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paragraph 323, where the case law is cited). There is no reason to presume that the legislature did not want both the Municipality and the District Board to be vigilant in the interests of public health; in fact the natural presumption is exactly the other way. The Subdivisional Magistrate admits that he has found the law difficult, and in such matters he will derive his best guidance from common sense, which leads to the same destination as properly understood law.

The appeal is allowed and the judgment and sentence of the Sub-Magistrate are restored and the order of the Subdivisional Magistrate reversed.

B.C.S.

SPECIAL BENCH.

Before Sir Murray Coutts-Trotter, Kt., *Chief Justice, Mr. Justice Beasley and Mr. Justice Srinivasa Ayyangar.*

1927, February 7.

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

v.

T.S. FIRM, TANJORE AT NEGAPATAM, ASSESSEE.*

Income-tax Act (*XI of* 1922), *sec.* 4 (2)—*Resident in British India, meaning of—Test of residence of firm—Residence of partners, whether relevant in determining residence of firm—Central control and management of the whole business, necessary—Possibility of two or more places of residence of firm—Delegation of a portion of the business, insufficient, but one of a portion of the management as a whole, necessary.*

A firm or partnership resides for the purposes of income-tax at the place where its real business is carried on; and the real

* Referred Case No. 23 of 1925.

COMMISSIONER OF INCOME-TAX, MADRAS, v. T.S. FIRM.

business is carried on where the central management and control of the whole of its business actually abides: *De Beers Consolidated Mines, Ltd.* v. *Howe*, [1906] A.C., 455, followed.

There may be two such places of residence but the suggested second residence must not merely have a delegation of management of some portion of the partnership business, however extensive, but a delegation of some portion of the management of the business as a whole: *Swedish Central Railway Company, Ltd.* v. *Thompson*, [1925] A.C., 495, followed.

The question as to where the individual partners actually had their places of residence is a wholly irrelevant consideration in determining the place of residence of the firm.

Where, therefore, it appeared that a firm of partners were carrying on business as bankers, money-lenders and cloth merchants in several places inside and outside British India, that the partners regularly resided at a place within the foreign State of Pudukottah, wherefrom they exercised a general supervision and direction of their whole business inside and outside British India, that they had several branches in British India generally controlled from Madras and also branches outside British India but no part of the control of the overseas branches ever passed through Madras or any other branch in British India, and that profits earned outside British India were remitted to the Madras branch, *held*, that the firm had for purposes of income-tax its place of residence only outside British India, and at no place within British India, and was consequently not liable to assessment of income-tax, for profits so remitted into British India from outside, under section 4 (2) of the Income-tax Act (XI of 1922).

CASE stated under section 66 (2) of the Indian Income-tax Act (XI of 1922) by the Commissioner of Income-tax, Madras, in his letter No. 1516 of 1925, dated 20th November 1925.

The material facts appear from the letter of reference sent by the Commissioner of Income-tax, Madras, to the Registrar of the High Court for favour of a decision by the High Court on the question referred by him. The material portions of the letter were as follows:—

"The assesees are a well-known Nattukottai Chetti firm of bankers, money-lenders and merchants. The firm has been

registered under section 2 (14) of the Income-tax Act at Madras, on the 18th December 1922. The business is carried on through agents at Madras, Rangoon, Negapatam, Pegu, Pyapon, Henzada and also at various places in Straits Settlements. Under section 64 of the Income-tax Act, Negapatam, has been declared to be the principal place of business. In the assessment year (1924–25), a sum of Rs. 1,00,671 was remitted from Singapore and Penang to the Madras office and was then transferred to an account called the 'Cuddalore account' kept at Madras. It was not the profit of the year of account but profit of the previous years in Singapore and Penang and liable to assessment as it was remitted to British India, if the assessees are residents of British India. . . . The account in which personal drawings of the partners are adjusted is kept at Madras . . . The partners of the firm undoubtedly do reside for the greater part of the year at Ramachandrapuram, Pudukottah State, i.e., outside British India. There they have palatial residences, and from there they keep in touch with the actions of the agents and do exercise a very real control over the business. No business is carried on by the firm in the Pudukkottah State, the bulk of the Madras Presidency business is done at Madras itself . . . The partners visit Madras frequently throughout the year to give oral instructions to the agents, to interview the banks and generally to supervise the business. They also attend certain annual festivals at certain temples. . . . The partner who really controls the business was in Madras for about ten days. . . . He was also in Madras in the year 1924–25 . . . The partners have residences within the Madras Presidency at Madras and at Cuddalore."

On these and other facts and circumstances referred to in his letter, the Income-tax Commissioner was of opinion that the firm had two places of residence one at Ramachandrapuram in the Pudukottah State, and another at Madras and that consequently the firm was liable for assessment for the profits remitted from its overseas branches to Madras.

A. Krishnaswami Ayyar and *M. Subbaroyar* for assessee.

M. Patanjali Sastri for the Referring officer.

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COUTTS-TROTTER, C.J.

JUDGMENT.

COUTTS TROTTER, C.J.—The question propounded for our decision is as follows:—"In the circumstances of this case, can the assessees, the T.S. Firm, be said to be resident in British India?"

The Income-tax Acts take residence as the test which is no doubt easy enough to apply in the case of an individual but leads to difficulties when you are dealing either with a limited company or a partnership because, as Lord LOREBURN pointed out in *De Beers Consolidated Mines, Ltd.* v. *Howe*(1), it is artificial to talk of the residence of a company which is necessarily a metaphorical expression, as "a company cannot eat or sleep though it can keep house and do business." He goes on to cite some earlier decisions and concludes thus,—earlier decisions which he holds as laying down the rule that a company resides for the purpose of income-tax where its real business is carried on, and he adds:

"I regard that as the true rule, and the real business is carried on where the central management and control actually abides."

The question was carried further in the case of *Swedish Central Railway Company, Ltd.*, v. *Thompson* (2) There the contention was that a company could have more than one residence because the central management and control might be divided between two places of business, so that a company could be said to have two residences. I cite a passage from the judgment of Viscount CAVE, the last paragraph of page 501:

"The effect of this decision is that, when the central management and control of a company abides in a particular place, the company is held for purposes of income-tax to have a residence in that place; but it does not follow that it cannot

(1) [1906] A.C., 455. (2) [1925] A.C., 495.

have a residence elsewhere. An individual may clearly have more than one residence. See *Cooper* v. *Cadwalader*(1) and on principle there appears to be no reason why a company should not be in the same position. The central management and control of a company may be divided, and it may keep house and do business in more than one place; and if so, it may have more than one residence."

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COUTTS-TROTTER, C.J.

If therefore it can be shown that the central management and control of a company or partnership, by which words I understand the management and control of the whole of its business, was divided between two localities, each of them may be said to be a residence of the company for the purposes of the Income-tax Act. But I read the learned Lord CHANCELLOR as emphasizing the words "central management and control" by which I understand that the suggested second residence must not merely have a delegation of management of some portion of the partnership business, however extensive, but a delegation of some portion of the management of the business as a whole. With these considerations to guide me, I approach the Commissioner's findings of fact in this case. Unfortunately he had directed himself to the view that what he was largely concerned with was the question of where the individual partners actually had physical places of residence and part of his reasoning, at any rate the finding that the concern was assessable at Madras was, because the partners from time to time came over to Madras to look into the affairs of the Madras branch or perhaps of all the branches in British India and resided in a house in Madras belonging to the firm in Coral Merchant Street for varying periods. That in my opinion is a wholly irrelevant consideration. The firm for the present purposes may be considered to

(1) (1904) 5 Tax Cas., 101.

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have had three classes of activities. In Ramachandrapuram the partners regularly resided in what the Commissioner calls palatial residences and there exercised a general supervising and directing power over the whole of the business. Secondly, it had many branches in British India, which, I think he means to suggest, were generally controlled from Madras. Finally there were branches entirely outside British India in the Malay States and elsewhere and it is with the profits earned in these branches that we are concerned in this case. Had it been found as a fact that the control of the whole business, that is to say, the business including the branches outside British India was exercised both from Ramachandrapuram and Madras, it may very well be that the principle of the Swedish Central Railway Company's case would apply and that the central management of the business as a whole might be considered to be split up between Ramachandrapuram and Madras. I cannot see anything in the findings to give the slightest colour to any suggestion of the kind or to hint that any part of the control of the overseas branches ever passed through the Madras or any other branch in British India. In these circumstances I am of opinion that the question propounded to us must be answered in the negative.

It was suggested in the course of the argument that the case might be sent back for fresh findings of fact in view of the observations of this Court and the test laid down by us. I cannot accept such a course because I think that the findings of fact must be taken to be complete and, though no doubt the Commissioner's mind was not applied to the exact point to which we think it ought to have been applied, I cannot doubt that, if any evidence had been available as to any kind of management or supervision being exercised from

British India over the overseas branches, the commissioner would have stated it as supporting his case and set it out.

The Commissioner will pay the assessee's costs of this reference. Fees Rs. 250.

My learned brothers have seen this judgment and concur in it.

K.R.

SPECIAL BENCH.

Before Sir Murray Coutts-Trotter, Kt., *Chief Justice, Mr. Justice Beasley and Mr. Justice Srinivasa Ayyangar.*

1927, March 23.

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

v.

S.K.R.S.L. FIRM, SIVAGANGA CIRCLE, OKKUR, ASSESSEE.*

Income-tax Act (XI of 1922), *ss.* 4 (2) *and* 66—*Reference by Commissioner—Profits earned or accrued outside British India—Remitted into British India—Profits accrued both beyond and within three years of remittance—Presumption, whether remittance related to earlier or later profits—Burden of proof on assessee.*

When a man has profits earned more than three years before the year of assessment and also profits earned within that period, to his credit, in a trade carried on by him outside British India, there is no presumption that a remittance made to him in British India, of a sum which might fall in either set of profits, is made from the earlier profits and not from the later.

The effect of section 4 (2) of the Income-tax Act (XI of 1922) is to cast upon the assessee the burden of proving that the profits accrued or arose outside British India more than three years before they were received or brought into British India.

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* Referred Case No. 10 of 1926.