

A H. L. SUD, INCOME-TAX OFFICER, BOMBAY

v.

**TATA ENGINEERING & LOCOMOTIVE CO. LTD.
BOMBAY**

September 6, 1968

B [J. C. SHAH, V. RAMASWAMI AND A. N. GROVER, JJ.]

Income-tax Act (11 of 1922), ss. 18A and 43—Advance tax of non-resident firm—Liability of agent of the firm—Whether notice to be given each year.

C The respondent-company, carried on manufacturing business in collaboration with some non-resident German firms. For each of the assessment years up to 1961-62, the Income-tax Officer issued a notice to the respondent under s. 43 of the Indian Income-tax Act, 1922, intimating that he intended treating the respondent as the agent of the non-resident firms, and thereafter passed orders treating the respondent as agent of the firms. For the assessment year 1962-63 no notice under s. 43 was issued or served upon the respondent by the Income-tax Officer and no order under that section was passed treating the respondent as their agent. **D** The respondent received from the Income-tax Officer notices of demand under s. 29 together with an order under s. 18A(1) calling upon the respondent to make advance payment of the tax for the assessment year 1962-63 as agent of the firms. The respondent denied its liability to make advance payment of tax. The Commissioner of Income-tax rejected the respondent's representation. The respondent, thereupon, filed writ petitions in the High Court challenging the demand of the advance tax and for quashing the notices of demand. **E** The High Court granted the writ. Dismissing the appeals, this Court,

HELD : The respondent could not be treated as an agent of the non-resident firms for the assessment year 1962-63 as advance tax could not be demanded under s. 18A for that assessment year treating the respondent as such statutory agent.

F Having regard to the scheme of the Income-tax Act, the assessment for each year is self-contained and the vicarious liability imposed by an appointment under s. 43 only extends to the liability for the assessment of the year for which the appointment is made and cannot extend to the liability for any other assessment. Nor can the expression "for all purposes" used in s. 43 extend the liability to any other assessment excepting the liability for the assessment year for which the appointment is made. **G** The expression "for all purposes", only indicates that when an appointment is made for a particular assessment year it is good for all purposes as far as the assessment is concerned i.e., for all purposes for imposing tax liability, determining the quantum of the liability and for recovering it. The liability sought to be imposed under s. 18A in the present case is not in respect of the income-tax for the assessment year for which the appointment is made, but for a subsequent assessment year. For the recovery of income-tax of the said subsequent year unless there is a fresh appointment of the respondent under s. 43 of the Act as a statutory agent, no such liability can be imposed on the respondent by the Income-tax Authorities. **H** [27 C-F]

In the present case, no notice was served on the respondent intimating that it would be treated as the agent of the non-resident firms for the

assessment year 1962-63. No opportunity was given to the respondent to be heard in the matter, nor was any formal order passed under s. 43 by the appellant treating the respondent as the agent of the non-resident firms for the assessment year 1962-63. Although a person may fail in a particular year to resist the claim that he is an agent, circumstances may alter in the next year and he may be able to resist the claim then. Hence notice shall have to be given by the Income-tax Officer for each assessment year to appoint a person as agent. [27 G—28 A]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 688 and 689 of 1968.

Appeals by special leave from the judgment and order dated April 17, 1963 of the Bombay High Court in Misc. Petitions Nos. 229 and 230 of 1962.

Sukumar Mitra, S. K. Aiyar, R. N. Sachthey and B. D. Sharma, for the appellant (in both the appeals).

M. C. Chagla, B. Datta and P. C. Bhartari, for the respondent (in both the appeals).

The Judgment of the Court was delivered by

Ramaswami, J. The respondent is a limited company incorporated under the Indian Companies Act, 1913 and carries on business of manufacturing and selling diesel trucks and bus chassis locomotives and other heavy engineering products. The respondent manufactures diesel trucks and bus chassis in collaboration with the German firm "Daimler Benz A.G." The business of manufacturing locomotives is carried on by the respondent in collaboration with the German firm "Kruss Maffei A.G." For each of the assessment years from 1955-56 to 1961-62, the Income Tax Officer issued a notice to the respondent under s. 43 of the Indian Income Tax Act, 1922 (hereinafter called the 'Act') intimating that he intended treating the respondent as the Agents of the two German firms. In pursuance of the notices the Income Tax Officer actually passed orders under s. 43 of the Act treating the respondent as agent of the said two German firms. For the assessment year 1962-63 no notice under s. 43 of the Act had been issued or served upon the respondent by the Income Tax Officer and no order under that section had been passed treating the respondent as the agent of the two German firms. On September 8, 1961, the respondent received from the Income Tax Officer notices of demand under s. 29 of the Act together with an order under s. 18A(i) calling upon the respondent to make advance payment of the tax for the assessment year 1962-63 as agent of the said two German firms. The tax demanded was Rs. 90,833.29 in the case of Krauss A.G. and Rs. 6,32,629.62 in the case of Daimler A.G. By its reply dated September 22, 1961, the respondent denied its liability to make advance payment of tax. The respondent also made a represen-

- A tation to the Commissioner of Income Tax but on April 16, 1962 the respondent received a communication from the Commissioner rejecting its representation. The respondent thereupon filed two petitions in the Bombay High Court challenging the action of the Income Tax Officer demanding advance tax and asking for the grant of a writ in the nature of *certiorari* to quash the notices of demand under s. 29 of the Act. By its judgment dated April 17/18, 1963, the High Court allowed the petitions and granted a writ quashing the notices of demand issued to the respondent and restraining the Income Tax Officer from taking any further steps or proceedings in the enforcement of the said notices. These appeals are brought by special leave to this Court on behalf of the Income Tax Officer, Companies Circle, Bombay, hereinafter called the 'appellant'.
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Sections 18A, 42 and 43 of the Act, as they stood at the material time, are to the following effect :

- D "18A. (1)(a) In the case of income in respect of which provision is not made under section 18 for deduction of income-tax at the time of payment, the Income-tax officer may, on or after the 1st day of April in any financial year, by order in writing, require an assessee to pay quarterly to the credit of the Central Government on the 15th day of June, 15th day of September, 15th day of December and 15th day of March in that year, respectively, an amount equal to one-quarter of the income-tax and super-tax payable on so much of such income as is included in his total income of the latest previous year in respect of which he has been assessed, if that total income exceeded the maximum amount not chargeable to tax in his case by two thousand five hundred rupees. Such income-tax and super-tax shall be calculated at the rates in force for the financial year in which he is required to pay the tax, and shall bear to the total amount of income-tax and super-tax so calculated on the said total income the same proportion as the amount of such inclusions bears to his total income or, in cases where under the provisions of sub-section (1) of section 17 both income-tax and super-tax or super-tax are chargeable with reference to the total world income, shall bear to the total amount of income-tax and super-tax which would have been payable on his total world income of the said previous year had it been his total income the same proportion as the amount of such inclusions bears to his total world income :
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Provided that, where the previous year of the assessee in respect of any source of income ends after the 31st day of December and before the 30th day of April, the order in writing issued by the Income-tax Officer requiring the payment of income-tax and super-tax on that source of income shall substitute for the four quarterly payments hereinbefore specified, three payments of equal amount to be made on the 15th day of September, the 15th day of December and the 15th day of March, respectively :

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(b) If the notice of demand issued under section 29 in pursuance of the order under clause (a) of this sub-section is served after any of the dates on which the instalments specified therein are payable, the tax shall be payable in equal instalments on each of such of those dates as fall after the date of the service of the notice or demand, or in one sum on the 15th day of March if the notice is served after the 15th day of December.

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(2) If any assessee who is required to pay tax by an order under sub-section (1) estimates at any time before the last instalment is due that the part of his income to which that sub-section applies for the period which would be the previous year for an assessment for the year next following is less than the income on which he is required to pay tax and accordingly wishes to pay an amount less than the amount which he is so required to pay, he may send to the Income-tax Officer an estimate of the tax payable by him calculated in the manner laid down in sub-section (1) on that part of his income for such period, and shall pay such amount as accords with his estimate in equal instalments on such of the dates specified in sub-section (1)(a) as have not expired or in one sum if only the last of such dates has not expired :

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(3) Any person who has not hitherto been assessed shall, before the 15th day of March in each financial year, if his total income of the period which would be the previous year for an assessment for the financial year next following is likely to exceed the maximum amount not chargeable to tax in his case by two thousand five hundred rupees, send to the Income-tax Officer an estimate of the tax payable by him on that part of his

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A income to which the provisions of section 18 do not
 apply of the said previous year calculated in the manner
 laid down in sub-section (1), and shall pay the amount,
 on such of the dates specified in that sub-section as have
 not expired, by instalments which may be revised
 according to the proviso to sub-section (2).

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C “42. (1) All income, profits or gains accruing or
 arising, whether directly or indirectly, through or from
 any business connection in the taxable territories, or
 through or from any property in the taxable territories,
 or through or from any asset or source of income in
 the taxable territories, or through or from any money
 lent at interest and brought into the taxable territories
 in cash or in kind or through or from the sale, exchange
 or transfer of a capital asset in the taxable territories,
 shall be deemed to be income accruing or arising within
 the taxable territories, and where the person entitled to
 D the income, profits or gains is not resident in the tax-
 able territories, shall be chargeable to income-tax either
 in his name or in the name of his agent, and in the
 latter case such agent shall be deemed to be, for all the
 purposes of this Act, the assessee in respect of such
 income-tax :

E Provided that where the person entitled to the in-
 come, profits or gains is not resident in the taxable terri-
 tories, the income-tax so chargeable may be recovered
 by deduction under any of the provisions of section 18
 and that any arrears of tax may be recovered also in
 F accordance with the provisions of this Act from any
 assets of the non-resident person which are, or may at
 any time come, within the taxable territories :

G Provided further that any such agent, or any person
 who apprehends that he may be assessed as such an
 agent, may retain out of any money payable by him to
 such non-resident person a sum equal to his estimated
 liability under this sub-section, and in the event of any
 disagreement between the non-resident person and such
 agent or person as to the amount to be so retained,
 such agent or person may secure from the Income-tax
 Officer a certificate stating the amount to be so retained
 pending final settlement of the liability, and the certi-
 H ficate so obtained shall be his warrant for retaining that
 amount :

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"43. Any person employed by or on behalf of a person residing out of the taxable territories, or having any business connection with such person, or through whom such person is in the receipt of any income, profits or gains upon whom the Income-tax Officer has caused a notice to be served of his intention of treating him as the agent of the non-resident person shall, for all the purposes of this Act, be deemed to be such agent :

Provided that where transactions are carried on in the ordinary course of business through a broker in the taxable territories in such circumstances that the broker does not in respect of such transactions deal directly with or on behalf of a non-resident principal but deals with or through a non-resident broker who is carrying on such transactions in the ordinary course of his business and not as a principal such first-mentioned broker shall not be deemed to be an agent under this section in respect of such transactions :

Provided further that no person shall be deemed to be the agent of a non-resident person, unless he has had an opportunity of being heard by the Income-tax Officer as to his liability.

Explanation.—A person, whether residing in or out of the taxable territories, who acquires, after the 28th day of February, 1947, whether by sale, exchange or transfer, a capital asset in the taxable territories from a person residing out of the taxable territories shall, for the purposes of charging to tax the capital gain arising from such sale, exchange or transfer, be deemed to have a business connection, within the meaning of this section, with such person residing out of the taxable territories."

On behalf of the appellant Mr. Sukumar Mitra addressed the argument that an appointment made under s. 43 of the Act was good for all purposes of the Act and therefore also for the purpose of s. 18A of the Act. It was said that under s. 18A, advance payment of tax is liable to be made in the current financial year that the assessment year 1961-62 is the same as the financial year 1961-62 and that for the said financial year in which the advance payment of tax was called to be made by the respondent, there was already an appointment of the respondent as the statutory agents of the non-resident firms, the advance payment of tax was rightly demanded from the respondent. The appointment of the respondent under s. 43 of the Act was made on October 21, 1961 and the notices of demand in the present case were issued

- A on November 2/3, 1961 and therefore subsequent to the said appointment. It was therefore contended that the advance payment of tax was properly demanded from the respondent and the respondent could not challenge the notices issued to it. In our opinion, there is no warrant or justification for the argument advanced on behalf of the appellant. The liability imposed upon a
- B person by his appointment as a statutory agent under s. 43 of the Act is only in respect of the liability for the assessment year for which the appointment is made. The appointment of the respondent for the assessment year 1961-62 was in respect of the liability of the non-resident firms for the income of the previous year for the said assessment year 1961-62. Having regard to the scheme of the Act, the assessment for each year is self-contained and the
- C vicarious liability imposed by an appointment under s. 43 of the Act only extends to the liability for the assessment of the year for which the appointment is made and cannot extend to the liability for any other assessment. Nor can the expression "for all purposes" used in s. 43 of the Act extend the liability to any other assessment excepting the liability for the assessment year for
- D which the appointment is made. The expression "for all purposes", in our opinion, only indicates that when an appointment is made for a particular assessment year it is good for all purposes as far as that assessment is concerned *i.e.*, for all purposes for imposing tax liability, determining the quantum of the liability and for recovering it. The liability sought to be imposed under
- E s. 18A of the Act is not in respect of the income-tax for the assessment year for which the appointment is made but for a subsequent assessment year. For the recovery of income-tax of the said subsequent year unless there is a fresh appointment of the respondent under s. 43 of the Act as a statutory agent, no such liability can be imposed on the respondent by the Income Tax authorities. It is true, as Mr. Sukumar Mitra contends that advance tax which
- F is required to be paid under s. 18A is charged during the financial year. But it must be remembered that it is charged not in respect of the previous year for which the financial year is the proper assessment year but it is charged for the tax liability of the subsequent year. In the present case, it is admitted that there was no appointment of the respondent under s. 43 of the Act as
- G statutory agent of the two German firms for the assessment year 1962-63. No notice was served upon the respondent under s. 43 of the Act intimating to the respondent that the appellant intended to treat it as the agent of the non-resident German firms for the assessment year 1962-63. No opportunity was given to the respondent to be heard in the matter, nor was any formal order passed under s. 43 of the Act by the appellant treating the respon-
- H dent as the agent of the non-resident German firms for the assessment year 1962-63. Although a person may fail in a particular year to resist the claim that he is an agent, circumstances may

alter in the next year and he may be able to resist the claim then. Hence notice shall have to be given by the Income-tax Officer for each assessment year to appoint a person as agent. It follows therefore that the respondent could not be treated as an agent of the two German firms for the assessment year 1962-63 and advance tax could not be demanded under s. 18A of the Act for that assessment year treating the respondent as such statutory agent. We are accordingly of the opinion that the notices of demand issued by the appellant to the respondent dated September 5, 1961 were illegal and *ultra vires* and rightly quashed by the High Court by the grant of a writ in the nature of *certiorari* under Art. 226 of the Constitution.

For the reasons expressed we hold that these appeals fail and are accordingly dismissed with costs—there will be one set of hearing fee.

Y.P.

Appeals dismissed.