INCOME-TAX REFERENCE.

Before Sir Lionel Leach, Chief Justice, Mr. Justice Madhavan Nair and Mr. Justice Varadachariar.

1938, November 1.

M. S. S. CHIDAMBARAM CHETTIAR AND ANOTHER, PETITIONERS,

v.

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

Indian Income-tax Act (XI of 1922), sec. 4 (2)—Foreign business —Immovable properties taken over in satisfaction of debts due to, value of said properties being treated as representing in part return of capital and in part profits—Profits available for remittance from foreign business—Assessee's right to exclusion from, of sum representing immovable properties taken over by him from his debtors.

The assessees, the members of an undivided Hindu family and carrying on a money-lending business at a place in British India where they had their headquarters, were partners in various money-lending firms in the Federated Malay States and in Burma. One of their foreign firms did business at Ipoh in the Federated Malay States. That firm took over in satisfaction of debts due to it immovable properties which had been mortgaged as security for debts, the values of the said properties being treated as representing in part the return of capital and in part profits. The total profits of the firm were on calculation found to amount to $127,806 of which $74,570 was represented by land. The assesses' share in the sum of $74,570 was $53,264. During the year of account (1933–34) the assessees remitted from Ipoh to Rangoon, which was then in British India, sums amounting in the aggregate to Rs. 99,279. Those remittances the Income-tax authorities treated as being remittances of profits. The question was whether in computing the profits available for remittance from the Ipoh firm the Income-tax Officer should have excluded the

* Original Petition No. 176 of 1937.

sum of $53,264. The total profits of the assessees for the years 1930–31 to 1933–34 were found to be $119,647.

Held that the case came within the principle stated in *Scottish Provident Institution* v. *Allan*(1) and that in computing the profits available for remittance from the Ipoh firm the Income-tax Officer was not bound to exclude the sum of $53,264.

The assessees could not be allowed to withdraw money from the firm and treat their interest in the immovable properties as representing their profits. They accumulated profits to the extent of $119,647 and out of the common funds of the firm they made the remittances. The withdrawals from the firm must therefore be treated as withdrawals of profits.

In the matter of the Indian Income-tax Act XI of 1922 and in the matter of the assessment of M. S. S. Chidambaram Chettiar and Meyyappa Chettiar, Karaikudi.

P. R. Srinivasan for petitioners.

M. Patanjali Sastri for Commissioner of Income-tax.

The JUDGMENT of the Court was delivered by LEACH C.J.—This reference arises out of an assessment of an undivided Hindu family the members of which are M. S. S. Chidambaram Chettiar and Meyyappa Chettiar. The assessees are partners in various money-lending firms in the Federated Malay States and in Burma, and carry on the same kind of business at Karaikudi where they have their headquarters. One of their foreign firms does business at Ipoh in the Federated Malay States. Owing to the financial depression which existed there this firm was compelled to take over in satisfaction of debts due to it immovable properties which had been mortgaged as security for debts. The values of these immovable properties were treated as representing in part the

(1) [1903] 4 T.C. 591.

CHIDAMBARAM v. COMMISSIONER OF INCOME-TAX, MADRAS.

LEACH C.J.

return of capital and in part profits. The total profits of the firm were calculated and it was found that they amounted to $127,806 of which $74,570 was represented by land. The assessees' share in the sum of $74,570 was $53,264. During the year of account (1933–34) the assessees remitted from Ipoh to Rangoon, which was then in British India, sums amounting in the aggregate to Rs. 99,279. These remittances the Income-tax authorities treated as being remittances of profits. The assessees objected to this, their objection being that the profits represented by immovable properties were not capable of remittance. The Court directed the Commissioner of Income-tax under section 66 (3) of the Act to refer the following question for decision :

> " The total profits of the assessees for the years 1930–31 to 1933–34 having been found to be $119,647 of which $74,570 represents immovable properties taken over by the assessees from their debtors, should the Income-tax Officer in computing the profits available for remittance from the Ipoh firm have excluded the sum of $74,570 ? "

The Commissioner of Income-tax rightly points out that there is an error in the wording of the question. The sum of $74,570 was the total interest of the firm in immovable properties, and the assessees' share, as I have already said, was only $53,264.

In our opinion the question referred must be answered in the negative. The assessees cannot be allowed to withdraw money from the firm and treat their interest in the immovable properties of the firm as representing their profits. They accumulated profits to the extent of $119,647 and out of the common funds of the firm they made the remittances. The withdrawals from the firm must therefore be treated as withdrawals of profits. The effect was to turn the immovable properties representing such profits into

capital assets. The case comes within the principle stated by the House of Lords in *Scottish Provident Institution* v. *Allan*(1).

As the answer is against the assessees they must pay the costs of the Commissioner of Income-tax, Rs. 250.

A.S.V.

APPELLATE CIVIL.

Before Sir Lionel Leach, Chief Justice, and Mr. Justice Madhavan Nair.

RAI SAHIB C. MADURANAYAKAM PILLAI (PLAINTIFF), APPELLANT,

1938, November 7.

v.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL (DEFENDANT), RESPONDENT.*

Water—Madras Presidency—Rights and obligations of Government as regards regulation and distribution of water in respect of lands in the old and new ayacuts.

Before 1870 the water in two tanks near the city of Madras, viz., Red Hills tank and Cholavaram tank, was used merely for the purpose of irrigating lands in their vicinity and the water in the Red Hills tank was sufficient in a normal year for the cultivation of one crop at least in an ayacut of over 5,000 acres. In 1870 the Government undertook a scheme to increase the storage capacity of these tanks with the primary object of supplying water to Madras. It contemplated the storage of sufficient water to bring under cultivation a further area, as well as supplying the old ayacut and Madras. The scheme was completed in 1872 and an additional area was brought under cultivation as the result of the increased water

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(1) (1903) 4 T.C. 591.

* Original Side Appeal No. 71 of 1936.