

## INCOME-TAX REFERENCE.

*Before the Hon'ble Mr. A. H. L. Leach, Chief Justice,  
Mr. Justice Varadachariar and Mr. Justice King.*

1937,  
October 22.

THE COMMISSIONER OF INCOME-TAX, MADRAS,  
PETITIONER,

v.

THE ANDHRA INSURANCE COMPANY, LIMITED,  
MASULIPATAM, KISTNA DISTRICT, RESPONDENT.\*

*Indian Income-tax Act (XI of 1922), sec. 59—Rule 25 of Rules framed under—“The last preceding valuation” in—Meaning of.*

The expression “the last preceding valuation” in Rule 25 of the Rules framed under section 59 of the Indian Income-tax Act of 1922 means the last preceding valuation at the time of the return and not the valuation covering the last valuation period terminating before the 1st of April of the year of assessment.

Rule 25 is of a mandatory character and provides the only manner in which the income, profits and gains of life assurance companies can be ascertained and it is not open to the Income-tax Officer to depart from its provisions.

*The Laxmi Insurance Co., Ltd. v. The Commissioner of Income-tax*(1) approved.

In the matter of the Indian Income-tax Act XI of 1922.

*N. Rama Rao* for assessee.—Section 59 of the Indian Income-tax Act provides for rules being made with reference to insurance companies. The Central Board of Revenue have made such rules. Rule 25 of those Rules is to be found on page 112 of the Income-tax Manual. The assessee company was incorporated in 1925 and the first actuarial valuation was made in December 1930 and it related to the period ended 31st December 1929, i.e., a period of four years, four months and four days. That valuation was in force until the next

\* Original Petition No. 34 of 1937.  
(1) (1931) I.L.R. 12 Lah. 757.

valuation which came out in December 1934 and was for the four years ended 31st December 1933. In June 1934 the assessment for 1934-35 was made and the tax paid. Under section 3 of the Act the tax was in respect of the previous year which in the present case was 1933. The last preceding valuation with reference to the income of 1933 was the valuation made in December 1930 for the period ended 31st December 1929. The Income-tax authorities say that they will take the valuation made in the assessment year 1934-35. The answer to the question depends upon the meaning of the words "the last preceding valuation" in Rule 25 of the Income-tax Rules. The return must be made by the 15th of June after the end of the year of account, unless the Income-tax Officer extends the time at the instance of the assessee. In the present case the return was to have been furnished by 15th June 1934. It was in fact furnished on 30th June 1934, i.e., fifteen days after, but the Income-tax Officer accepted it and assessed the assessee company to income-tax on the basis of the return on 30th June 1934. With reference to the assessment for 1934-35, "the last preceding valuation" within the meaning of Rule 25, both with reference to the date on which the return was submitted and to the date on which the assessment was made, was the valuation made in December 1930 for the period ended 31st December 1929. [*The Laxmi Insurance Co., Ltd. v. The Commissioner of Income-tax*(1) was referred to.]

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*M. Patanjali Sastri* for Commissioner of Income-tax.— Once assessment proceedings are started they may be kept alive for any length of time. If in the present case the Income-tax Officer had kept alive the assessment proceedings till after the actuarial valuation of 1934, the assessment could have been made with reference to that valuation.

[The meaning of the words "the last preceding valuation" cannot be changed by a postponement of the date of assessment. The question would even then be what was the last preceding valuation with reference to December 1933.—  
VARADACHARIAR J.]

If the valuation of 1934 had become available before the date on which the return was submitted, the last preceding valuation within the meaning of Rule 25 would be the valuation of 1934.

(1) (1931) I.L.R. 12 Lah. 757.

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THE JUDGMENT of the Court was delivered by LEACH C.J.—The assessee in this case is a life insurance company carrying on business at Masulipatam, having been incorporated in the year 1925. Under the provisions of section 8 of the Indian Life Assurance Companies Act, 1912, a life assurance company is required once in every five years, or at such shorter intervals as may be prescribed by the instrument constituting the company or by its regulations or bye-laws, to cause an investigation to be made by an actuary into its financial condition, including a valuation of its liabilities. This company decided that the valuation should take place every four years. The first valuation was made in December 1930 and was for the period ended 31st December 1929. The next valuation took place in December 1934 and this was for the four years ended 31st December 1933. Under section 22 of the Indian Income-tax Act, the principal officer of every company shall prepare, and on or before the fifteenth day of June in each year, furnish to the Income-tax Officer a return, in the prescribed form and verified in the prescribed manner, of the total income of the company during the previous year. On 30th June 1934 the secretary of the company furnished the return contemplated by this section. It was fifteen days late, but the Income-tax Officer accepted it and assessed the company to income-tax on the basis of the return. Rule 25 of the Income-tax Rules provides that in the case of life assurance companies incorporated in British India, whose profits are periodically ascertained by actuarial valuation, the income, profits and gains of the life assurance business

shall be the average annual net profits disclosed by the last preceding valuation. This rule was framed under the provisions of section 59 of the Act and has effect as if enacted in the Act.

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The return which the secretary furnished to the Income-tax Officer on 30th June 1934 was based on the valuation for the period ended 31st December 1929 and on this basis the income of the company for the account year 1933 was Rs. 8,294. The company paid the amount of the tax; but when the valuation for the four years ended 31st December 1933 was published in December 1934 it was found that the profits had greatly increased. If the assessment had been based on this return the amount of the income would have been Rs. 39,755 instead of Rs. 8,294. When this was discovered by the Income-tax Officer, he issued a notice under section 34 of the Act, intimating his intention to assess the company in respect of the year 1933 on the further sum of Rs. 31,461 (the difference between Rs. 39,755 and Rs. 8,294) on the ground that this was income which had escaped assessment. The company objected and asked the Commissioner of Income-tax to refer the matter to this Court under the provisions of section 66 (2). The Commissioner has accordingly referred the following question :

“ Whether the ‘ last preceding valuation ’ of the surplus of the company for the purposes of the assessment to be made for the year of assessment 1934-35 was in the circumstances of the case that covering the years 1926-29 or that covering the years 1930-33 ? ”

The Income-tax Commissioner in his reference has expressed the opinion that the Income-tax Officer is entitled to reopen the assessment under

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section 34 notwithstanding the wording of Rule 25. He contends that the expression "the last preceding valuation" must be taken to mean the valuation covering the last valuation period terminating before the 1st of April of the year of assessment. This contention ignores the wording of Rule 25. The wording is perfectly clear and says that the income of a life assurance company shall be the average annual net profits disclosed by the last preceding valuation, that is the last preceding valuation at the time of the return. The return must be made by the 15th of June after the end of the year of account, unless the Income-tax Officer extends the time at the instance of the assessee. In this case the last preceding valuation when the return was submitted was the valuation made in December 1930 for the period ended 31st December 1929. As I have said, the words of the rule are perfectly clear and they must be given their plain meaning. Giving them their plain meaning the return made in June 1934 was made on the proper basis.

In these circumstances the Income-tax authorities had no right to serve a notice under section 34 of the Act, as no income had escaped assessment. The return had been made in accordance with the statute and the tax had been paid. In *The Laxmi Insurance Co., Ltd. v. The Commissioner of Income-tax*(1), it was pointed out that Rule 25 is of a mandatory character and provides the only manner in which the income, profits and gains of life assurance companies can be ascertained and that it is not open to an Income-tax Officer to depart from its

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provisions. With this opinion we are in entire agreement. It follows that the answer to the reference is that the last preceding valuation of the surplus of the company for the purposes of the assessment for the year 1934-35 was that covering the years 1926-29. As the company has succeeded, it will be entitled to its costs which we fix at Rs. 250.

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APPELLATE CIVIL.

*Before the Hon'ble Mr. A. H. L. Leach, Chief Justice,  
and Mr. Justice Madhavan Nair.*

THE SECRETARY OF STATE FOR INDIA IN COUNCIL  
BY THE COLLECTOR, WEST GODAVARI (APPELLANT),  
PETITIONER,

1937,  
October 5.

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v.

VINJAMURI KISTNAMACHARYULU (LEGAL REPRESENTATIVE OF DECEASED RESPONDENT), RESPONDENT.\*

*Indian Limitation Act (IX of 1908), sec. 5—Abatement of appeal—Delay in seeking to set aside—Sufficient cause for excusing—Appellant's ignorance of death of respondent, if and when.*

Ignorance of the death of the respondent, in the absence of any negligence or other act or omission for which the appellant can be held responsible, is sufficient cause for excusing the delay in seeking to set aside the abatement of an appeal within the meaning of section 5 of the Indian Limitation Act.

*Lakshmi Chand v. Behari Lal*(1) and *Rajani Kanta Roy v. Raja Jyoti Prosad Singh Deo*(2) approved.

PETITION praying that in the circumstances stated therein and in the affidavit filed therewith, the

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\* Civil Miscellaneous Petitions Nos. 2694 and 2695 of 1937.

(1) (1931) I.L.R. 54 All 280.

(2) (1922) 27 C.W.N. 710.