

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S) 4091 OF 2016
(Arising out of SLP (Civil) No(s) 6384 of 2009)

M/S P.G. & W.SAWOO
PVT.LTD. & ANR.

...APPELLANT(S)

VERSUS

ASSISTANT COMMISSIONER OF
INCOME TAX & ORS.

...RESPONDENT(S)

O R D E R

1. Leave granted.
2. Heard learned counsels for the parties and perused the relevant material.
3. The short question that arises for determination in this appeal is the validity of the notice issued under Section 148 of the Income Tax Act (for short, 'the Act') seeking to reopen the concluded assessment of the appellant-assessee for the assessment year 1989-1990 (for the period of 21 months commencing on 01.07.198 and ending on 31.03.1989) .

4. The income in question being income from house property is liable to be computed in accordance with the provision of Sections 22 and 23 of the Act. The premises belonging to the appellant was let out on rent to the Government of India. The rent was enhanced from Rs.4.00 to Rs.8.11 per sq.ft. per month effective from 01.09.1987. The said enhancement of rent was made by a letter dated 29.03.1994 of the Estate Manager of the Government of India. The said letter makes it clear that the enhancement was subject to conditions including execution of a fresh lease agreement and communication of acceptance of the conditions incorporated therein. Such acceptance was communicated by the appellant by letter dated 30.03.1994.
5. The contention of the assessee before us is that having regard to the provisions of Section 5, 22 and 23 of the Act and the decision of this Court in '*E.D. Sassoon &*

Company Ltd. And Others vs. Commissioner of Income-Tax', (1954) 26 ITR 27, no income accrued or arose and no annual value which is taxable under Sections 22 and 23 of the Act was received or receivable by the assessee at any point of time during the previous year corresponding to the assessment year 1989-1990. Hence, the impugned notice seeking to reopen the assessment in question is without jurisdiction or authority of law.

6. To controvert the aforesaid contention on behalf of the appellant-assessee the respondent-Revenue contends before us that the enhancement of rent is retrospective i.e. from 01.09.1987 and, therefore, the income must have to be understood to have been received in the said assessment year i.e. 1989-1990.
7. The issue is capable of resolution within a short compass. A reading of the decision of

this Court in *E.D. Sassoon* (supra) would go to show that the income to be chargeable to tax must accrue or arise at any point of time during the previous year. This Court in *E.D. Sassoon* (supra) has held in categorical terms that income can be said to have accrued or arisen only when a right to receive the amount in question is vested in the appellant-assessee. The following extract from the judgment in *E.D. Sassoon* (supra) amply illustrates the above position :

"The word "earned" has not been used in Section 4 of the Income-tax Act. The section talks of "income, profits and gains" from whatever source derived which (a) are received by or on behalf of the assessee, or (b) accrue or arise to the assessee in the taxable territories during the chargeable accounting period. Neither the word "income" nor the words "is received", "accrues" and "arises" have been defined in the Act. The Privy Council in *Commissioner of Income-tax, Bengal v. Shaw Wallace & Co.*¹ attempted a definition of the term "income" in the words following :-

¹ (1932) I.L.R. 59 Cal. 1343 at 1352

"Income, their Lordships think, in the Indian Income-tax Act, connotes a periodical monetary return 'coming in' with some sort of regularity, or expected regularity from definite sources. The source is not necessarily one which is expected to be continuously productive, but it must be one whose object is the production of a definite return, excluding anything in the nature of a mere windfall."

Mukerji, J., has defined these terms in *Rogers Pyatt Shellac & Co. v. Secretary of State for India*²

"Now what is income ? The term is nowhere defined in the Act.....In the absence of a statutory definition we must take its ordinary dictionary meaning - 'that which comes in as the periodical produce of one's work, business, lands or investments (considered in reference to its amount and commonly expressed in terms of money); annual or periodical receipts accruing to a person or corporation' (Oxford Dictionary). The word clearly implies the idea of receipt, actual or constructive. The policy of the Act is to make the amount taxable when it is paid or received either actually or constructively. 'Accrues', 'arises' and 'is received' are three distinct terms. So far as receiving of income is concerned there can be no difficulty; it conveys a clear and definite meaning, and I can think of no expression which makes its meaning

²(1925) 1 I.T.C. 363 at 371

plainer than the word 'receiving' itself. The words 'accrue' and 'arise' also are not defined in the Act. The ordinary dictionary meanings of these words have got to be taken as the meanings attaching to them. 'Accruing' is synonymous with 'arising' in the sense of springing as a natural growth or result. The three Expressions 'accrues', 'arises' and 'is received' having been used in the section, strictly speaking 'accrues' should not be taken as synonymous with 'arises' but on the distinct sense of growing up by way of addition for increase or as an accession or advantage; while the word 'arises' means comes into existence or notice or presents itself. The former connotes the idea of a growth or accumulation and the latter of the growth or accumulation with a tangible shape so as to be receivable. It is difficult to say that this distinction has been throughout maintained in the Act and perhaps the two words seem to denote the same idea or ideas very similar, and the difference only lies in this that one is more appropriate than the other when applied to particular cases. It is clear, however, as pointed out by Fry, L.J. in *Colquhoun v. Brooks*³, [this part of the decision not having been affected by the reversal of the decision by the House of Lords] that both the words are used in contradistinction to the word 'receive' and indicate a right to receive. They represent a stage anterior to the point of time when the income becomes receivable and connote

³ (1888) 21 Q.B.D. 52 at 59

a character of the income which is more or less inchoate.

One other matter need be referred to in connection with the section. What is sought to be taxed must be income and it cannot be taxed unless it has arrived at a stage when it can be called 'income'."

The observations of Lord Justice Fry quoted above by Mukerji J. were made in *Colquhoun v. Brooks*⁴ while construing the provisions of 16 and 17 Victoria Chapter 34, Section 2, Schedule 'D'. The words to be construed there were "profits or gains, arising or accruing" and it was observed by Lord Justice Fry at page 59:-

"In the first place, I would observe that the tax is in respect of 'profits or gains arising or accruing.' I cannot read those words as meaning 'received by'. If the enactment were limited to profits and gains 'received by' the person to be charged, that limitation would apply as much to all Her Majesty's subjects as to foreigners residing in this country. The result would be that no income-tax would be payable upon profits which accrued but which were not actually received, although profits might have been earned in the kingdom and might have accrued in the kingdom. I think, therefore, that the words 'arising or accruing' are general words descriptive of a *right to receive profits*."

⁴ (1888) 21 Q.B.D. 52 at 59

To the same effect are the observations of Satyanarayana Rao J. in *Commissioner of Income-tax, Madras v. Anamallais Timber Trust Ltd.*⁵, and Mukherjea J. in *Commissioner of Income-tax, Bombay v. Ahmedbhai Umarbhai & Co., Bombay*⁶, where this passage from the judgment of Mukerji J. in *Rogers Pyatt Shellac & Co. v. Secretary of State for India*⁷, is approved and adopted. It is clear therefore that income may accrue to an assessee without the actual receipt of the same. If the assessee acquires a right to receive the income, the income can be said to have accrued to him though it may be received later on its being ascertained. The basic conception is that he must have acquired a right to receive the income. There must be a debt owed to him by somebody. There must be as is otherwise expressed *debitum in presenti, solvendum in futuro*; See *W. S. Try Ltd. v. Johnson (Inspector of Taxes)*⁸, and *Webb v. Stenton and Others, Garnishees*⁹. Unless and until there is created in favour of the assessee a debt due by somebody it cannot be said that he has acquired a right to receive the income or that income has accrued to him."

⁵ (1950) 18 I.T.R. 333 at 342

⁶ (1950) S.C.R. 335 at 389 : 18 I.T.R. 472

⁷ (1925) 1 I.T.C. 365 at 372

⁸ (1946) 1 All E.R. 532 at 539

⁹ 11 Q.B.D. 518 at 522, 527

8. Viewed from the aforesaid perspective, it is clear that no such right to receive the rent accrued to the assessee at any point of time during the assessment year in question, inasmuch as such enhancement though with retrospective effect, was made only in the year 1994. The contention of the Revenue that the enhancement was with retrospective effect, in our considered view, does not alter the situation as retrospectivity is with regard to the right to receive rent with effect from an anterior date. The right, however, came to be vested only in the year 1994.
9. In the light of the foregoing discussions, it has to be held that the notice seeking to reopen the assessment for the assessment year 1989-1990 is without jurisdiction and authority of law. The said notice, therefore, is liable to be interfered with and the order of the High Court set aside.

We order accordingly. Consequently, the appeal is allowed.

10. Needless to say, the present adjudication is confined to the question of jurisdiction to issue the notice under Section 148 of the Act for reopening the assessment for the assessment year 1989-1990. No opinion on the rights and liabilities of the parties in respect of the receipt in question with regard to any subsequent year(s) has been dealt with by us and we make it clear that the same will be governed by the relevant provisions of the Act.

.....,J.
(RANJAN GOGOI)

.....,J.
(PRAFULLA C. PANT)

NEW DELHI
APRIL 19, 2016

ITEM NO.7

COURT NO.7

SECTION IIIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 6384/2009

(Arising out of impugned final judgment and order dated 26/09/2008 in APO No. 587/1994 in WP No. 1690/1994 passed by the High Court of Calcutta)

M/S P.G. & W.SAWOO P.LTD. & ANR.

Petitioner(s)

VERSUS

ASST.COMMR.OF INCOME TAX & ORS.

Respondent(s)

(with office report)

Date : 19/04/2016 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE PRAFULLA C. PANT

For Petitioner(s) Mr. S. Ganesh, Sr. Adv.
Mr. Yashvardhan, Adv.
Mr. S. Sukumaran, Adv.
Mr. Anand Sukumar, Adv.
Mr. Bhupesh Kumar Pathak, Adv.
Ms. Meera Mathur, Adv.

For Respondent(s) Mr. K. Radhakrishnan, Sr. Adv.
Mr. D.L. Chidanand, Adv.
Mr. Subhash Acharya, Adv.
Ms. Anil Katiyar, Adv.
Mr. B. V. Balaram Das, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed
order.

As a sequel to the above, all pending
interlocutory applications are disposed of.

(Neetu Khajuria)
Sr.P.A.

(Asha Soni)
Court Master

(Signed order is placed on the file.)