ANNA-PURNAMMA v. APPAYYA SASTRI.

it seems to us that at any rate a consent previously obtained from a deceased sapinda cannot be efficacious to validate an adoption which is not approved by the persons who are the nearest sapindas at the time the adoption is actually made."

This pronouncement is halting and indecisive. In *Suryanarayana* v. *Ramdoss*(1), this case was considered by SESHAGIRI AYYAR, J., with whose comments we agree; (see also 49 Madras, 536).

For the above reasons, the answer to the second question referred to us is in the affirmative.

In view of our answer to the second question, we do not think it is necessary to consider the first question.

K.R.

ORIGINAL SIDE—SPECIAL BENCH.

Before Sir Murray Coutts Trotter, Kt., *Chief Justice*, *Mr. Justice Odgers* and *Mr. Justice Beasley*.

1929, January 17.

THE MADRAS CENTRAL URBAN BANK, LTD., ASSESSEES,

v.

THE COMMISSIONER OF INCOME-TAX, REFERRING OFFICER.*

Sections 6, 8, 10 *and* 60 *of the Indian Income-tax Act* (*XI of* 1922)—*Co-operative Society—Profits exempted from income-tax—Optional investment of surplu sfunds in Government securities—Liability to pay tax on interest from securities.*

A notification under section 60 of the Indian Income-tax Act (XI of 1922) exempted from assessment to income-tax "profits of any co-operative society registered under the Co-operative Societies Act, 1912." A society so registered was by an order of Government required to keep 40 per cent of its

(1) (1918) I.L.R., 41 Mad., 604.
* Original Petition No. 202 of 1928.

total liability under call deposits in a liquid or fluid form and instead of keeping the necessary cash with itself, the society invested it in Government securities which produced interest.

Held, that in the absence of proof that such *investments* are obligatory on the society or are a part of its usual business, the interest on the securities was not part of the "profits" of the "business" of the society within the meaning of the notification and section 10 of the Income-tax Act, but that it was chargeable to income-tax as "interest on securities" under section 8 of the Act.

REFERENCE under section 66 of the Indian Income-tax Act (XI of 1922) by the Commissioner of Income-tax in the matter of the assessment of the Madras Central Urban Bank, Ltd.

The facts are given in the Judgment.

M. Subbaraya Ayyar for assessee.—The Government Order requires this Bank to keep 40 per cent of its total liability under call deposits in a liquid or fluid form. Hence the Bank is obliged to have on hand a lot of ready money and the usual way with all banks in such cases is to make such investments as have been made in this case. Such investments are not made with a view to earn interest. They are incidental to every banking business and the interest earned from the investments is therefore part of the 'profits' of the business and must be assessed as such only under section 10 and not under section 8 of the Act. Profits of similar investments have been treated in England as business profits; *Smiles* v. *Australasian Mortgage and Agency Company*(1), *Scottish Investment Trust Company* v. *Forbes*(2), *Norwich Union Fire Insurance* v. *Magee*(3), *Liverpool and London and Globe Insurance Company* v. *Bennett*(4), from which there was an appeal to the Court of Appeal in (1912) 2 K.B., 41 and a further appeal to the House of Lords in [1913] A.C., 610. *See* also *James Waldie and Sons, Ltd.* v. *The Commissioners of Inland Revenue*(5).

M. Patanjali Sastri for the Commissioner.—The exemption is only in respect of "profits" and not in respect also of "interest" earned on securities. The Income-tax Act has in

(1) [1888] 2 Tax Cases, 367. (2) [1893] 3 Tax Cases, 231.
(3) [1896] 3 Tax Cases, 457. (4) [1911] 2 K.B., 577.
(5) [1919] 12 Tax Cases, 113.

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section 6 differentiated between these two categories or sources of income. It is not obligatory on this Bank to put the surplus amounts only in Government securities; these investments are not part of the usual business of the Bank but are distinct transactions; *Back* v. *Daniels*(1), and *Commercial Properties, Ltd., In re.*(2).

JUDGMENT.

This is a case stated for our opinion by the Commissioner of Income-tax at the request of the Madras Central Urban Bank, Limited. This is a society registered under Act II of 1912, and the question arises from its assessment on interest derived by it from investments in Government securities. The society contends that it is exempted from paying tax in respect of these investments by a notification in the Finance Department issued under section 60 of the Indian Income-tax Act, 1922 which corresponds to section 28 of the Co-operative Societies Act enabling the Governor-General in Council to remit income-tax payable in respect of the 'profits' of the society. The question is whether this interest is part of the 'profits' of the society. The notification, Exhibit A, exempts "the profits of any co-operative society . . . registered under the Co-operative Societies Act, 1912, or the dividends or other payments received by the members of any such society on account of profits." The notification has been interpreted to include interest on securities which according to the Commissioner is consistently termed "income". "Profits" according to him does not include interest on securities and hence the latter is taxable. The contention for the Bank is that it is bound by the Government Orders to keep 40 per cent of its total liability under call deposits in a liquid or fluid form and that, instead

(1) [1925] 1 K.B., 526. (2) (1928) I.L.R., 55 Calc., 1057.

of keeping these fluid assets in their safe or till, they keep them in as nearly a fluid form as possible in Government securities upon which of course they receive interest. It is said that this is part of the business of the Bank and that unless this interest was received, the activities of the Bank would be very severely handicapped. That of course is a matter for detailed examination of acounts and balance sheets and so on, of which nothing has been attempted before us. But what we have to decide is as to whether this investment in Government securities is part of the business of the Bank or whether such investment falls under section 8 of the Act which says

> "The tax shall be payable by an assessee under the head 'interest on securities' in respect of the interest receivable by him on any security of the Government of India or a Local Government,"

whereas the Bank contends that it should be assessed under section 10 (1),

> "the tax shall be payable by an assessee under the head 'Business' in respect of the profits or gains of any business carried on by him."

If the Bank is assessed under that head, no tax will be payable. Mr. M. Subbaraya Ayyar for the Bank has referred us to several English cases. Before referring to them, however, it may be as well to note that the English Income-tax Act, 1918, is a good deal more complicated than the Indian Act and that the English Statute is divided under schedules with rules under each schedule. For instance, Schedule C concerns tax charged in respect of profits arising from interest, annuities, dividends and shares of annuities payable out of public revenue; Schedule D tax charged in respect of profits or gains to any person residing in the United Kingdom (1) from any kind of property whatsoever, (2) from any trade or profession, etc.; so that, really the only question

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that arises on this reference is, whether the investment is part of the Bank's trade or not; in other words, whether it falls under 1 (3) of their by-laws "to carry on general business of banking not repugnant to the provisions of the Co-operative Societies' Act". Turning to the Indian Act, it will be observed that this complication of schedules is absent, but that section 6 which is the first section in Chapter III headed "Taxable Income" divides the heads of income which are chargeable to income-tax into (1) salaries, (2) interest on securities, (3) property, (4) business, (5) professional earnings, and (6) other sources. To refer to the cases cited by Mr. M. Subbaroya Ayyar:—In *Smiles* v. *Australasian Mortgage & Agency Company*(1), a company in the course of wool-broking business granted temporary advances on the security of second mortgages or on wool and produce. The Court of Exchequer, Scotland, held that interest was chargeable under the first case of Schedule D, i.e., trade, manufacture, etc. The Lord President pointed out that the account between the company and its customers was of the nature of a current account as between bankers and customers and held that this was proper trading and nothing else and not investment of money upon securities. Lord SHAND said:—

"If a company which has a large rest fund laid aside for the purpose of investment makes investments in foreign stock or other foreign securities, . . . that is a case in which the charge is to be made under the fourth case."

But the President was of opinion that the present case was entirely different because the company was doing the business of wool-brokers. Lord SHAND also thought:

"It is quite unlike a case of investment; the interest fluctuates; it is for no fixed period; the transaction may be

(1) [1888] 2 Tax Cases, 367.

closed at any time. In short it is the case of a wool-broker combining with his business that of a banker."

But as Lord SHAND further points out:

"If this had been the case of a banking company carrying on the business of a Bank, that would not be a case falling within the fourth case, which is the case applying to investments."

Scottish Investment Trust Company v. *Forbes*(1) is also a decision of the Court of Exchequer, Scotland. That was a case of an investment company and therefore investments was an essential feature of the business and therefore the net gain made by the company by realizing investments at higher prices than were paid for by them was to be reckoned among the profits and gains for the purpose of assessment. *Norwich Union Fire Insurance* v. *Magee*(2): that was an insurance company receiving as part of their profits, interest on American securities not remitted to the United Kingdom. Held that the interest formed part of the profits of the company being assessable under case (1) of Schedule D. So in *Liverpool and London and Globe Insurance Company* v. *Bennett*(3), the Liverpool and London and Globe Insurance Company carried on business, at home and abroad. By the laws of certain of the foreign countries in which it conducted its business the company was required to deposit with the Governments of those countries certain sums of money and to invest those sums in accordance with the local laws. This was done. They also voluntarily invested certain other sums. Both classes of investments yielded interest which was received abroad and not remitted to the United Kingdom. It was held that the interest on both classes of investments was assessable under the first case of Schedule D as being part of the business. HAMILTON, J., held that the

(1) [1893] 3 Tax Cases, 231. (2) [1896] 3 Tax Cases, 457.
(3) (1911) 2 K.B., 577.

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voluntary investments were not for the sake of investments but for the sake of having a fund abroad readily realizable to meet the liabilities of their business and that the making of the investments was just as much part of their mode of conducting the business as the taking of risks and in the event of the current account at the Bank being insufficient to meet the liabilities, all the investment funds might have to be called upon at sometime or other. The object of the investments was to extend the business, so the making of them was part of the business. These extracts from the judgment of HAMILTON, J., seem to me sufficient to at once distinguish this from the case before us. In *Liverpool and London and Globe Insurance Company* v. *Bennett*(1) this very case went to the House of Lords after having been affirmed by the Court of Appeal in *Liverpool and London and Globe Insurance Company* v. *Bennett*(1). Their Lordships dismissed the appeal holding that the income of the foreign investments formed part of the profits or gains of the company's business and was properly taxed under case 1 of Schedule D. See Lord LOREBURN at page 619 who adopts BUCKLEY, L.J.'s expression that the investments were "the fruit derived from a fund employed and risked" in a business coming within the statutory description. It has also to be noticed that *Liverpool and London and Globe Insurance Company* v. *Bennett*(1), was not a case of Government securities. It seems to me impossible, at least without a great deal more information than has been presented to us, to say that these investments of more or less amounts for a longer or shorter time on the part of the Bank in order to prevent their fluid assets from lying absolutely idle in their coffers, formed part of the business of the Bank. It

(1) [1913] A.C., 610. (2) [1912] 2 K.B., 41.

seems to me that they are in the same position as any private person who with a large credit balance in his private account desires to put it into a remunerative form which shall at the same time be readily realizable and therefore invests for shorter or longer periods in Government paper. Mr. Patanjali Sastri for the Crown cited *Back* v. *Daniels*(1), where the Court of Appeal held that under the peculiar circumstances of that case, the Daniels were occupiers of some part of the land in question which prevented their being assessed under Schedule D, but the importance of the case is in the expression of the opinion of SCRUTTON, L.J., at page 544, that

> "When there is a separate and distinct operation unconnected with the occupation of the land, such as a cheese factory dealing with the milk of a dairy farm, or a butcher's shop dealing with the beasts of a cattle farm, I can understand a separate assessment of that operation; but I do not think that the fact that the farmer sells his produce either on the farm or at the local market, or at Mark Lane, or even if he sells it in a shop, justifies an assessment under Schedule D as well as or in substitution for Schedule B."

It, therefore, seems to me from the best consideration that I can give to the matter that this investment of these fluid assets of the Bank cannot be held to be part of the business of the Bank in accordance with the decisions quoted from the Scotch and English cases which seem to me to be all distinguishable and to be clearly assignable to an operation in furtherance of the particular business of the firm or company concerned. The obligation on the Bank to keep 40 per cent of its total liabilities in a fluid form is in consequence of an administrative order of Government and does not oblige them, although it may permit them, to invest the fund at all, and it seems to me that as they are to hold the

(1) [1925] 1 K.B., 526.

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fund in readiness to meet some particular liability which is specified, it cannot be said to be part of their business as a Bank to invest these liquid assets in the interval. I think therefore the decision of the Commissioner was right.

We think the Bank must pay Rs. 250 for the Commissioner's costs.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Venkatasubba Rao and Mr. Justice Reilly.

1929, January 17.

JETHAJI PERAJI FIRM, APPELLANT,

v.

KRISHNAYYA AND OTHERS, RESPONDENTS.*

Sections 27, 37 and 43 of the Provincial Insolvency Act (V of 1920)—Failure to apply for discharge—Annulment of adjudication, effect of—Official Receiver's petition under section 54, before annulment—Effect of annulment on petition.

On an annulment of adjudication under section 43 of the Provincial Insolvency Act (V of 1920) owing to the insolvent's failure to apply for his discharge, the insolvency proceedings do not necessarily come to an end and his property does not *ipso facto* revert to the insolvent. The Court may, in proper cases, vest it in the Official Receiver or other person as provided by section 37 of the Act. And if before the annulment, the Official Receiver had applied to set aside a mortgage under section 54 of the Act, as an act of fraudulent preference, he can prosecute the application after the annulment.

Quaere, whether section 43 is mandatory?

APPEAL against the Order of the District Court of Guntūr made in Insolvency Appeal No. 144 of 1924 in I.P. Nos. 12 and 16 of 1921.

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* Civil Miscellaneous Appeals Nos. 310 to 313 of 1923 and C.R.P. Nos. 627 and 628 of 1924.