

Chaman Lal,
etc.
v.
Mst. Anguri,
etc.

In the memorandum of cross-objections the finding given by the Courts below with regard to the ancestral nature of the property is challenged but the cross-objections are not pressed before us and are dismissed with costs.

Harnam
Singh, J.

In the result Regular Second Appeal No. 328 of 1948 and the cross-objections are dismissed with costs.

E. Weston,
C. J.

E. WESTON, C.J.—I agree.

CIVIL REFERENCE (APPELLATE SIDE)

Before Eric Weston, C.J., and Harnam Singh, J.

IN THE MATTER OF THE INCOME-TAX ASSESSMENT OF MESSRS CHIRANJIT LAL MULTANI-MAL, R. B., BHATINDA,
PATIALA STATE,—*Petitioner*

versus

THE COMMISSIONER OF INCOME-TAX,—*Respondent.*

Civil Reference No. 8 of 1950 (Income-tax)

Income-tax—Cheque sold by assessee to Bank outside British India—Bank receiving payment in British India—Assessee whether can be held to have received payment in British India—Negotiable Instruments Act (XXVI of 1881) Section 50—Effect of.

1952

August, 25th

Held, that under section 50 of the Negotiable Instruments Act the endorsement of a Negotiable Instrument followed by delivery transfers to the endorsee the property therein with the right of further negotiation. The section provides, however, that the endorsement may, by express words, restrict or exclude such right, or may merely constitute the endorsee an agent to endorse the instrument or receive its contents for the endorser or for some other specified person. In the absence of the cheque and evidence as to the precise words used in the endorsements and in view of the certificate by the Bank it must be accepted that the endorsements were of the nature contemplated by the substantive part of section 50 rather than those contemplated by the proviso to the section. That being so when once property in cheques passed by endorsements made outside British India the assessee must be taken to have received what he did outside British India and the subsequent receipts in British India by the Bank were receipts by the Bank and not receipts by the assessee.

Case referred by the Income-tax Appellate Tribunal, Delhi Bench, with his letter No. R.A. No. 149/49-50, dated the 26th September 1950, under section 66 (1) of the Indian Income-tax Act, 1922 (Act XI of 1922), as amended by section 92 of the Income-tax (Amendment) Act, 1939 (Act VII of 1939), for the decision of the Hon'ble Judges of the High Court.

M. L. PURI and J. L. BHATIA, for Petitioner.

A. N. KARPAL and D. K. KAPUR, for Respondent.

JUDGMENT

ERIC WESTON, C.J. This is a reference under section 66 (1) of the Income-tax Act by the Income-tax Appellate Tribunal, Delhi Bench. The question referred to us is expressed in these terms:—

Eric Weston,
C. J.

“Upon the facts found and in view of the certificate from the Patiala State Bank was the Tribunal correct in concluding that the Patiala State Bank acted merely as a collecting agent for the assessee and that the purchase in D. D. of cheques of the value of Rs. 1,40,785 by the Bank at Bhatinda amounted to the receipt by the assessee of that sum in British India?”

Briefly stated the facts are these. It appears that the assessee firm of six partners does the business of a flour mill at Bhatinda. The reference concerns receipts during the accounting year 1941-42, the assessment year of which was 1943-44, and concerns a receipt of Rs. 1,40,785 received by the assessee from the Government of India for flour grinding work done by them in their Bhatinda Mill. At the material time Bhatinda was not a part of British India and the assessee partnership could be made liable to Indian income-tax only on the basis that the amount was received in British India, for there is no suggestion that the amount accrued to the partnership in British India. The contention of the Department is that the amount had been received by the assessee firm

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at Delhi, and it bases its contention on the circumstance that payment was made to the assessee by cheques drawn on a Delhi Bank. The contention of the assessee is that on receiving the cheques at Bhatinda they sold them to the branch of the Patiala State Bank there, that all property in the cheques thereupon were transferred to the Patiala State Bank under section 50 of the Negotiable Instruments Act and the payments subsequently made at Delhi to the Patiala State Bank were not payments to the assessee; the receipt of the money by the assessee was at Bhatinda. In support of their contention it appears that the assessee produced a certificate signed by the Manager of the Patiala State Bank which reads as follows:—

“ All cheques on Reserve Bank of India received by them from the Government in payment of grinding of wheat done by them and passed on to us were purchased in D.D. by the Patiala State Bank (now Bank of Patiala) at their Bhatinda office and credits to the account of the aforesaid Seth Chiranjit Lal Multanimal Rai Bahadur were given straightaway without waiting for realization.”

This certificate seems to have been accepted by the Appellate Tribunal at its face value. The Appellate Tribunal considered nevertheless that the payments must be deemed to have been made at Delhi. Their reasons seem to be that the Patiala State Bank should be taken as acting as agent on behalf of the assessee; the circumstance that the Patiala State Bank placed a transaction in the category of demand drafts could not be said to affect the true nature of the transaction, and the Tribunal also seems to have considered that Government cheques are generally marked negotiable. It does not appear that the Tribunal made any attempt to have the actual cheques produced when the nature of the cheques and the nature of the endorsements made would have been obvious.

The form in which the reference has been made to us is not as satisfactory as it might have been, for when the referring Tribunal mentions the facts found it is not clear what they mean. The reference, however, does indicate that the certificate given by the Patiala State Bank should be accepted, so far as it goes, as stating correctly the nature of the dealings of the Bank with the assessee.

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Under section 50 of the Negotiable Instruments Act the endorsement of a negotiable instrument followed by delivery transfers to the endorsee the property therein with the right of further negotiation. The section provides, however, that the endorsement may, by express words, restrict or exclude such right, or may merely constitute the endorsee an agent to endorse the instrument or to receive its contents for the endorser or for some other specified person. In the absence of the cheques and evidence as to the precise words used in the endorsements, and in view of the certificate by the Patiala State Bank it must be accepted that the endorsements made on the cheques for Rs 1,40,785 were of the nature contemplated by the substantive part of section 50 rather than those contemplated by the proviso to the section. That being so, when once property in the cheques passed by the endorsements made at Bhatinda the assessee must be taken to have received what he did at Bhatinda, and the subsequent receipts at Delhi by the Bank of Patiala were receipts by the Bank of Patiala and not receipts by the assessee. In the circumstances the money cannot be said to have been received by the assessee in British India and I would answer the reference accordingly. The assessee is entitled to his costs which we assess at Rs 100 and the return of the balance of the deposit made by him under section 66 (1) of the Act.

HARNAM SINGH, J.—I agree.

Harnam Singh,
J.