IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Original Side

Present :- **Hon'ble Mr. Justice I. P. Mukerji**
Hon'ble Justice Amrita Sinha

ITA No.279 of 2008
ITA No.242 of 2008

Director of Income Tax (International Taxation)
Vs.
Board of Control for Cricket in Sri Lanka & Ors.
Through PILCOM

For the Appellant :- **Ms. Asha Ghutghutia**

For the Respondent :- **Mr. J.P. Khaitan, Sr. Adv.**
Mr. Agnibesh Sengupta, Adv.
Mr. Raj Kumar Basu, Adv.

Judgment On :- **25.09.2018**

I. P. Mukerji, J.:-

Both the appeals are disposed of by this common judgment and order.

In 1996, the Cricket World Cup tournament was held in the sub-continent. Sri Lanka won it, for the only time, in history.

The International Cricket Council (ICC) has its head quarters in London. It is the organisation which makes and alters the rules of the game, sets the different levels and minimum standards at which the game is to be played in each country to get its recognition, the different formats of the game, e.g. test cricket, first class cricket, limited overs competition and so on. It has affiliates from similar organisations in countries, all over the world. ICC may first recognise a country's team to be fit to compete in the limited overs competitions and thereafter declare it fit to play test cricket. It controls, supervises and regulates the game of cricket in every respect. Not only does it recognise countries and teams, it also certifies the fitness of venues, grounds where the game is intended to be played at the international level. It sets a yearly calendar based on which the game above first class level is played.

At a special meeting of the ICC held on 2nd February, 1993 in London, India, Pakistan and Sri Lanka were chosen to co-host the world cup.

A joint management committee of these three countries, [PAK-INDO-LANKA joint management committee (PILCOM)] was formed to conduct this world cup cricket tournament. Bank accounts were opened by PILCOM in London to be operated jointly by India and Pakistan cricket boards. In this account were deposited moneys from sponsorships, TV rights etc.

The Board of Control for Cricket in India (BCCI) appointed its own committee for discharge of its functions. It was known as INDCOM. It had its bank account at Calcutta. From the bank account of PILCOM at London certain amounts were transferred to the bank accounts of the host countries for the purpose of payment of fees to the Umpires and referees, defraying administrative expenses and payment of prize money. PILCOM paid £43,50,000 which included £19,55,000 as guarantee money to eleven cricket associations. On 6th May, 1997 the Income Tax Officer (TDS), Ward – 21(4), Calcutta [ITO(TDS)] made an order under Section 201(1)/194E against PILCOM demanding Rs.2,18,29,3007/- as tax which ought to have deducted by it. The proceedings culminated in the order dated 4th January, 2000 of the tribunal. It held that no income could be deemed to accrue or arise to the cricket associations, in India under Section 9(1) of the Income Tax Act, 1961. It held that only that proportion of the total fund received by any country from PILCOM which was equal to the ratio of the number of matches played by such country to the total number of matches played by that country in the tournament should be considered to be income arising or accruing to the cricket association of that particular country. Tax should be deducted at source in respect of this portion of the payment made by it to a particular association. Both PILCOM and the revenue preferred appeals against this order of the tribunal before this High Court. These appeals [(2011) 335 ITR 147 (Cal)] were decided on 11th November, 2010. Both the appeals were dismissed with the observation that the order of the tribunal did not call for any inference.

Meanwhile, the assessing officer issued a notice under Section 142(a) of the Income Tax Act, 1961 on 25th March, 1998 to PILCOM, Kolkata. The various cricket associations filed returns showing their income as NIL. The respondent assessee filed a revised return. Notice under Section 148 was issued. The assessing officer thereafter made several orders all dated 21st March, 2002 under Section 147 of the Act for all the cricket boards. The assessing officer made an assessment of income of each assessee through PILCOM. Appeals were preferred before the Commissioner of Income Tax (Appeals), who on 10th December, 2002 partly allowed them. All the assesses filed appeals before the learned Income Tax Appellate Tribunal which by the impugned order dated 22nd June, 2007 for the assessment year 1996-97, cancelled the assessment made by the assessing officer. Supposedly, based on its order dated 4th January, 2000 the tribunal on 22nd June, 2007 held that since the income had accrued in India it could not be said to be deemed to have accrued in India. Therefore, PILCOM could not be liable as agent under Section 163 of the said Act.

Hence, this appeal under Section 260A of the said Act.

On 26th August, 2008, this appeal was admitted by this Court to be heard on the following substantial questions of law:

"Whether on the facts and in the circumstances of the case the Learned Tribunal erred in law in cancelling the order of assessment under section 147 passed by the Assessing Officer without considering its earlier decision wherein the Learned Tribunal held that the order under Section 163 treating PILCOM as agent of Non-Resident Boards and players was valid?"

At this stage it is necessary to analyse certain provisions of the Income Tax Act, 1961.

Section 5(1) states that the total income in any previous year of a person who is a resident of India includes all income which is received or deemed to be received in India or which accrues or arises or is deemed to accrue or arise in India or accrues or arises to him outside India.

Under Section 5(2), the total income of a non-resident includes all income which is so received or deemed to be received in India or has accrued or arises or deemed to accrue or arise in India during the previous year.

Under Section 9(1)(i), the income which is deemed to accrue or arise in India has been defined so as to inter alia include all income accruing or arising whether directly or indirectly through any business connection in India.

Now, we come to Section 163 which says that an agent in relation to a non-resident includes inter alia any person in India from or through whom a non-resident does any business or is in receipt of any income, directly or indirectly.

Section 160 declares such an agent for the income of a non-resident specified in Section 9(1) to be a representative assessee. Under Section 161 he is treated as the person who is receiving the income or in whose favour the income has accrued beneficially. He shall be liable to assessment in his own name but in a representative capacity.

Therefore, now we come to a point where each of the foreign Cricket Boards could be said to be a non-resident person and PILCOM could be said to have been their agent.

The Tribunal in its impugned order relied on its previous Order dated 4th January, 2000 which held that the income had actually arisen in India.

On the basis of this order it proceeded to make a completely wrong interpretation of the law.

If one considers Section 5, income is divided into two categories. One which is received in India and one which arises or accrues or deemed to arise or accrue in India but may be received here or elsewhere.

Section 9 merely tries to classify the income which is deemed to accrue or arise in India by saying that it should inter alia arise from business connection of the non-resident with India. Section 160 makes it abundantly plain that a representative assessee would represent the assessee in respect of a non-resident in respect of his income specified in Section 9. This simply means that a representative assessee would represent all income accruing or

arising in India and not in a foreign country directly or indirectly from any business connection in India. It goes without saying that the representative assessee not only represents an income which has directly arisen or accrued in India but also that which has indirectly arisen or accrued in this country, through a business connection. Only the short title to the section describes this income as deemed to accrue or arise in India. Use of this title does not absolve the representative assessee of the duty to account for any income which has directly or deemed to have arisen to the non-resident in this country.

In my opinion the Tribunal has made a complete misunderstanding of the law in entertaining the opinion that since the income made by the non-resident Cricket Boards were held to have directly arisen in India, this income could not be deemed to have arisen or accrued to the non-resident in India and the responsibility of the representative assessee was confined to accounting for income which had directly arisen or accrued in India.

Furthermore, if the department chooses to make an assessment of the person resident outside India directly, there is no question of assessment of his agent or a representative assessee.

Jyotendrasinhji Vs. S.I. Tripathi & Ors. reported in ***201 ITR 611 (SC)***.

British Sugar Manufacturers, Ltd. Vs. Harris (Inspector of Taxes) reported in ***209 ITR 101***.

In fact, Section 166 of the Income Tax Act, 1961 very clearly lays down that nothing in the foregoing sections relating to representative assessee shall prevent either the direct assessment of the person for whom the money is receivable.

The Tribunal, in our opinion, made a clear mistake in believing that since it was held in an earlier proceeding that the income in question arose in India, a representative assessee could not be liable because it was only liable according to it in respect of the income which was deemed to have arisen in India. The effect of the order of the Tribunal is that inspite of a foreign

resident having an agent in India and income directly arising in this country to the foreign resident, the agent would escape liability to assessment.

In those circumstances, the order of the Tribunal dated 6th June, 2007 is set aside. The questions of law framed by the order of this Court dated 26th August, 2008 are answered in the affirmative in favour of the Revenue. The orders of the Assessing Officer and of the Commissioner of Income Tax (Appeals) are affirmed. The points left open by the tribunal in its impugned order may be decided by it in accordance with law.

Both the appeals are allowed.

Urgent certified photo copy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

I Agree,

(Amrita Sinha, J.) **(I.P. MUKERJI, J.)**