

SPECIAL BENCH.

*Before Sir William Phillips, Kt., Officiating Chief Justice,
Mr. Justice Ramesam and Mr. Justice Beasley.*

1927,
September 5.

THE COMMISSIONER OF INCOME-TAX, MADRAS,
REFERRING OFFICER,

v.

MESSRS. BINNY & Co., ASSESSEE.*

*Indian Income-tax Act (XI of 1922), sec. 50—“Recovered,”
meaning of.*

The words “tax was recovered” in section 50 of the Indian Income-tax Act (XI of 1922) mean “tax was received by the Government” and not either “tax was refunded” to the assessee in the United Kingdom under section 27 of the Finance Act, 1920 (10 and 11 Geo. V, Ch. 18), or “tax was recovered by coercive process.” Hence any claim for refund of tax claimable under section 49 of the Indian Income-tax Act, should, as provided by section 50 of the Act, be made within one year from the last day of the year in which it was received by or paid to the Government in India.

CASE stated under section 66 (1) of Act XI of 1922 by the Commissioner of Income-tax, Madras, in the matter of Messrs. Binny & Co., Limited (London), by agents Messrs. Binny & Co., Madras.

The facts as stated by the Commissioner of Income-tax in his Reference to the High Court were as follow:—

“The petitioners Messrs. Binny & Co. (London) were assessed to Indian income-tax for the years 1922-23 and 1923-24 and 1924-25. The tax due for 1922-23 was paid finally in April 1923, that for 1923-24 in November 1923 and that for 1924-25 in September 1924. On 17th December 1924, Messrs. Binny & Co. obtained from the United Kingdom Revenue authorities the certificate required by section 49 showing the rate of tax levied in the United Kingdom and the rate of relief obtained

* Referred Case No. 7 of 1926.

there. On 29th August 1925 they applied to the Income-tax Officer, First Circle, Madras, for the double income-tax relief from Indian Revenue for 1922-23 and on 4th September 1925 for the relief for 1923-24. For 1924-25 the application for relief was made on 8th September 1925. It was granted, but relief for 1922-23 and 1923-24 was refused on the ground that the applications, dated 29th August and 4th September, were made more than one year after the last day of the year on which the taxes for 1922-23 and 1923-24 had been paid. In the view of the Income-tax Department the claims for these years should have been made before 31st March 1925. They were thus late about 5 months."

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ON THIS REFERENCE—

Vere Mocket for assessee.—The word "recovered" in section 50 of the Income-tax Act refers to the repayment of tax in the United Kingdom referred to in section 49. Hence the word "recovered" means "refunded" to the assessee under section 27 of the Finance Act of 1920. Section 50 has not used the words "received" or "paid." See also section 59 (2) (b). The ordinary meaning of "recovered" according to dictionaries is "taking back" what was originally paid. One other meaning for the word "recovered" that can be suggested is "recovered by compulsory process." If either of these meanings is right I am within time.

M. Patanjali Sastri for Referring Officer.—Section 50 covers not only section 49 but also section 48 and we must give such a meaning to the word "recovered" as would be applicable to section 48 also. The meaning suggested by the appellant cannot be applied in the case of section 48. The Income-tax Act uses the words "paid," "received," "collected," "recovered," "levied," "adjusted," as synonymous. See sections 18 (8), 41, 44-A, 8, 68 (a) 2nd proviso. All these refer to the initial voluntary payment, receipt or collection, etc., without any coercive process. The assessee had three months after obtaining the certificate in England to apply to the Income-tax authorities here, but he mistook his remedy.

JUDGMENT.

What we are asked to determine is the meaning of the words "tax was recovered" in section 50 of the Indian Income-tax Act. It is contended by the assessee

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that the word "recovered" which ordinarily has the meaning of taking back must refer to the repayment of tax in the United Kingdom referred to in section 49 and that the words "tax was recovered" must be read as meaning "tax was refunded to the assessee under the provisions of section 27 of the Finance Act of 1920." Unfortunately for this contention we see that section 50 is applicable not only to section 49 but also to section 48; and if we are to apply this meaning of the word "recovered" to section 48, it would mean that when a person had obtained a refund under section 48 he is given under section 50 another year within which to apply for that same refund. This certainly makes nonsense of the two sections. The word "recovered" does not necessarily mean the actual taking back of what has been given as is obvious from its use throughout the Income-tax Act. In section 18 (8) which deals with "deduction" of tax in advance it is observed that "the power to levy by deduction under this section shall be without prejudice to any other mode of recovery," implying thereby that deduction is one mode of recovery. Similarly, under section 41 tax is "recoverable" from the Court of Wards, Administrator-General, etc., and there it does not mean "taken back." It is suggested that tax can only be "recovered" by coercive process. The Act does provide for recovery by coercive process but even then there is no taking back of what has been given any more than when the tax is received by voluntary payment. Possibly there is an implication in the word "recover" that the tax is a sum which has to be deducted out of the income as really belonging to Government, and in that sense the word "recovered" would bear the meaning of "taking back." Section 44 (a) is also a very strong argument against the assessee's contention as to the meaning of the word

“recovered.” We are therefore satisfied that the words “tax was recovered” mean “tax was received by the Government.”

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It has been pointed out to us that this interpretation may cause hardship in individual cases where there has been delay on the part of the income-tax authorities in England in making the refund there, such delay not being due to the default of the assessee. We would point out that this hardship can only be obviated by an amendment of section 50 and we are of opinion that this should be done by giving the Income-tax Commissioner power to extend the time in suitable cases.

The petitioner will pay the costs of this application, i.e., Counsel's fee Rs. 250.

Moresby & Co., Attorneys for assessee.

N.R.

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YAGAPPA NADAR, ASSESSEE.*

Indian Income-tax Act (XI of 1922), sec. 2 (1) (b)—Agricultural income—When income derived from toddy is such income.

Income derived from toddy is agricultural income when it is received by the actual cultivator, whether owner or lessee of the land on which the trees grow. If the income is obtained by a person who has not produced the trees from which the toddy is tapped, or has not done any agricultural operation whereby

* Referred Case No. 16 of 1926.