Commissioner of Wealth Tax Vs International Computers and Tabulators Ltd.

Court: Bombay High Court

Date of Decision: March 28, 1980

Acts Referred: Wealth Tax Act, 1957 â€" Section 2, 27(1)

Citation: (1980) 17 CTR 20

Hon'ble Judges: Sawant, J; M.N. Chandurkar, J

Bench: Division Bench

Judgement

Chandurkar, J.
The assessee company which was formerly known as British Tabulating Machine Co. Ltd. is incorporated in United

Kingdom and had a branch in Indian upto 24-9-1952. The business of the company in India was letting on hire tabulating, sorting and accounting

machines and sale of punching cards and ancillary equipments employed in the Hollerith system of Punched Accounting and Statistical Works.

Hollerith (India) Ltd. now known as International Computers & Tabulators (India) Private Ltd. is a percent subsidiary of the assessee company.

With effect from 25-9-1952 the assessee company''s business in India was sold to this subsidiary company by the assessee company though the

agreement of sale is dated 24-2-1953. In accordance with the agreement the assessee company transferred to the subsidiary company all its assets

and liabilities in India except some rented machines which were described as ""such tabulating, sorting, accounting and ancillary machines as are

now or shall here after be used in connection with Hollerith System and such other class of machines now or hereafter used in connection with the

said system as are ordinarily let on hire by B.T.M."" The initials ''B.T.M.'' stood for ""British Tabulating Machines Co. Ltd."" There was also a Hiring

Agreement between the assessee company and the Indian Company (hereinafter the ''subsidiary'' company'' will be referred to as the ''Indian

company''), under which the assessee company was to let and the Indian company was to take on hire as from 25-9-1952 all rented machines of

B.T.M. or in transit to India and in use or intended for use in the residual business of assessee company in India and also all rented machines which

shall be supplied by the assessee company to the Indian company as may be reasonably required by the Indian Company for the purpose of

carrying on the business in India. In accordance with this hiring agreement which was executed simultaneously with the agreement regarding the

sale the assessee company hired out the rented machines to the Indian company which was at full liberty to use and hire the rented machines in the

ordinary course of the business, which was being earlier carried on by the assessee company in Indian and which business was taken over by the

Indian company. The rent payable by the Indian company to the assessee company in respect of the rented machines was to be a sum equal to 45

per cent of the amount receivable by the Indian company by way of rent from its customers in respect of the rented machines. The rented machines

continued to be the property of the assessee company. After the assessee company''s business was taken over by the Indian company, the

assessee company informed the Registrar of Companies that it had on longer a place of business in India and that, therefore, the returns which

were required to be submitted under the provisions of s. 277 of the Indian Companies Act, 1913 were not necessary to be filed with Registrar. S.

277 prescribed certain requirements in regard to companies established outside British India. The assessee company accordingly did not submit

any returns. It has been found that in so far as the business of letting on hire tabulating, sorting and accounting machines and the sale of punch cards

and ancillary equipments employed in the Hollerith System of punched-card accounting and statistical works in India was concerned, the dealing

between the assessee company and the Indian company were as principal to principal and not as a principal and an agent.

2. The assessee company was carrying on similar business in various other countries in Asia such as Burma. Ceylon, Pakistan, Hong Kong,

Singapore etc. which were described by the assessee company as ""Agency Territories"". Under the agreement with the Indian company, the Indian

company was bound to perform certain accounting and administrative, technical and supervisory functions on behalf of the assessee company in

respect of its business in these other Asian countries. The details of these functions are to be found in what is described as a Memorandum of

Accounting in Agency Territories in Asia. The relevant terms of this memorandum are as follows :

1. Hollerith (India) Ltd. (H.I.L.) will maintain on behalf of the British Tabulating Machine Co. Ltd. (BTM) books of account in respect of each

Agency Territory and will render invoices in the name of B.T.M. to customers in those territories for all amounts due in respect of rented machines

and for any goods supplied or services rendered by H.I.L. to those customers.

2. H.I.L. will send to Chief Accountant (B.T.M.) each period a summary of invoices (sales return) and a list of outstanding accounting and will

report on any customer''s account which is three or more months in arrears.

3. Chief Accountant B.T.M. will send to H.I.L. as issued copies of invoices rendered to customers in Agency Territories and will advice H.I.L.

immediately of all remittances received and all expenses incurred in respect of these territories.

4. Books entries recording transactions between B.T.M. Head Office and Agency Territories will be passed through current a/c maintained at

B.T.M. Head Office and in the books maintained by H.I.L. in respect of that territory.

5. H.I.L. will render to Chief Accountant B.T.M. each period such accounting and statistical returns as may be required in respect of each territory

and in particular the following returns :

(a) Profit & Loss A/C and Balance-sheet.

(b) Movements of Rented Machines and Rental Charges.

(c) Payroll and supporting schedules.

(d) Sales return.

(e) Revenue Report (by cable).

(f) Statement of Current Account originated by H.I.L.

6. H.I.L. will invoice to B.T.M. each period the amount of actual outgoings in respect of staff, premises and Hollerith equipment in Agency

Territories such as :

(a) Salaries & travelling expenses of staff.

(b) Rent, rates, lighting, heating, etc. of premises.

(c) Materials for maintenance of Hollerith Equipment.

(d) General office expenses (stationery, postage, etc.)

In addition, H.I.L. will invoice to B.T.M. each period expenses incurred in connection with the business of the Agency Territories such as

supervision of their General Manager and his staff (including expenses of visits of these territories) training of staff, publicity, and accounting,

provided the total amount so charged in any financial year does not exceed, in respect of each territory, the sum of :

5% of gross revenue accruing to B.T.M. and 10% of the amount by which the gross revenue exceeds the average gross revenue of the three

preceding financial years.

Note. Gross revenue includes all charges to customers other than Service Charges and Charges for Service Bureau and Sales service work and

the recovery of the cost of importation and delivery of equipment.

The WTO in respect of the asst. yr. 1958-59 and 1959-60 sought to assess the assessee company to wealth tax as a company as defined u/s 2(h)

of the WT Act. The material portion of the definition in force at the material time defining company is as follows :

Company"" means a "company" as defined u/s 3 of the Companies Act, 1961 (I of 1956) and includes :

(i) .....

(ii) A company incorporated outside India which has a place of business in India.

2. (a) .....

3. (a) .....

It is this definition which is relevant for the purpose of this reference. The WTO took the view that the assessee company was practically was

practically carrying on business in India from a place which was the same as that of the Indian company and was indirectly maintaining an office in

India. He found that the India subsidiary company exclusively rendered services to the assessee company and to the outside world that is the

branches of the assessee company in the Agency Territories and that assessee company knew that the assessee company"s business in India was

being carried on in India. Accordingly, the assessee company was assessed to wealth tax in the asst. yrs. 1958-59 and 1959-60.

3. The assessee company appealed against this order to the AAC. The AAC while not disputing that the assessee company does not own any

business premises in India and had not taken on lease any premises in India for its business and did not have any salaried employees in India and

further that there was no visible sign or physical indication on the business premises in India of the Indian subsidiary company so as to show that

those business premises were also the place of business of the appellant assessee company, found that in view of certain circumstances on record,

it could not be said that the appellant assessee company did not have any connection at all with the business premises in India of the Indian

subsidiary company. These circumstances, according to the AAC, were as follows :

1. The books of account of the assessee company in respect of its business in the other Asian countries are written up and maintained in the

business premises of the Indian subsidiary.

2. The various invoices to the customers of the assessee company in other Asian countries for all the amounts due in respect of the rented machines

and for any goods supplied or services rendered by the Indian subsidiary to these customers are made in and rendered to the customers concerned

from the business premises of the Indian subsidiary in the name of the assessee company.

3. Profit and Loss A/c, balance sheet and other returns and statements in respect of the Appellant Assessee Company"s business with the other

Asian countries are also prepared and drawn up by the Indian subsidiary in its premises in India.

4. The Appellant Company''s business in the other Asian countries is also being supervised from the business premises of the Indian subsidiary;

publicity in respect of the appellant''s business in the other Asian countries and the training of staff employed by the appellant company for business

in those countries were also being done from the business premises of the Indian subsidiary in India.

The AAC took the view that simply because the assessee company reimbursed the Indian subsidiary for the expenses in connection with such

services subject to the ceiling specified in the memorandum of accounting for Agency Territories in Asia, it cannot be accepted that the appellant

company was not having any connection whatsoever with business premises of the Indian subsidiary, particularly when the various activities in

respect of the appellant company''s business in the Agency Territories were carried on from the business of the Indian subsidiary in the name of the

appellant company. The AAC therefore, confirmed the finding of the WTO.

4. Before the Appl. Tribunal, in the appeal filed by the assessee company, it was argued on behalf of the assessee company that the Indian

subsidiary company had no authority to deal with third parties on behalf of the assessee company which is incorporated in London and the persons

who have dealings in India with the Indian company were not in fact dealing with the assessee company. It was contended that because the

assessee company secured the services of the Indian company, that did not amount to establishing a place of business in India. It was pointed out

to the Tribunal that the Indian company had no authority to sign on behalf of the assessee company or to negotiate for it and that the maintenance

of accounts and preparation of invoices etc. was done as a matter of convenience. On behalf of the department it was argued before the Tribunal

that the expenditure incurred by the Indian company was reimbursed by the assessee company and that in fact the expenses were incurred by the

assessee company through the Indian company. Therefore, according to the department, the assessee company carried on its own business

through the media of the Indian company. The Tribunal accepted the contention on behalf of the assessee company and the question which,

according to the Tribunal, was to be determined was whether the assessee company had a place of business in India. The Tribunal did not discuss

in detail the several circumstances taken into account by the AAC but held that on the material brought on record by the department, it was difficult

to say that the assessee company had a place of business in India. The Tribunal observed that the assessee company might be carrying on some of

its activities through its subsidiary in India but that did not strictly amount to saying that the assessee company had a place of business in India. The

Tribunal recorded a positive finding that it has not been proved that the assessee company has a place of business in India.

5. Arising out of this order of the Tribunal, the following question has been referred to this Court u/s 27(1) of the WT Act at the instance of the

Revenue :

Whether, on the facts and in the circumstances of the case, it was rightly held that the assessee company had no place of business in India and,

therefore, it was not a company within the meaning of s. 2(h) of the WT Act for the asst. yrs. 1958-59 and 1959-60 ?

Mr. Kotwal appearing on behalf of the Revenue has contended on the authority of the decision of the Supreme Court in the CWT, Madras v. Sri

Meenakshi Mill Ltd. & Ors. that it was permissible in the matter of taxation to pierce the veil of a corporate entity and to look at the reality of the

transaction. According to the ld. Counsel, if the real nature of the transactions between the assessee company and the Indian company were

considered in their proper perspective, it would be seen that it was really the assessee company which was carrying on its business through its

Indian subsidiary at the place of the Indian subsidiary and, therefore, the assessee company must be said to have had a place of business in India.

We have been referred to the decision of the Calcutta High Court in Imperial Chemical Industries Ltd. v. CWT. West Bengal-III, in which the

Calcutta High shed that the assessee company was carrying on business, the place where the business was being carried on is not difficult to locate

and it was not necessary for the assessee company either to own any premises or to hold any premises under leasehold or a license. It was held on

the facts of that case that the assessee was carrying on its business from the office of its agents and, therefore, the assessee though a company

incorporated outside India, had a place of business in India and was a company within the meaning of s. 2(h) of the WT Act.

6. Mr. Dastur appearing on behalf of the assessee company has argued that the services rendered by the subsidiary company were rendered on

their own account because the assessee company had paid remuneration to the subsidiary company and the services so rendered by the subsidiary

company to the assessee company were not services rendered as agents. According to the ld. Counsel, the Indian company was not an agent of

the assessee company because the Indian company was not entitled to act on behalf of the assessee company nor was it entitled to create any legal

relationship with third parties between the assessee company and such other parties. The ld. Counsel has referred us to certain English decisions in

support of the proposition that the assessee company cannot be said to have had a place of business in India. Grant v. Anderson & Co. is a

decision of the Court of Appeal in which the question was whether the defendants had a place of business within the jurisdiction of the London

Court within the meaning of Order XLVIII, A, rr. 1, 3, Rule 1 provided that persons liable as co-partners and carrying on business within the

jurisdiction of a court may be sued in their firm name, and rule 3 of the same order provides for service of the writ in such cases at the principal

place, within the jurisdiction, of the business of the partnership upon any person having the management of the business there. The defendants in

that case were a firm of manufacturers carrying on business in Glasgow, all the members of which were domiciled and resident in Scotland. They

had employed an agent in London to procure orders for them on commission. For that purpose the agent occupied an office in London, the rent of

which he paid himself, and at which he kept samples of the defendants'' goods. The duty of the agent was to receive and transmit orders to the

defendants at Glasgow and he had no authority to conclude contracts for the defendants, except upon express instructions. A writ was issued

against the defendants in the name of their firm, and served upon the agent at the above mentioned office at London and it was held by the Court of

Appeal confirming the decision of the Queen''s Bench Division that the defendants did not carry on business and had no place of business within

the jurisdiction of the London Court and therefore the writ and service must be set aside. The other decision relied upon by Mr. Dastur was

Deverall v. Grant Advertising Incorporated, where the question was whether the American company had at any time established a place of

business in Great Britain and on facts it was held that no such place of business in Great Britain was established. Incidentally, we may point out that

the Court of Appeal took the view in that case that the question whether a place of business has been established or not is a question of fact to be

determined on the evidence adduced in each particular case.

7. We have no doubt referred to the contention and the arguments advanced on merits but having considered the matter at length we are inclined

to take the view that the question which has been posed for consideration by this reference appears to us to be a pure question of fact and the

arguments therefore need not be considered. The orders of the WTO, the AAC and the Tribunal to have proceeded on the footing that what they

had to decide was whether the assessee company was carrying on business from any place in India that is from the place where the office of the

Indian subsidiary company was situated. We have referred in detail to the circumstances which weighed with the AAC when he came to the finding

that the assessee company carried on business from the premises of the Indian subsidiary company. Where, on certain established facts, a finding

about the existence or non-existence of another fact is to be recorded or an inference as to the existence or non-existence is reached, in such a

case the inference will still be an inference of fact. The Tribunal has accepted the arguments advanced on behalf of the assessee company that it

was not carrying on any business in India. The question before the Tribunal and the AAC was whether the assessee company had a place of

business in India. If the Tribunal has arrived at such a finding then it is difficult for us to see how the finding that the assessee company has no place

of business in India can really become a question of law. In any case we must restrict ourselves to the nature of the question raised. The

controversy before us is not whether the circumstances relied upon by the AAC or by the Appl. Tribunal amount to carrying on business or not. If

that was the nature of the question referred, it may have been possible to say that it was a mixed question of law and fact.

8. Mr. Kotwal on behalf of the department argued that the question can be re-framed in an appropriate manner because in the form in which the

question has been referred, it must be treated as including the question as to whether the assessee company was carrying on business in India

which is material in deciding the taxable liability of the assessee company. It is not possible for us to accede to that request. The reference made by

the Tribunal to us is not in any way ambiguous and it positively indicates the only conclusion which was put in issue in the question was whether the

assessee company had a place of business in India or not. If this is a question of fact, as already pointed out, we are not bound to deal with such a

question because u/s 27(1) of the Wealth Tax Act only a question of law arising out of the order of the Tribunal can be referred. Consequently, at

pointed out by this Court in CIT, Bombay City-II v. Deviprasad Khandelwal & Co. Ltd., the question is not answered because it is a question of

fact.

9. The Revenue to pay the costs of this reference.