APPELLATE CIVIL.

Before Mr. Justice Waller and Mr. Justice Krishnan Pandalai.

1932, March 3.

CHEENA PENA RENA PERIANAN CHETTI (PLAINTIFF), PETITIONER,

v.

TALUK BOARD, DEVAKOTTA, THROUGH ITS PRESIDENT, HOLDING ITS OFFICE WITHIN THE DEVAKOTTA UNION BOARD LIMITS (DEFENDANT), RESPONDENT.*

Madras Local Boards Act (XIV of 1920), sec. 93—Income accrued to a person outside British India but received by him within the area of a Taluk Board—Taxability by Taluk Board of.

Income accrued to a person outside British India but received by him within the area of a Taluk Board is, under section 93 of the Madras Local Boards Act (XIV of 1920), taxable by that Board. Where part only of the income accruing to him outside British India is received by him within the area of a Taluk Board it can assess him only on that part. The plain meaning of section 93 is that that part of his income is chargeable which he actually receives within the area of the Taluk Board.

PETITION under section 25 of Act IX of 1887 praying the High Court to revise the decree of the Court of the Temporary Subordinate Judge of Devakotta, dated 16th July 1927, in Small Cause Suit No. 668 of 1926.

A. Swaminatha Ayyar for petitioner.

K. Rajah Ayyar for respondent.

Cur. adv. vult.

JUDGMENT.

WALLER J. WALLER J.—The petitioner, who was the plaintiff in the suit, has a money-lending business at Rangoon, but

* Civil Revision Petition No. 1833 of 1927.

resides within the limits of the Taluk Board of Devakotta. The dispute between him and the Board is as to his liability to pay the profession-tax. The Board seeks to assess him on the whole of the income derived by him from his business at Rangoon. His first contention is that he is not assessable at all, as income cannot be received as income more than once. Alternatively he pleads that, in any event, he cannot be assessed on more than that part of his income which has been remitted to him from Rangoon.

In regard to his first contention, several decisions in income-tax cases have been cited. Two of them are in his favour. The first is *Sundar Das* v. *The Collector of Gujrat*(1). The assessee had accumulated in Beluchistan, where no income-tax is leviable except on salaries, his profits from military contracts until they amounted to over twenty-three lakhs of rupees. In 1919–20 he transmitted—by what means does not appear—this large sum of money to the Punjab, where the Collector sought to assess it to income-tax. On a reference to the Chief Court, it was held that the money could not be treated as income received in the Punjab, as it had already been received as income in Beluchistan. With great respect, I do not understand the *ratio decidendi* in the case or how income received in an area where it is free from income-tax cannot, when it is transferred to another area where it is liable to the tax, be treated as having been received there as income within the meaning and intendment of the Income-tax Act. The leading case on the point in Madras is *Board of Revenue, Madras* v. *Ramanadhan Chetty*(2). In that case, it was sought to assess to the tax the whole income derived by a person resident

(1) (1922) I.L.R. 3 Lah. 349 (F.B.). (2) (1919) I.L.R. 43 Mad. 75 (S.B.).

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in the Madras Presidency from a business conducted on his behalf outside British India. It was decided that the income was not assessable, as no part of it had reached British India. Obviously, if any part of it had reached British India, that part of it would have been held to be taxable. On that ruling, the assessee in *Sundar Das* v. *The Collector of Gujrat*(1) would have been liable to tax. However, one of the Judges observed that the Madras case was distinguishable, though he did not say how. The truth, I think, is that *Sundar Das's* was a hard case, in which it was sought to assess as the income of one year the accumulated income of years. The Act then in force made no provision for cases of that nature. The present Act does; it exempts from the tax all but the accumulated income of the last three years. In an earlier case from Bombay, *Aurangabad Mills, Limited, In re*(2), the question was whether the whole income of the company, which worked and earned its profits outside British India but had its head office in Bombay, could be assessed to the tax in Bombay. The question was answered in the negative, but it was admitted on behalf of the company that, if its profits had been transmitted to Bombay, they would have been taxable. The same question was raised in Madras and decided in *Board of Revenue* v. *Ripon Press*(3) in the same way. *Sundar Das* v. *The Collector of Gujrat*(1) was referred to with approval by one of the three Judges, COUTTS TROTTER J., but the question referred to the Bench was not whether income could be received twice as income, but whether the income of a company which was received outside British India could be taxed

(1) (1922) I.L.R. 3 Lah. 349 (F.B.). (2) (1921) I.L.R. 45 Bom. 1286.
(3) (1923) I.L.R. 46 Mad. 706 (S.B.).

in British India, whether it was received there or not. Sir WALTER SCHWABE said in his judgment :

"Except for the small amount received as the company's money by the company in Bellary, there is no income which accrues or arises or is received in British India."

He was of opinion, I infer, that the company's money received in Bellary was income received by it in British India, but the assessability of that income was not the question then in issue. In a later passage he referred to *Sundar Das* v. *The Collector of Gujrat*(1) and said that he mentioned it

"because that is a point which may be involved in the event of the question being referred to the Court whether such amounts received by the company as stated by me above, in Bellary, are themselves liable to taxation or not."

It seems to follow that what COUTTS TROTTER J. had to say about *Sundar Das* v. *The Collector of Gujrat*(1) was entirely *obiter*. The last case cited was *Sir Saiyid Ali Imam* v. *The Crown*(2), which followed *Sundar Das* v. *The Collector of Gujrat*(1) and assumed that it had been approved by the Bench in *Board of Revenue* v. *Ripon Press*(3). As I have already pointed out, the question did not arise in the latter case and all that Sir WALTER SCHWABE said was that *Sundar Das* v. *The Collector of Gujrat*(1) would have to be considered in relation to it, if and when it did arise. It seems to me that the law was correctly stated in *Board of Revenue, Madras* v. *Ramanadhan Chetty*(4), and that the admission made on behalf of the company in *Aurangabad Mills, Limited, In re*(5) was in accordance with it. The first contention therefore fails.

The second contention and the claim of the Board raises the real question at issue—on what should the petitioner be taxed—on his total income, wherever it

(1) (1922) I.L.R. 3 Lah. 349 (F.B.). (2) (1924) I.L.R. 4 Pat. 210.
(3) (1923) I.L.R. 46 Mad. 706 (S.B.). (4) (1919) I.L.R. 43 Mad. 75 (S.B.).
(5) (1921) I.L.R. 45 Bom. 1286.

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may have accrued to him, or on that part of it which reached him at Devakotta. The answer to that question is, I think, to be found in the wording of section 93 of the Madras Local Boards Act (XIV of 1920). The petitioner is a person who "within such area (that is within the area of the Taluk Board, Devakotta) . . . is in receipt of 'an income' from any source other than houses and lands inside the local limits" of that area. The plain meaning of the section seems to be that that part of his income is chargeable which he actually receives within the area of the Taluk Board. A different conclusion was arrived at in *Mahadeva Sastri* v. *The Municipal Council, Kumbakonam*(1), but that was a case governed by a different Act. What, in effect, the Judges then held was that being in receipt of a pension in a certain area meant the same thing as being a pensioner residing in that area. If the Act meant that, it might have said so. When it spoke of receiving a pension in a certain area, it did not mean receiving a pension outside it. I find that the petitioner is assessable only on that part of his profits that reached him at Devakotta and that his tax, on that basis, is Rs. 18. He will get a decree for Rs. 142. The parties will pay and receive proportionate costs on that amount throughout.

KRISHNAN PANDALAI J.—I agree.

A.S.V.

(1) (1913) M.W.N. 935.