(1970) 01 BOM CK 0032

Bombay High Court

Case No: Income-tax Reference No. 43 of 1963

R.M. Raja (Deceased)		APPELLANT
	Vs	
Commissioner of Income Tax, Bombay City III Bombay		RESPONDENT

Date of Decision: Jan. 15, 1970

Acts Referred:

- Income Tax Act, 1922 - Section 4(1)

Citation: (1971) 80 ITR 308

Hon'ble Judges: N.A. Mody, Acting C.J.; Desai, J

Bench: Division Bench

Advocate: N.A. Palkhivala, for the Appellant; G.N. Joshi, for the Respondent

Judgement

Mody, Actg.C.J.

1. This is a reference u/s 66(2) of the Income Tax Act, 1922. It concerns the assessment years 1946-47 and 1948-49, the corresponding accounting years being Samvat year 2001 (18th October, 1944, to 4th November, 1945), and Samvat year 2003 (25th October, 1946 to 12th November, 1947) In these two assessment years the Sums of Rs. 1,73,000 and Rs, 4,80,000 have been brought to tax under the provisions of section 4(1)(b)(iii) of the Income Tax Act, 1922, under the order of the Tribunal out of which this reference arises. These two amounts have been brought to tax on the basis of their having been received in the taxable territories, being British Indian, as it then was, from the accumulated profits from the then native State of Junagadh by the Tribunal by its judgment which is common to both the said assessment years.

2. Two questions have been referred, but question No. 2 has not been pressed and, as a matter of fact, was not argued at all. Only question No. 1, therefore, survives for determination. Question No. 1 reads :

"Whether the Tribunal erred in law or acted without evidence in holding that all or any of the various items aggregating to Rs. 4,80,000, (rupees four lakhs eighty thousand) in the assessment year 1948-49 and Rs. 1,70,000 (rupees one lakh seventy thousand) in the assessment year 1946-47, constituted remittances of profits to the taxable territories within the meaning of section 4(1)(b)(iii) of the Indian Income Tax Act."

3. In the two previous years relevant to this reference one R. M. Raja was alive. He died later in February, 1955. He was assessed as an individual and resident but not ordinarily resident in the taxable territories in the two relevant accounting years. He was carrying on business at Jungadh, Veraval and Shahpur all within the State of Jungadh, which is now in Saurashtra. Separate sets of accounts were maintained for each of these three places. The business at Junagadh was the head office and was carried on the name of "Kanji Lava", the business being mainly that of a banker. In that business he used to discount at Junagadh hundies drawn on persons in the then British India as well as cheques drawn on banks in British India. He also used to exchange cheques on his British Indian banks at Bombay against cash received within the State of Jungadh. The business of Kanji Lava had a branch at Shahpur which carried on the business of an oil mill for crushing oil seeds in the name and style of "Madhavji Kanji Shahpur Press". There was also a branch at Veraval. It carried on business mainly of trading in oil in the name and style of "Madhavji Kanji." The Verbal branch also carried on some business in banking of the some nature as the business at the head office at Junagadh. In the course of the business of manufacturing oil and selling it, sales were effected to persons resident within the taxable territories who often made payments of the price by cheques, etc. drawn on banks in British India. Such cheques were handed over to other persons on behalf of the assessee in Bombay and sometimes they were sent to Bombay for purposes of collection. In addition to these business in the State of Jungadh, the Hindu undivided family of the assessee, of which the assessee was the karta, carried on large oil manufacturing business in Bombay under the name and style of "Raja Oil Mills".

4. For the purpose of his business activities the assessee had several accounts in several banks in Bombay either in his own in his own name on in the joint names of himself and his son or sons or even others. He had an account with the Bank of India, Bullion Exchange Branch, Bombay, in the joint names of his two sons. He had two other accounts in the Bank of India, head office, Bombay, one in his own name and the other in the joint names of two of his sons. He had an account with the National Bank of India Ltd., Bombay, which was in the joint names of his two sons. He also had an account with the Central Bank of India Ltd., Bombay, in the joint names of two his sons and the Raja Oil Mills. It may be stated that summaries of these bank accounts for the relevant accounting years, Samvat year 2001 and 2003, were produced before the Tribunal. Corresponding bank accounts also appear in the account books of Kanji Lava, Junagadh. The business of Raja Oil Mills, Bombay,

also had a banking account and a corresponding account was maintained by Kanji Lava, Junagadh, in its books of account.

5. By its judgment the Tribunal found that the assessee was not carrying on only banking business, but was carrying on the business of an oil mill at Veraval as well as in Bombay. The Tribunal also found that there were frequent transfers of funds from the several bank accounts of the assessee not only inter se the banking accounts, but also in the business of Raja Oil Mills. It also found that a perusal of the account of the assessee in the Raja Oil Mills, Bombay, showed that the assessee had utilised the funds standing to his credit in that account for many other purposes, such as, making deposits in the assessee''s own banks in Bombay, in paying life insurance premium, Income Tax, etc., in purchasing prize bonds and in connection with the payment for goods and bills presumably connected with the assessee''s business at Veraval and Shahpur. The Tribunal also found that the assessee did not charge interest to the Raja Oil Mills on the sums standing to his credit in the books of account of the latter. From these facts the Tribunal concluded that the assessee''s account with the Raja Oil Mills was not one exclusively relating to his banking business.

6. As regards the accounting year, Samvat year 2001, relating to the assessment year 1946-47, the said sum of Rs. 1,70,000 was made up of two sums standing to the credit of the assessee''s account with the Raja Oil Mills. The assessee had sent Rs. 50,000 on 9th November, 1944 and Rs. 25,000 on 17th December, 1944 from Junagadh for being deposited in the assessee''s account with the Bank of India, head office, Bombay. These amounts remained in that account for several months till 18th October, 1945, when they were transferred from that account to his account with the Raja Oil Mills. Similarly, three sums of Rs. 50,000, Rs. 13,000 and Rs. 50,000 were sent by the assessee from Junagadh to the assessee''s account with the Bank of India on 28th October, 1944, 4th November, 1944, and 15th November, 1944, respectively, and they continued to remain in that account till 12th October, 1945, when they were withdrawn and deposited in the assessee''s account with the Raja Oil Mills. These five remittances aggregated to Rs. 1,88,000 and the Tribunal found that out of these accounts two sums of Rs. 75,000 and Rs. 95,000 aggregating to the said sum of Rs. 1,70,000 were deposited in the assessee''s account with the Raja Oil Mills as stated earlier. The Tribunal held that the assessee''s account with the Raja Oil Mills could not be considered to be exclusively an account maintained for the assessee''s banking business, that, at best, that account was in respect of the assessee''s mixed activities, banking and non-banking, that the department had discharged its burden of proving that these remittances were not part of the assessee''s stock-in-trade of his banking business and that they were remittances to the taxable territories from the Indian State in the course of a non-banking business and that, therefore, a presumption arose in favour of the department that these remittances were on account of profits made by the assessee in the Indian State. The Tribunal held that, therefore, subject to there being sufficient profits in the

native State of Junagadh available or being remitted to the taxable territories the said sum of Rs. 1,70,000 should be considered as taxable u/s 4 (1) (b) (iii). As regards the assessment year 1948-49, the said sum of Rs. 4,80,000 was made up of diverse items consisting of specific remittances from Junagadh to Bombay aggregating to Rs. 4,80,000. The Tribunal found that those remittances were credited initially in one or the other banking account of the assessee in Bombay where they remained for considerable lengths of time and that, out of the same, diverse sums were given to the Raja Oil Mills, Bombay, and were credited in the assessee''s account with the Raja Oil Mills. The Tribunal held that in connection with the amounts aggregating to Rs. 4,80,000 the position was similar in nature to that in connection with the amount of Rs. 1,70,000, and, for the same reasons as given in respect of that sum of Rs. 1,70,000, the Tribunal held that the sum of Rs. 4,80,000 was liable to be taxed u/s 4(1)(b)(iii). The Tribunal held that the amounts of Rs. 1,70,000, and Rs. 4,80,000 were liable to be taxed subject to there being sufficient profits available in the State of Junagadh for being remitted to Bombay. The Tribunal directed the Appellate Assistant Commissioner to go into the question as to whether there were sufficient profits available for being remitted to the taxable territories so as to cover the remittances of the said sums of Rs. 1,70,000 and Rs. 4,80,000 in the said two respective accounting years.

7. The two relevant assessment years are 1946-47 and 1948-49. In respect of the intervening assessment year 1947-48, the assessment was completed earlier and questions relating to the same ultimately came up before this High Court and the judgment therein is Commissioner of Income Tax v. R. M. Raja. The relevant facts on which the reference was decided by that judgment were practically similar to those in the present reference. There was, however, one material difference and that was that in that case there was an agreed statement of the case and it showed that the remittances from the native State to the taxable territories were held to have been made in the course of the banking business of the assessee'' whereas there is no such agreement in the case before us. In this case, however, it is not disputed that all the said five accounts of the assessee in the banks in Bombay were in respect of the banking business of the assessee. The special feature in the case before us is that all the amounts which aggregated to the said two sums of Rs. 1,70,000 and Rs. 4,80,000 were deposited by the assessee out of his remittances from the State of Junagadh in the business of the Raja Oil Mills, Bombay, and were got credited in the assessee''s account in the books of account of that business. The principles, however, laid down by that judgment are not only binding on us, but are very helpful in deciding the points arising in the case before us.

8. That judgment lays down the principles which we will presently summarise. What are liable to tax u/s 4(i)(b)(iii) are profits which accrued to the assessee in an Indian State in the years prior to the previous year and which were brought into the taxable territories. If it is established that there were available profits in the Indian State, them a presumption would readily arise that remittances were out of the

profits and it would be for the assessee to rebut that presumption. If there be remittances from an Indian State into the taxable territories and also vice versa and if the former exceed the latter, a presumption would arise that the excess remittances were out of the accumulated profits which had accrued in the Indian State. To a banker money is his stock-in-trade, and if a banker remits money in the course of his business, we start with this that what he in remitting is his stock-in-trade and he is remitting it for his business and for the purpose of carrying on him business and there would, therefore be no presumption that when he remits any amount in the course of his business, he has remitted profits out of his accumulated profits and if the taxing department wants to tax any remittances if would be for the taxing department to establish that the remittances were not a part of his stock-in-trade but out of his accumulated profits. From these principles laid down by that judgment it must follow that in the case of a banker when there is flow of monies both ways, and particularly if the flow either way is fairly equal, it would not be correct for the Income Tax department to pick some individual items of remittances made in the normal course of banking business as being out of accumulated profits, because money is banker''s stock-in-trade. Of course, there would be exceptions where the taxing department can clearly identify and prove any remittance as being out of accumulated profits and the ration of the judgment of the High Court in the case of Jankidas referred to in the above Bombay judgment would apply and only the excess of remittances into the taxable territories over those from the taxable territories would be liable to tax u/s 4(1)(b)(iii). In the above Bombay judgment it had not been proved that profits were available for remittances to British India and the department applied before the High Court that the matter be remitted so that the Income Tax Officer could give the necessary finding in that connection. In respect of that application it is observed in the judgment :

"But even if we were to remand the matter and the Income Tax Officer was to find that profits were available, the difficulty would still remain whether the remittance was out of the profits or the remittance was as part of the stock-in-trade of the banking business and with regard to that the department can only rely upon the presumption that once available profits are established, the remittance must be out of those profits. But as we have just pointed out, in the present case that presumption cannot arise."

9. The important words are "can only rely on the presumption." Because the taxing department could not rely on a presumption, the application for remand was made to enable a finding being recorded whether "profits were available for remittance to British India." This shows what we have stated earlier that, even apart from there being no presumption, it cannot even be proved that the remittances from the native State into the taxable territories were out of accumulated profits, subject, of course, to the exceptions mentioned earlier.

10. We will now refer to some of the facts relevant to the assessment year 1946-47, and the said sum of Rs. 1,70,000.

11. We will first refer to the summary of the various banking accounts of the assessee for that year which are annexed to the statement of the case. As stated earlier, it is not disputed that these banking accounts were used by the assessee for the purposes of his banking business. Now, in the single name of R. M. Raja, the amounts deposited during the year aggregated to Rs. 75,317 and the withdrawals aggregated to Rs. 75,055. The two aggregates are practically equal. In the other account in the Bank of India Ltd. head office, Bombay, which was in the joint names of the sons of the assessee, the aggregate of the deposits is Rs. 1,13,180 and the aggregate of the withdrawals is Rs. 1,13,053. The two aggregates are practically equal. In the account in the Bank of India Ltd., Bullion Exchange Branch, Bombay, the aggregate of the deposits is Rs. 17,14,258 and that of the withdrawals is Rs. 17,11,335, the two being fairly equal. the Tribunal has held that this amount was by far the largest banking account of the assessee and it must be noted that each of the two aggregates of deposits and withdrawals exceeded as large a sum as Rs. 17,00,000.

12. Now we will advert to the said sum of Rs. 1,70,000. Rs. 50,000, Rs. 13,000, and Rs. 50,000 were remitted from the State of Junagadh and deposited in the account with the Bank of India Ltd. in the joint names on 28th October, 1944, 4th November, 1944, and 15th November, 1944, respectively, and on 12th October, 1945, that is, after almost a year Rs. 95,000 were paid out of that account to the Raja Oil Mills. The Tribunal has pointed out that these amounts remained idle for months and months. Two sums of Rs. 50,000 and Rs. 25,000 were credited in the account with the Bank of India Ltd., head office, Bombay, in the single name of the assessee on 9th November, 1944, and 17th December, 1944, respectively, and it was almost ten or eleven months thereafter on the 18th October, 1945, that Rs. 75,000 were paid into the assessee''s account with the Raja Oil Mills. Now, a copy of the account of the Raja Oil Mills from the account books of Kanji Lava, Junagadh, for this year was produced before the Tribunal and it is annexed to the statement of the case. That account shows there two sums of Rs. 95,000 and Rs. 75,000 as having been credited into that account on the 12th October, 1945, and 18th October, 1945, respectively. But it also shows that an aggregate sum of Rs. 2,50,000 was withdrawn by the assessee in four different amounts between 12th October, 1945 and 19th October, 1945. It may be stated that these amounts aggregating to Rs. 2,50,000 were withdrawn in cash and according to the assessee they were in fact taken in cash to Rajkot. The Tribunal has not believed the story that the amount was taken in cash to Rajkot. But, the taxing department has not disputed, nor has the Tribunal held, that the amounts aggregating to Rs. 2,50,000 were in fact withdrawn, the dispute being confined to the question whether they were taken to Rajkot or not. It is, therefore, clear that the sum of Rs. 1,70,000 deposited in the assessee''s account with the Raja Oil Mills remained with the Raja Oil Mills only for a few days.

13. We will now refer to some facts relating to the assessment year 1948-49, in connection with the above sum of Rs. 4,80,000. The summary of the bank accounts for this accounting year shows that in the assessee''s account with the Bank of India Ltd., head office, Bombay, in his single name, the aggregates of the deposits and withdrawals are Rs. 50,111 and Rs. 50,135 respectively, the two being practically equal. In the assessee''s account with the Bank of India Ltd., head office, Bombay, in the joint names of himself and his son, the aggregates of the deposits and withdrawals during the year are Rs. 65,469 and Rs. 60,037, respectively, the excess of the deposits being about Rs. 5,400 only. In the account with the Bank of India Ltd. Bullion Exchange Branch, Bombay, which is by far the largest account, the deposits aggregate to Rs. 26,26,952 and the withdrawals aggregate to Rs. 25,88,738. The excess of the deposits over the withdrawals is of about Rs. 38,000 which, as compared with the totals of either side of about Rs. 26,00,000, is very small. In the account with the National Bank of India. Ltd. the aggregates of the deposits and the withdrawals are Rs. 96,249 and Rs. 95,044, respectively, and the two are fairly equal. In the assessee''s account with the Central Bank of India Ltd., the deposits and withdrawals during the year aggregate to Rs. 98,813 and Rs. 97,540, which are fairly equal. Now, the said aggregate amount of Rs. 4,80,000 credited into the assessee''s account with the Raja Oil Mills is made up of certain twelve amounts. These amounts were credited into that account on different dates between 17th June, 1947, and 30th August 1947, i.e. a period of about two and half months. These amounts were credited into this account by transfers of various amounts from the assessee''s different banking accounts in Bombay. These transfers were made between the 29th September, 1947, and 28th October, 1947, i.e. a period of about one month. These amounts had been lying in the various banking accounts of the assessee in Bombay for periods ranging from two to seven months. It is clear that the twelve amounts composing this aggregate sum of Rs. 4,80,000 remained with the Raja Oil Mills for very short periods, ranging between two or three months.

14. Now, the Tribunal has held that the assessee was not carrying on only banking business. That fact, by itself, is not of importance. What has to be ascertained is whether the remittances from the native State into the taxable territories were in the course of the assessee''s banking business. As the assessee was carrying on banking business as well as other business, what has to be ascertained is whether the remittances were in the course of his banking business or not. All the remittances during all the relevant years have been credited into one or the other banking accounts of the assessee in Bombay and, as stated earlier, it is not disputed that these accounts related to the assessees banking business. It must, therefore, be held that all the remittances during the two relevant years were made by the assessee in the course of his banking business. The Tribunal has found that there were frequent transfers by the assessee of funds from his banking accounts to his account with the Raja Oil Mills and that he has not even charged interest to the Raja Oil Mills for the amounts standing to the credit of that account. Now, as already

stated earlier, what has to be ascertained is whether the remittances were in the course of the assessee''s banking business or not. Once it is found that a remittance or remittances was or were in the course of the assessee''s banking business, what the assessee did with the amounts so remitted after they were received in the taxable territories is of no direct relevance or importance. Moreover, as seen earlier, the specific amounts which aggregate to the said two sums of Rs. 1,70,000 and Rs. 4,80,000 remained with the Raja Oil Mills for fairly short durations. The Tribunal has also found that the assessee used some parts of the amounts standing to his credit in his banking accounts and his account with the Raja Oil Mills for other purposes, such, as paying life insurance premia, Income Tax, etc., purchasing prize bonds, making payments for goods and bills presumably connected with the assessee''s business at Veraval and Shahpur, etc. These, again are not directly relevant or important for the purpose of ascertaining whether the remittances were made in the course of the assessee''s banking business. The Tribunal has also found that large amounts of the remittance, after they were credited in the assessee''s banking accounts, remained idle for months. The Tribunal states that money to a banker in his stock-in-trade and from its very nature there would be a quick turnover because the banker''s profits depend upon the same and that the absence of a quick turnover by reason of the amounts remaining idle for months would lead to an inference that the remittances were not in the course of the assessee''s banking business. What we have stated earlier viz., that it is the nature of the remittances which has to be ascertained applies to this aspect also. Just as the use to which funds after they are received in the taxable territories are put is not directly relevant or important, so also would the fact that the funds remained idle for considerable periods not be of direct relevance or importance. What has to be determined is the character of the remittance, i.e., whether the remittance was in the course of normal banking business. If it was then in the case of a banker it would be remitting of his stock-in-trade. It is therefore of no importance whether after the remittance were received the funds were employed usefully or not. In any event the banking account show that practically all the fund remitted to India during each of the two years have been remitted back in that year after they were received in India.

15. In our opinion therefore the Tribunal has failed to apply the correct principles of law to the facts of this case. In view of that conclusion it is not necessary for us to decide whether the Tribunal has acted without evidence in reaching its conclusions about the said amounts of Rs. 1,70,000 and Rs. 4,80,000. We therefore answer question No. 1, in far as it pertains to the question whether the Tribunal erred in law in the affirmative. The respondent to pay the applicant''s costs of this reference.