Solicitors for defendant—appellant : *Douglas Grant and Dold.*

Solicitors for plaintiffs—respondents: *Hy. S. L. Polak & Co.*

A.M.T.

INCOME-TAX REFERENCE.

Before Sir Owen Beasley, Kt., Chief Justice, Mr. Justice Ramesam and Mr. Justice King.

RAO BAHADUR MOTHAY GANGARAJU GARU, PETITIONER,

v.

THE COMMISSIONER OF INCOME-TAX, MADRAS, RESPONDENT.*

1934, December 4.

Indian Income-tax Act (XI of 1922), sec. 10—Trade or business —Legacies subject of litigation—Purchase of interest in—Trade or business if.

By itself the purchase of an interest in legacies, the subject of litigation, cannot be described as a trade or business.

Where the purchase in Court auction by an assessee of an interest in legacies, the subject of litigation, was an isolated transaction in no way connected with any other trade or business activities of the assessee,

held that the purchase could not be said to be an adventure or concern in the nature of trade and that the profit made by the assessee out of the purchase was not assessable to income-tax.

PETITION under section 66 (3) of the Indian Income-tax Act (XI of 1922).

Government Pleader (P. Venkataramana Rao) for *V. S. Narasimhachari* for petitioner.

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* Original Petition No. 159 of 1932.

GANGARAJU v. COMMISSIONER OF INCOME-TAX, MADRAS.

M. Patanjali Sastri for Commissioner of Income-tax.

JUDGMENT.

BEASLEY C.J.

BEASLEY C.J.—The question referred to us is :

"Whether the sum of Rs. 1,50,399 is assessable to tax."

The facts of the case are that the assessee, who is a landowner and a money-lender and has an interest in certain cotton mills, purchased on 22nd March 1926 in Court auction in Original Suit No. 24 of 1925 on the file of the Sub-Judge, Bezwada, the right, title and interest of one Parthasarathi Appa Rao in the legacies left by one Venkayamma. The suit in which these legacies figured had been up to the Privy Council and the position at the time of the purchase was that the decision upholding Venkayamma's disposing power over the income of the estate and the dispositions made by her in her will had been upheld. The petitioner gave as purchase-money Rs. 39,800. He was not able to realise his interest until 1929. There was somewhat protracted litigation in between the date of the purchase and the date when he was able to get his money ; and he had to take steps both by way of defending his position and of executing the decree which he had got in his favour and incurred a certain amount of law costs in doing so. However, eventually, during the year of account he actually realised a sum of Rs. 1,97,025 from the reversioners of the estate in question towards the amount due to him under the decree. He had also spent Rs. 46,625-15-0, Rs. 39,800 in respect of the purchase and Rs. 6,825-15-0 in respect of the further litigation to which reference has been made. Deducting that sum of Rs. 46,625-15-0 from the

amount realised by him, there was left a sum of Rs. 1,50,399 which was treated as an excess receipt; and it was this sum which the Income-tax Officer held to be assessable to income-tax; and the assessment has been upheld by the Commissioner of Income-tax. In this way the matter comes before us.

It is contended by Mr. Patanjali Sastri that although this was an isolated transaction—as indeed it was and there is certainly no evidence of the assessee ever having entered into a transaction of a similar nature either before the date of this or after it—nevertheless this was an adventure or concern in the nature of trade. He argues that it was a speculation, that a very low price was given in comparison to the amount subsequently realised and that in that speculation the capital of the assessee was embarked. In our view, this cannot be described as an adventure or concern in the nature of trade. The trading activities of the assessee were limited to lending money, owning land, if that can be called a trade, and having an interest in cotton mills; and this is in no sense a transaction related to any of those activities. In this case the interest in the legacies was not even purchased from anybody who was indebted to the assessee in his money-lending business. It was an isolated transaction, although probably entered into by him as a speculation, as he happened to make a good profit out of it. We are quite unable to see that it has any connection whatever with any other trades or businesses carried on by the assessee. By itself the purchase of an interest in legacies, the subject of litigation, cannot certainly be described as a trade or business. Reference

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BEASLEY C.J.

has been made to the case of *Rutledge* v. *The Commissioners of Inland Revenue*(1) by Mr. Patanjali Sastri in support of his argument. In that case the appellant was a money-lender who was also in 1920 interested in a cinema company. He had since that time been interested in various businesses. Being in Berlin in 1920 on business connected with the cinema company he was offered an opportunity of purchasing very cheaply a large quantity of paper. He effected the purchase and within a short time after his return to England sold the whole consignment to one person at a considerable profit, and it was held that the profits in question were liable to assessment to income-tax and to excess profits duty as being profits of an adventure in the nature of trade. The facts of that case are quite dissimilar to those here. There, what was purchased was a quantity of toilet paper and it was a very large quantity, not a quantity which an ordinary person would buy for private use. It was of such a large quantity as clearly to make it a business transaction ; and obviously the intention with which this large quantity was bought at an exceedingly low price was with the object of selling it later on at a favourable opportunity at an enhanced price and getting the benefit of the profit therefrom. This is quite clear, I think, from the judgment of Lord SANDS who says on page 497 :

> "The nature and quantity of the subject dealt with exclude the suggestion that it would have been disposed of otherwise than as a trade transaction. Neither the purchaser nor any purchaser from him was likely to require such a quantity for his private use."

(1) (1929) 14 T.C. 490.

The view we take of the matter is that that case is certainly of no assistance to us and that, with regard to this case, this was an isolated transaction in no way connected with any other trade or business activities of the assessee. That being so, we are unable to hold that it was an adventure in the nature of trade and, if that is so, then the sum in question clearly was not assessable to income-tax. The question referred to us must, therefore, be answered in the negative. Costs Rs. 250 to the assessee.

RAMESAM J.—I agree.

KING J.—I agree.

A.S.V

INCOME-TAX REFERENCE.

Before Sir Owen Beasley, Kt., Chief Justice, Mr. Justice Ramesam and Mr. Justice King.

N. A. S. V. VENKATACHALAM CHETTIAR, PETITIONER,

v.

THE COMMISSIONER OF INCOME-TAX, MADRAS, RESPONDENT.*

1934, December 4.

Indian Income-tax Act (XI of 1922), sec. 48—Refund of income-tax under—Order of Income-tax Officer refusing—Order of Commissioner under sec. 33 refusing to interfere with—Application under sec. 66 (2) in case of—Competency of—Specific Relief Act (I of 1877), sec. 45—Remedy under—Availability of.

An application by the petitioner to the Income-tax Officer for a refund of income-tax under section 48 of the Indian

* Original Petition No. 128 of 1934.