income Tax Officer had received information subsequent to the original assessments from the records of the subsequent assessment year that the overhead expenses related to the entire business, including the business as commission agents, and not merely to the business of the purchases and sales of tobacco. On the second question the High Court held that there was nothing to prevent the Income-tax Officer, when he found that re-assessment proceedings could not be taken against the agents, from proceeding directly against the assessee and re-assessing it for the two assessment years.

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Two points have been urged before us by learned counsel for the assessee. It is contended that the Income Tax Officer has no jurisdiction to take proceedings under ss. 147 and 148 of the Income-tax Act because the conditions pre-requisite for making the reassessments were not satisfied. The re-assessments were made with reference to cl. (b) of s. 147 of the Act, and apparently the Income Tax Officer proceeded on the basis that in consequence of information in his possession he had reason to believe that income chargeable to tax had

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- A escaped assessment for the two assessments years. From the material before us it appears that the Income Tax Officer came to realise that income had escaped assessment for the two assessment years when he was in the process of making assessment for a subsequent assessment year. While making that assessment he came to know from the documents pertaining to that assessment that the overhead expenses
- B related to the entire business including the business as commission agents and were not confined to the business of purchase and sale. It is true, as the High Court has observed, that this information could have been acquired by the Income Tax Officer if he had exercised due diligence at the time of the original assessment itself. It does not appear however, that the attention of the Income Tax Officer was directed by anything before him to the fact that the overhead expenses related to the entire business. The information derived by the Income Tax Officer evidently came into his possession when taking assessment proceedings for the subsequent year. In the circumstances, it cannot be doubted that the case falls within the terms of cl. (b) of s. 147 of the Act, and that, therefore, the High Court is right in holding against the assessee.
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The second point urged before us is that when the Income tax Officer had taken the assessment proceedings against the Indian agent of the assessee it was not open to him to take assessment proceedings against the assessee. It is open to an Income Tax Officer to assess either a non-resident assessee or to assess the agent of such non-resident assessee. It cannot be disputed also that if an assessment is made on one there can be no assessment on the other, and therefore, in this case if the assessment had been made on the Indian agent the assessment could not have been made on the assessee. However, the facts show that the re-assessment proceedings commenced on the agent were found to be barred by time by reason of s. 149(3) of the Act. The issue of notice under s. 148 of the Act to the agent after the expiry of two years from the end of the relevant assessment year is prohibited by the statute. The Income Tax Officer dropped the proceedings when he was made aware of that prohibition. The assessment proceedings taken by him against the agent have to be ignored and cannot operate as a bar to assessment proceeding directly against the assessee. On this point also the High Court has taken the correct view when it answered the question in favour of the Revenue.

In the result the appeals fail and are dismissed with costs.