REFERENCE UNDER THE INCOME-TAX ACT.

Before Derbyshire C. J., Costello and Panckridge JJ.

In re PHOENIX ASSURANCE COMPANY, LTD.*

1937

Feb. 5; *Mar.* 8, 20.

Income-tax—Life Insurance Company, Income of—Exemption from tax on interest derived from tax-free securities—Proportion of Indian premiums and All-world premiums—Indian Income-tax Act (XI of 1922), s. 8 prov.; rr. 25, 35.

The assessee company made a return of their total income on the basis of the proportion of their premium income in India to the total premium income over the whole world, as required by r. 35 of the rules made under s. 59 of the Indian Income-tax Act. The company's London actuary also certified that interest received from Indian income-tax-free securities was included in the fund in arriving at the actuarial valuation for the quinquennium ended December 31, 1930.

held (by DERBYSHIRE C. J. and COSTELLO J., PANCKRIDGE J. dissenting) that the company are entitled to have the same proportion of the tax-free interest, that the Indian premiums bear to the world-wide premiums, deducted from the income, profits and gains assessed under rr. 25 and 35 and exempted from tax.

INCOME-TAX REFERENCE.

The assessee company is incorporated in England and carries on business in Life, Fire, Marine and Accident Assurance, in India and other countries.

The company submitted a return on the basis of rr. 25 and 35 as stated in the judgment of Derbyshire C.J. The Income-tax Officer refused to deduct from the total income so disclosed the amount of interest received on tax-free securities and gave credit for the average amount of tax deducted at source during the relevant quinquennium, instead of for the actual amount deducted during the previous year. The company appealed to the Assistant Commissioner.

All other facts appear from the judgment of Derbyshire C.J.

The assessee company formulated the following questions for reference to the High Court :—

(1) Whether in arriving at the amount of taxable profits and gains of your petitioner, the Income-tax Officer was not bound to analyse and dissect

*Income-tax Reference, No. 8 of 1936, under s. 66 (2) of the Indian Income-tax Act, 1922.

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income, profits and gains calculated on the basis of actuarial valuation and to deduct therefrom the amount of interest from securities declared to be tax-free as being not liable to assessment to income-tax and surcharge in the hands of your petitioners ?

(2) Whether the Assistant Commissioner having called for and obtained a certificate from the actuary of your petitioner showing the amount of interest from securities declared to be tax-free was not bound by such certificate ?

(3) Whether in determining the tax payable by your petitioner credit should have been given under s. 18 (5) of the Act for the actual amount of income-tax paid by your petitioner by deduction at source from interest on securities treating the same as payment made on account of tax in respect of the year in question ; or whether the Income-tax Officer is justified in only taking and allowing credit for an average of such income-tax during the said quinquennial period ending the December 31, 1930 ?

Isaacs for the assessee company. The whole-world income would be taxed in England without any deduction for tax-free interest. It is immaterial what proportion of the interest received from tax-free securities is actually reflected in the proportion representing the Indian income. *Gresham Life Assurance Society, Limited* v. *Bishop* (1).

Section 42 of the Indian Income-tax Act indicates that the interest on Indian tax-free securities should be taken as having arisen in India. Further the word in s. 8 is "receivable".

Sir Asoka Roy, Advocate General, *Radha Binode Pal* and *Ramesh Chandra Pal* for the Income-tax department. When profits are ascertained in this curious manner it is impossible to say that any part of the interest received on Indian tax-free securities has been included in the sum representing the Indian income. So it is not possible to grant any exemption.

Isaacs, in further argument (on March 8th). *Hughes'* case (2) shows that the statutory exemption must be applied irrespective of consequences.

Roy, in further argument. *Hughes'* case (2) has no application to this case. There the income exempted from tax was identified.

Cur. adv. vult.

(1) [1902] A. C. 287, 291. (2) (1936) 53 T. L. R. 258.

DERBYSHIRE C.J. The questions of law submitted in this case are identical with the first three questions submitted in the case of the North British & Mercantile Insurance Company which have been answered by me in the affirmative. The facts, however, in this case are somewhat different.

The Phoenix Assurance Company carries on business throughout the world as well as in India. In the return for which assessment was made for the year 1934-35 the company did not submit a balance sheet dealing with its separate insurance activities in India, but submitted a statement purporting to be under rule 35 of the rules made under s. 59 of the Income-tax Act showing the total profits of the company in respect of all its life assurance activities throughout the world based on a quinquennial valuation for the five years ending December 31, 1930. (A) It also showed the total premiums received by the company as a whole in respect of that period (C) and also the premiums received in India in respect of the same period (B). The profits of the Indian company were then calculated to $\frac{B}{C} \times A = Rs.\ 15,65,974$, giving an average annual profit of the life assurance business of Rs. 3,13,195. This purported to be in accordance with rule 35. The company claimed that the said annual average net profits included an item of interest derived from tax-free securities of the Government of India and that in consequence of the proviso to s. 8 of the Income-tax Act, 1922, no income-tax was payable on such item of tax-free interest. The Assistant Commissioner gave the company an opportunity of proving that the average annual net profits included this item of tax-free interest and the company submitted a certificate from its London actuary to the following effect :—

"I hereby certify that the undermentioned "amounts of interest totalling Rs. 1,56,811 were re- "ceived from Indian income tax-free securities and "were included in the fund in arriving at the net "profits disclosed by this company's actuarial valuation

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"for the quinquennium ended December 31, 1930, and "by that of its British Empire and Positive Funds for "the quinquennium ended December 31, 1931".

(The British Empire and Positive Funds are the funds of subsidiary companies controlled by the Phoenix. The case throughout has been treated as if all the profits and tax-free interest were made and/or received by the Phoenix Company during the quinquennium ending December 31, 1930.) The Assistant Commissioner held that the certificate in question did not prove that any income from tax-free securities was included in the actuarial surplus and he dismissed the assessees' claim to have the above amount of tax-free interest deducted from the total profits and gains and so exempted from tax. Beyond the actuary's certificate there is no proof that the tax-free interest in question is included in the actuarial surplus. The evidence was offered, however, in such a form as is usual in cases where various items go to make an aggregate income. If the Assistant Commissioner in this case was not satisfied with the evidence, he could have called for further evidence. He has not done that, but dismissed it forthwith. To prove a matter of this kind strictly in accordance with the rules of the evidence might be a difficult matter, but if the income-tax authorities wish to have the matter strictly proved they should, in my opinion, give the assessees a further opportunity of bringing proof. That was not done in this case.

The case was argued before us on the basis that the tax-free interest above-mentioned was actually received by the company in India, and that the company's Indian income is simply the proportion of the company's whole world-wide income that the Indian premiums bear to the world-wide premiums. If in fact the tax-free interest has been received by the company it must have gone into the funds of the Indian branch of the company and then reckoned in the total of the world-wide funds of the company. The only effect of this tax-free interest has been to

increase the world-wide funds of the company without increasing its liabilities. The tax-free interest has, therefore, contributed to the world-wide surplus and it seems to me that the Indian proportion $\frac{B}{C}$ of the world-wide surplus must of necessity contain the same proportion $\frac{B}{C}$ of the tax-free interest. I am of the opinion, therefore, that the assessees in this case, once they have satisfied the income-tax authorities that they have received the interest on Government securities tax-free above-mentioned, and that it has been reckoned in the world-wide funds of the company, are entitled to have the same proportion of that tax-free interest that the Indian premiums bear to the world-wide premiums, deducted from the income, profits and gains assessed under rules 25 and 35 and exempted from tax.

The answers to questions (1), (2) and (3) are, for the reasons given in the case of the North British & Mercantile Insurance Company, in the affirmative, subject to what I have stated above.

The assessees are entitled to their costs in these proceedings.

COSTELLO J. With regard to the case of the Phoenix Assurance Company, Limited, I agree with the judgment delivered by my Lord the Chief Justice and I do not think it necessary that I should add any words of my own.

PANCKRIDGE J. In my opinion, the answers which have been given to the questions propounded in the case of the North British & Mercantile Insurance Company, Limited, must be given to the same questions propounded in this case.

Questions answered in the affirmative.

Attorneys for assessee: *Sandersons & Morgans.*

Advocate for Income-tax department: *Ramesh Chandra Pal.*