THE

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(*MADRAS SERIES*)

SPECIAL BENCH.

Before Mr. Justice Ayling, Mr. Justice Coutts Trotter and Mr. Justice Ramesam.

BOARD OF REVENUE (REFERRING OFFICER),

1923, March 29.

v.

THE MYLAPORE HINDU PERMANENT FUND, LTD. (ASSESSEE).*

Indian Income-tax Act (VII of 1918), sec. 9—Registered Mutual Benefit Society—Borrowing and lending confined to members—Interest on loans, not taxable "profits" within section.

Where the capital of a mutual benefit society was made up solely of periodical investments by its members and the income of the society was mainly derived from interest earned on loans given solely to its members, every one of whom was by the rules eligible to take loans,

Held, that such interest earned by the society from its own members was not taxable "profits" within section 9 of the Indian Income-tax Act VII of 1918 in spite of the fact that the society was registered under the Indian Companies Act and as such was for certain purposes a separate legal entity from its members. *New York Life Insurance Coy.* v. *Styles* (1889) 14 A.C., 381, followed; *Equitable Life Assurance Society of the United States* v. *Bishop* (1900) 1 Q.B., 177, and *Leeds Benefit Building Society* v. *Mallandaine* (1897) 2 Q.B., 402, distinguished.

Held further: Interest derived by the society on occasional authorized deposits with outside banks of its unlent surplus was taxable.

* Referred Case No. 17 of 1921.

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CASE stated by the Secretary, Board of Revenue, Income-tax, Madras, in his letter dated 6th October 1921 in Income-tax Appeal No. 2 of 1921–22 for a decision as to whether the whole of the earnings of the Mylapore Hindu Permanent Fund less actual expenses is taxable and whether any deduction is allowable as claimed by the Company.

The facts are given in the judgment.

A. Krishnaswami Ayyar (with *N. Rama Rao* and *T. S. Srinivasa Rao*) for assessee.—The Fund is a mutual benefit society; its capital is contributed only by its members; and it lends only to its members; it does not do any business with outsiders; it is not an association for profit; it cannot be taxed for what it earns as interest from its own members. *New York Life Insurance Company* v. *Styles*(1), *Carlisle and Silloth Golf Club* v. *Smith*(2), on appeal from *Carlisle and Silloth Golf Club* v. *Smith*(3).

Government Pleader (*C. V. Anantakrishna Ayyar*) for Government.—The society that is assessed is a different legal person from its members; it is an incorporated society; it carries on money lending business; its income by way of interest is taxable in spite of the facts that a portion of it is distributed as profits to its own members and its loans are confined only to its members; see *Equitable Life Assurance Society of the United States* v. *Bishop*(4), which has construed *New York Life Insurance Coy.* v. *Styles*(1), see also *Leeds Benefit Building Society* v. *Mallandaine*(5), on appeal from *Leeds Permanent Benefit Building Society* v. *Mallandaine*(6); Konstam on Income-tax, pages 179 and 5. *Glasgow*

(1) (1889) 14 A.C., 381.
(2) [1913] 3 K.B., 75, 82.
(3) [1912] 2 K.B., 177.
(4) [1900] 1 Q.B., 177, 190.
(5) [1897] 2 Q.B., 402, 405, 410.
(6) (1897) 76 L.T., 650, 654.

Corporation Water Commissioners v. *Miller*(1), *Mullingar Rural District Council* v. *Rowles*(2). This interest is income derived from business according to section 5 (4) and (6) of the Act and this income is not exempt from taxation. Compare the Co-operative Societies Act (II of 1912), section 28, which exempts only co-operative societies from taxation.

A. Krishnaswami Ayyar in reply; *Leeds Benefit Building Society* v. *Mallandaine*(3) is a case of taxing the "interest" and not "income"; see *Clerical, Medical and General Life Assurance Society* v. *Carter*(4).

The JUDGMENT of the Court was delivered by

RAMESAM, J.—This reference under section 51 of Act VII of 1918 relates to the assessing of the Mylapore Hindu Permanent Fund for purposes of income-tax.

The fund was established in 1872, being registered under the Indian Companies Act of 1866. It then started with 11,904 shares and gradually increased the shares up to 119,047 shares. A shareholder subscribes one rupee per share per mensem and at the end of seven years draws 102½ rupees and then he ceases to be a shareholder (*qua* that share). The rate of interest works out at slightly less than 6¼ per cent at simple interest. The amount of Rs. 18½ thus earned on each share is described as the guaranteed rate of interest. Other rules reduce the rate earned in case of withdrawal within seven years. A shareholder has to pay interest on the subscription if not paid within the time prescribed by the rules. The Fund gives loans to the shareholders, divided into ordinary loans and special loans. Occasionally when there are large amounts not borrowed by the shareholders they

(1) (1886) 2 Tax Cases, 131, 140.
(2) (1912) 6 Tax Cases, 85.
(3) [1897] 2 Q.B., 402.
(4) (1889) 22 Q.B.D., 444.

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may be invested on fixed or current deposits in outside institutions such as the public Banks of Madras. The excess of interest earned by the Fund over the expenses of the institution and the interest earned by the shareholders is regarded as the profits of the Fund. One-eighth of this goes to the Reserve Fund, three-eighths (subject to a maximum of Rs. 5,000) is divided among the Directors and the rest is partly added to the Reserve Fund and partly distributed among the shareholders with reference to the number of the shares and the number of months during which they have held them (rule 85).

It is clear from the above summary of the rules of the Fund that the number of the so-called shareholders is fluctuating from time to time, the figure 119,047 representing only the maximum limit and that its earnings consist of (1) chiefly interest from the shareholders either on loans or on overdue subscriptions and (2) occasionally, interest from outside investments; so far as the second of these items is concerned it is conceded on both sides that the amount earned is liable to income-tax and the whole controversy centred on the first item. As to this item, it seems to me that the case is governed by *New York Life Insurance Company* v. *Styles*(1). The principle of that case is that income to be taxable must come in from outside and not from within. The fact that the Fund is a legal entity (for certain purposes) does not matter, for, in the language of Lord WATSON (p. 393–4)

> "it represents the aggregate of its members,"

and the members are the participators of its profits and

> "I do not think that their complete identity can be destroyed or even impaired by their incorporation."

(1) (1889) 14 A.C., 381.

Last v. *London Assurance Corporation*(1), was distinguished by Lord BRAMWELL (p. 396) on the ground that the profits were made and meant to be made not from its own members but from those it dealt with. There were in that case two bodies, the shareholders and the assured. In *Styles'* case and in the case before us the persons dealt with and the participators are identical. To the same effect are Lord HERSCHEL's observations at p. 409 and Lord MACNAGHTEN's at p. 412 where he describes *Styles'* case as one where the business is a mutual undertaking pure and simple. In *Equitable Life Assurance Society of the United States* v. *Bishop*(2), the shareholders of the Company were entirely different people from the members of the mutual insurance body (VAUGHAN WILLIAMS, L.J., at p. 190).

The case of *Leeds Benefit Building Society* v. *Mallandaine*(3), was strongly relied on by the learned Government Pleader. The judgment of the Divisional Court is reported in 76 L.T.R., 650. The learned Judges (WILLES and GRANTHAM, JJ.), observed,

> "the case of *New York Life Assurance Company* v. *Styles*(4) was not in point as the society is not a mutual society"

whereas that Insurance Company was (at p. 652). On appeal the whole argument turned on the application of *Clerical, Medical and General Life Assurance Society* v. *Carter*(5), and no reference was made to *Styles'* case either in the judgment of the Court of Appeal or the arguments before it and the decision of the Court of appeal is no authority on the point now discussed. In that case a benefit building society consisted of two classes of members (1) investors each of whom invested one or more sums of £100 and (2) borrowers who did not

(1) (1885) 10 A.C., 438.
(2) [1900] 1 Q.B., 177.
(3) [1897] 2 Q.B., 402.
(4) (1889) 14 A.C., 381.
(5) (1889) 22 Q.B.D., 444.

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invest but borrowed from the society on shares or fifth parts of shares and paid 2*s.* 6*d.* per share or 6*d.* per fifth part of a share per week to the fund after the borrowing, this sum being intended to be a discharge of (1) the interest on the loan and (2) the principal. The resemblance between that case and the present one is in the fact that both the investors and the borrowers participate in the surplus and that the investors are like the shareholders in the present case but the difference consists in the fact that the borrowers are not like the shareholders and an investor can never be a borrower. It is obvious that the fact, that, while the investors only were the capitalists, the final participators consisted of the investors and borrowers, prevented its being a mutual company. If the real company in that case is regarded as consisting of the investors only, the income was earned from outsiders only and *Styles'* case (1), cannot apply. This must have been the view of the Divisional Court, the borrowers being regarded as outsiders. It is clear that their payments of 2*s.* 6*d.* per share or 6*d.* per fifth part of a share per week can bear no analogy to the sums of £100 contributed by the investors and the final participation of the borrowers in the profits was considered as a bait to them and as a reduction of the interest they pay and not to alter their position as outsiders. *Glasgow Corporation Water Commissioners* v. *Miller*(2), and *Mullingar Rural District Council* v. *Rowles*(3), relate to the supply of water by the Glasgow Corporation and the District Council of Mullingar and cannot help us in the present case. In *Carlisle and Silloth Golf Club* v. *Smith*(4), BUCKLEY, L.J., says at p. 82-

(1) (1889) 14 A.C., 381.
(2) (1886) 2 Tax Cases, 131.
(3) (1912) 6 Tax Cases, 85.
(4) [1913] 3 K.B., 75.

"A man cannot make a loss or profit out of himself and that was the ground of the decision in *New York Life Insurance Company* v. *Styles*(1)."

I am therefore of opinion that all earnings of the Fund from within are governed by *Styles'* case and are not liable to be taxed.

The Government must pay the costs of this reference to the other side. Fee Rs. 250.

N.R.

APPELLATE CIVIL.

Before Sir John Wallis, Kt., Chief Justice and Justice Krishnan.

TADEPALLI SUBBA RAO GARU AND OTHERS (DEFENDANTS), APPELLANTS (IN BOTH APPEALS),

1921, April 28.

v.

SRI BALUSU BUCHI SARVARAYUDU AND OTHERS (PLAINTIFF AND DEFENDANTS), RESPONDENTS (IN BOTH APPEALS).*

Transfer of Property Act (IV of 1882), ss. 83, 84, 76 (i), 72, 60 and 95—Deposit—Mortgagee in possession purchasing equity of redemption in some of the items of mortgaged property—Assignee of portion of the equity of redemption—Right of part-owner of equity of redemption to deposit whole mortgage amount—Right to redeem whole—Right of mortgagee to retain possession of items purchased by him—Liability of mortgagee remaining in possession after deposit—Liable for gross receipts, meaning of—Just allowances, such as Government revenue, etc., if can be deducted—Suit for redemption in such cases—Form of decree—Mesne profits—Interest.

An assignee of a portion of the equity of redemption is entitled to deposit the whole of the mortgage-debt under

(1) (1889) 14 A.C., 381.

* Appeals Nos. 352 of 1918 and 222 of 1919.