

## APPELLATE CIVIL—SPECIAL BENCH.

*Before Sir John Wallis, Kt., Chief Justice, Mr. Justice Ayling  
and Mr. Justice Krishnan.*

THE CHIEF COMMISSIONER OF INCOME-TAX, MADRAS  
(REFERRING OFFICER),

1921,  
April 19.

v.

BHANJEE RAMJEE & Co. (ASSEESSE).\*

*Indian Income-tax Act (VII of 1918), ss. 3, 33 (1)—Non-resident foreigner  
having business connexion in British India—Assessability to income-tax in  
British India.*

A person who is not a resident in British India, but to whom income arises or accrues through business connexions in British India is assessable to income-tax under sections 3 and 33 (1) of the Indian Income-tax Act (VII of 1918) whether he is a British subject or a foreigner.

The provision in the latter section that such income shall be taxable in the name of the agent of any such person does not mean that it is not chargeable unless assessed in the name of an agent.

CASE stated under section 51 of Act VII of 1918, by the Deputy Commissioner and Secretary to the Chief Commissioner of Income-tax, Madras, in his letter, dated the 11th February 1921, in pursuance of the order contained in the judgment of the High Court in the exercise of its Ordinary Original Civil Jurisdiction, and dated the 23th September 1920.

The Collector of Income-tax, Calicut, assessed the assessee on an income of Rs. 76,660. Against this the latter appealed to the Board of Revenue. The latter in dismissing the appeal stated :

“The appellants make the usual application that ‘in case the opinion of the Board on the question of the legal liability of the petitioners’ Company be against the petitioners’ Company’ the question should be referred to the High Court under section 51 of the Act. In the opinion of the Board it is unnecessary to make this reference and the question whether the decision of the Board is against or in favour of the Company is quite irrelevant in coming to a decision on the question whether a reference is necessary or not.”

CHIEF  
COMMISSIONER OF  
INCOME-TAX  
v.  
BHANJI  
RAMJEE  
& Co.

Thereupon, the assessee applied under section 45, Specific Relief Act of 1877, to the High Court in its Ordinary Original Jurisdiction for an order requiring the Chief Revenue authority in Madras to refer to the High Court, under section 51 of the Income-tax Act, the questions raised in the appeal. On this notice of motion KUMARASWAMI, J., ordered that the Chief Revenue authority should draw up a statement of the case and should "refer to the High Court the question whether the Collector of South Malabar had jurisdiction to assess the petitioner." The Board of Revenue then referred the matter to the High Court. The material portions of the Letter of Reference are as follows :

"2. Messrs. Bhanjee Ramjee & Co. have their head office at Mattancheri in the Native State of Cochin. The firm carries on trade with European firms in British Cochin. The contracts for the supply of goods are entered into and signed at the offices of firms in British Cochin and the goods are delivered at the jetties of the purchasers: the sale-proceeds are paid to the firm's agent or other duly authorized servant in cash in British India or by cheques which are cashed in Banks in British India.

"3. The Collector of Malabar is the proper officer who is to assess income arising or accruing in British Cochin (vide Logan's Manual, Volume III, pages 343-46).

"4. Section 1 (2) does not exclude from taxation the subjects of a Native State. Section 33 (1) specifically makes persons residing out of British India taxable and section 33 (2) makes specifically taxable a person who is neither a resident in British India nor a British subject.

"5. Under section 2 (5) since the assessee himself resides out of British India the Collector for the purpose of assessing his income must be taken to be the Collector of that area in which the business, from which the taxable income accrues, is done.

"6. Under section 33 (1) all profits or gains accruing or arising from any business connexion in British India are taxable, although the merchant is out of British India. For convenience the income-tax is to be charged in the name of the agent of such firm. Whether the firm has an agent or not in British India is a question of fact. The petitioner did not move the question before the Board of Revenue. He is not therefore entitled to move it before the High Court. Even supposing that he should have no agent this cannot render his income free of tax. As a matter of fact the assessee himself accepted service of the P.D. notice and appeared in answer to the E. notice

and it is not open to him now to plead that an irregularity, if any, in procedure invalidates the assessment. Nor is he prejudiced by the procedure adopted if it be held on the facts that he has a business connexion in British India. The petitioner's contention that he is a resident of a foreign state and does not carry on business by himself, or by agent who is within the jurisdiction of the Collector of Malabar, is therefore contradicted by the evidence.

"7. As stated above, the petitioner is dealing with European firms in British Cochin and his gain accrue within British India, and this constitutes in the opinion of the Board a business connexion from which profits or gains accrue within British India.

"It is not open to the petitioner to contest the facts on record in this reference although the question whether these facts do or do not constitute a 'business connexion' as intended by section 33 (1) may be a question of law for the decision of the High Court."

#### ON THIS REFERENCE

*S. Srinivasa Ayyangar* for the assessee.—My client does not reside in British India and therefore is not liable to pay income-tax. The petition to the Board states that I have no business in British India. I do not say his income does not accrue in British India. I say he is not liable to assessment and the Collector of Malabar has no jurisdiction. His principal place of business is Bombay. Reference made to sections 33, 34, 17 (2), 18, 20, *Re v. General Income-tax Commissioners for Aldrington*, *Ex parte A. M. Singer*(1) and *Re v. General Income-tax Commissioners for Southampton*, *Ex parte W. Singer*(2).

*Government Pleader (C. Madhavan Nayar)* for the Referring Officer.—The assessee used to send an agent into British Cochin to enter into contracts, the cheques given were cashed in Banks situated in British India, and the money was kept by him in such Banks. This establishes that he has connexions in British India as required by section 33. It is admitted it is taxable income. Section 33 lays down the machinery. We have succeeded in getting at him even though we had the option of charging the agent. Reference was made to *Tischler & Co. v. Apthorpe*(3), and *Werle & Co. v. Colquhoun*(4).

(1) (1916) 114 L.T., 1170.

(2) (1916) 114 L.T., 1166; *sec.*, (1916) 2 K.B., 249.

(3) (1885) 52 L.T., 814 at 816, 817. (4) (1888) 20 Q.B.D., 753 at 760.

## OPINION.

CHIEF  
COMMISSIONER OF  
INCOME-TAX  
v.  
BEANJEE  
RAMJEE  
& Co.

The question which the Board was directed to refer is whether in the circumstances, the Collector of Malabar had jurisdiction to assess the petitioner. Now the income which is taxable under the Act is, as provided in section 3,

“All income from whatsoever source it is derived if it accrues or arises or is received in British India or is under the provisions of this Act, deemed to accrue or arise or to be received in British India,”

And under section 33 (1), in the case of any person residing out of British India,

“All profits or gains accruing or arising to such person whether directly or indirectly through or from any business connexion in British India shall be deemed to be income accruing or arising in British India.”

and is consequently taxable under the express provisions of section 3. It makes no difference with regard to this section whether the non-resident entitled to the income is a British subject or a foreigner; in either case he is chargeable with the tax in British India. It has, however, been argued that because section 33 (1) not only provides that such profits and gains shall be deemed to be income accruing or arising within British India but goes on to provide that they

“shall be chargeable to income-tax in the name of the agent of any such person, and such agent shall be deemed to be the assessee in respect of such income-tax,”

the profits and gains in question are not chargeable unless they are assessed to income-tax in the name of an agent of the non-resident. This construction is not supported by the proviso immediately following:

“Provided that any arrears of tax may be recovered also in accordance with the provisions of this Act from any assets of the non-resident person, which are or may at any time come within British India.”

which supports the construction that the profits or gains are chargeable if they can be got at in British India whether they are assessed in the name of an agent of the non-resident or not. This was expressly decided on the corresponding section of the English Act by MATHEW and A. L. SMITH, JJ., in *Tischler v. Apthorpe*(1), which was approved by the Court of

Appeal in *Werle & Co. v. Colquhoun*(1), and it was held that a non-resident who had been himself assessed whilst in England had been properly assessed. All that the latter part of the section does is to provide machinery by which the tax can be levied where the non-resident cannot himself be got at.

CHIEF  
COMMISSIONER OF  
INCOME-TAX  
v.  
BHANJEE  
RAMJEE  
& Co.

In the present case, the petitioner resides and has his principal place of business in the Cochin State in Mattancherri, which adjoins British Cochin and practically forms one town with it, and the petitioner not only does a large part of his business in British Cochin as stated in the reference, but also accepted notices and submitted the necessary returns to the Collector of Malabar, of which British Cochin forms a part for income-tax purposes. The reference states that

“Contracts for the supply of goods are entered into and signed at the offices of firms in British Cochin and the goods are delivered at the jetties of the purchasers: the sale-proceeds are paid to the firm’s agent or other duly authorized servant in cash in British India or by cheques which are cashed in Banks in British India.”

In these circumstances, it seems clear that these are profits and gains arising to the petitioner through or from his business connexions in British India in respect of which he is assessable under the Act. The petitioner never set up the case that his principal place of business in British India was situate in Bombay and that therefore even as regards his gains and profits in British Cochin he ought to have been assessed by the Collector of Bombay by virtue of the definition of Collector in section 2 (5). His case was that the business in Bombay was carried on by another firm in which he was merely a partner and that there were no assessable profits or gains arising to him in British Cochin. If there were, he did not dispute the right of the Collector of Malabar to assess him in respect of them. On the contrary he submitted the necessary returns to the Collector of Malabar and did not raise this point either before the Collector or on his appeal to the Board of Revenue nor is it dealt with either in the order directing the reference or in the reference itself. In these circumstances it is not open to him to raise this question now, and it is unnecessary for us to consider it. The petitioner must pay the costs of the reference, Rs. 250.

M.H.H.