

Judge of this Court. But until that step is taken and the proposal passes into law, I feel constrained to say that the Courts of this country have no option but to enforce the rule with whatever reluctance and with whatever consciousness of its repugnance to the present sentiments of the Hindu people.

PUDJAYA  
NADAR  
v.  
PAVANASA  
NADAR  
—  
COURTS  
TROTTER, J.

M. H. H.

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APPELLATE CIVIL—FULL BENCH.

*Before Sir Walter Salis Schwabe, Kt., K.C., Chief Justice,  
Mr. Justice Oldfield and Mr. Justice Coutts Trotter.*

SECRETARY TO THE BOARD OF REVENUE  
(INCOME-TAX), REFERRING OFFICER,

1922,  
April 25.

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v.

MAHOMED SHARIFF HUSSAIN MEAH SAHIB & Co.,  
ASSEESSEE.\*

*Income-tax Act (VII of 1918 and XVII of 1920), sec. 2, sub-section 12-A—"Registered Firm"—Collector's certificate—Income for prior year when firm not registered—Whether can be adjusted in year when certificate in force.*

An adjustment can be made during a financial year in which the Collector's certificate of registration under section 2, sub-section 12-A, of the Indian Income-tax Act is in force in respect of the income of the firm for the previous year when the firm had not been so registered.

CASE stated under section 51 of Act VII of 1918 and section 6 of Act XIX of 1920 by the Secretary to the Board of Revenue (Income-tax), Madras.

The following are the material portions of the Letter of Reference from the Secretary to the Board of Revenue :—

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"2. Under the Super-tax Act (XIX of 1920) a registered firm is not liable to super-tax. Under the rules framed by the

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\* Referred Case No. 1 of 1922.

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Madras Government for the registration of firms an assessee has to make an application to the Collector for registration not later than a date fixed by the Collector and the certificate of registration granted by the Collector should be renewed from year to year. Such registration has effect up to the end of the financial year in which the certificate is granted or renewed. Under these rules the appellants, Messrs. Mahomed Sheriff Hussain Meah Sahib & Co., first applied to the Collector of Madras to register their firm on 30th March 1921. The last date prescribed by the Collector for such applications for the financial year 1920-21 was 20th December 1920. The Collector registered the appellant firm with effect from 1st April 1921, that is for the official year 1921-22. The Collector assessed them to super-tax for the year 1920-21 as they were not a registered firm in that year. The appellants appealed against this assessment to the Board of Revenue requesting that they should be treated as a registered firm for the year 1920-21 but this the Board declined to do.

3. In the year 1921-22 the Collector adjusted the super-tax assessment under section 19 of the Income-tax Act (VII of 1918) and section 6 of the Super-tax Act (XIX of 1920) but did not assess them to super-tax for the year 1921-22 as they were not a registered firm for that year. The appellants have appealed to the Board contending that no adjustment could be made in the year 1921-22 in which the certificate of registration was in force, and have requested a reference to the High Court on this question.

4. Under section 19 of the Income-tax Act, the assessment on every assessee made under section 14 of the Act in any year should be adjusted in the following year or, in certain circumstances in the same year, when the actual income of that year is known. This adjustment must be made whether the assessee has assessable income or not in the following year or, on the motion of the assessee's representative in interest, even when the assessee dies after the assessment (commonly called the "provisional assessment") is made. The Act does not provide the total refund of the tax paid "provisionally" in the previous year simply because the assessee has ceased to exist before the adjustment is made. In the

present case the appellants' firm was an assessee under the Super-tax Act (to which section 19 of the Income-tax Act applies) in 1920-21 though it ceased to be an assessee in the year 1921-22 by reason of their registration, and the tax paid by them in 1920-21 has to be adjusted and the balance payable to them or recoverable from them on adjustment has to be paid or recovered in the year of adjustment. The tax claimed on adjustment is not in respect of the year in which they were registered. It relates to the income of the year in which they were still unregistered. If it had so happened that the firm was entitled to a refund on adjustment, appellants would probably have been much aggrieved had they been refused the refund on the ground that no adjustment could be made in respect of a registered firm.

5. The Board feels no doubt that the appellants' claim is inadmissible, but as they have requested a reference and the policy of Government as indicated by the new Income-tax Bill is not to withhold such references, the Board submits the case for the decision of the Honourable Judges."

*Government Pleader* for the Crown.

*D. Chamier* for assessee.

### JUDGMENT.

SCHWABE, C.J.—This reference, under section 51 of the Income-tax Act and section 6 of the Super-tax Act now in force, is as to "whether an adjustment can be made during a financial year in which the Collector's certificate of registration under section 12-A is in force in respect of the income of a firm for the previous year in which the firm was not registered." In my judgment it clearly can. The whole scheme of income-tax and super-tax in this country is based on the principle that the tax is assessed at the beginning of the year on an anticipated income and is paid in anticipation on the assessment; but when the year is over and the actual earnings have been discovered, there is not a fresh assessment but an adjustment. As far as super-tax is

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concerned, a registered firm is exempt from super-tax as a firm, although the partners are personally liable for super-tax, if their separate incomes are large enough to bring the provisions of the Super-tax Act into operation against them.

In the year 1920-21 this firm of Messrs. Mahomed Sheriff Hussain Meah Sahib & Co., through carelessness or for some other reason which I am not able to appreciate, having made its return for the assessment purposes at Rs. '90,000 omitted to get registered in time to take advantage of the exemption granted to registered firms. At the end of the year or the beginning of the next year in due course there was an adjustment, because it turned out that the profits were Rs. 1,37,000 instead of Rs. 90,000. It is contested that adjustment cannot be made because under section 19 of the Income-tax Act, VII of 1918.

“ When the Collector has, in any year after the commencement of this Act for which income-tax is leviable, ascertained the total income actually received ”  
is said to mean in any year in which super-tax is leviable, and it is argued that, as this firm was registered in the following year, i.e., 1921-22, and therefore escaped from super-tax that year, the Collector has no power to call for an adjustment for the preceding year. In my judgment, that is an entire misinterpretation of the section. The section simply means that, if at the end of the year it is found that the amount at which the income was assessed has been either exceeded or reduced, there is a right and a duty to deal with the matter accordingly. For the year in question this firm was not registered, and not being registered they must be dealt with on an adjustment in the same way in which they were dealt with on assessment, and the amount on which they have to pay is the amount

actually earned in 1920-21 and not the anticipated earnings for the year.

It follows that the answer to the question is in the affirmative.

The costs of the reference shall be paid by the assessee, and such costs shall include the Government Pleader's fee. The Taxing Officer will fix a reasonable fee under the terms of rule 38 of the Appellate Side Fee Rules which is in these words :

"In cases in which the subject matter of the claim does not admit of valuation, the Court, or in the case of the High Court, the Taxing Officer, shall fix a reasonable fee, regard being had to the time occupied in the preparation and hearing of the case and the nature of the questions raised therein as also to the minima fees prescribed by rule 31."

It cannot be right that there should be a fixed amount payable to the Government Pleader as fee in respect of a case which may last a week and may take days for preparation, and that the same fixed amount should be payable in respect of a case like this which cannot take very long to read and prepare for argument, and it cannot be right that the assessee who has a small case is to pay an unnecessarily large fee to the relief of an assessee who has a large case.

OLDFIELD, J.—I agree.

OLDFIELD, J.

COUTTS TROTTER, J.—I agree.

COUTTS  
TROTTER, J.

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