To say that the Income-tax Officer shall be limited to facts discovered within a year of the year of assessment is to say something which the section does not say and which, if acted upon, would defeat the object of the section. We have no hesitation in answering the reference in the affirmative.

The reference having been decided against the assessee he will pay the costs, Rs. 250.

A.S.V.

INCOME-TAX REFERENCE.

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

PR. AL. M. MUTHUKARUPPAN CHETTIAR,
PETITIONER,

v.

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

1938, October 27.

Indian Income-tax Act (XI of 1922), sec. 13—Scope of—Rejection of assessee's books under, merely on ground of assessee's method of accounting not appealing to Income-tax Officer—Permissibility—British Indian assessee with headquarters in British India and having foreign businesses—Books of, if must include details of his businesses abroad—Books relating to transactions in respect of business at headquarters correct and complete—Rejection of, on ground of their not including entries relating to his foreign businesses—Propriety of—Sec. 10 (2), proviso (a)—Deduction—Claim to—Particulars required by proviso—Necessity.

The assessee, who lived at a place in British India and had his headquarters there and who was a partner in money-lending firms carrying on business outside British India, was

* Original Petition No. 136 of 1937.

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assessed in respect of his business at headquarters and on sums which were held to be remittances of profits from foreign business. The assessee returned a loss and in support of his return he produced the books which related to the transactions in respect of the business at headquarters and copies of the books of the firms abroad in which he was interested. The Income-tax Officer rejected the assessee's account books and made an assessment on an estimate. The books were admitted to be correct as far as they related to the business at headquarters. They were rejected because they did not include entries relating to foreign business which would have been convenient for the Income-tax authorities when estimating the profits made abroad. The rejection was attempted to be justified under the provisions of section 13 of the Indian Income-tax Act of 1922. The assessee was not asked to produce the originals of the books of the firms abroad in which he was interested, nor was it suggested that the copies produced by him were in any way inaccurate.

Held that the rejection of the account books was not justified and that the Income-tax Officer had therefore no right to make the assessment on an estimate.

Section 13 of the Act relates only to the method of accounting, and the books cannot be rejected merely because the method of accounting does not appeal to the Income-tax Officer. He may adopt the method of accounting which he prefers, but he cannot reject an assessee's books by reason of the provisions of section 13. Nor had the Income-tax Officer the right to reject the books in question because they did not relate to the foreign business. They related to the business which was being assessed, namely that at headquarters, and were not false or incomplete.

The Income-tax authorities cannot require the assessee to keep the books of his business in British India in a particular manner and they cannot require him to include in his books the details of his business abroad.

When claiming a deduction an assessee must give the particulars required by proviso (*a*) of section 10 (2) of the Indian Income-tax Act of 1922. If he fails to do so he cannot claim the deduction.

In the matter of the Indian Income-tax Act XI of 1922 and in the matter of the assessment of PR. AL. M. Muthukaruppan Chettiar.

P. R. Srinivasan for assessee.

M. Patanjali Sastri for Commissioner of Income-tax.

The JUDGMENT of the Court was delivered by LEACH C.J.—This reference relates to the assessment to income-tax of one Pr. Al. M. Muthukaruppan Chettiar for the year 1935–36. The assessee lives at Paganeri in Chettinad where he has his business headquarters. He is a partner in numerous money-lending firms carrying on business in Burma and the Federated Malay States and is the owner of a rice mill at Wakema in Burma. Until 1930 he had also a money-lending business in Colombo. He was assessed in respect of his business at headquarters and on sums which were held to be remittances of profits from foreign business. Four questions are embodied in this reference, namely :

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" (i) Is there any evidence to support the rejection of the assessee's account books kept at his headquarters in British India ?

(ii) Is the assessee entitled in law to a deduction of Rs. 1,875 in respect of depreciation of machinery in the Wakema mill, he having leased the mill ?

(iii) Is the Income-tax Officer entitled in law to treat the remittance of Rs. 88,834 as representing a remittance of profits from a foreign business ?

(iv) Were there any materials before the Income-tax Officer from which he could hold that debts Nos. 23, 174, 42, 80, 145, 166, 39 and 147 should have been written off before 12th April 1931 ? "

The first question relates to the assessment in respect of the assessee's business at headquarters. The assessee returned a loss, but the Income-tax Officer came to the conclusion that he had made a profit of Rs. 5,000. The assessment was made under

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section 23 (3) of the Income-tax Act after the Income-tax Officer had rejected the assessee's books. It is not suggested that the books are false; it is accepted that they are correct as far as they relate to the business at headquarters. The Income-tax Officer however rejected the books on the ground that they did not "record the capital invested in the various concerns both individually and in partnership in Burma and outside British India and therefore could not be held to be complete." On appeal the Assistant Commissioner concurred in the rejection of the books on the ground that "the appellant did not produce proper account books showing his total wealth and its distribution." The Income-tax authorities cannot require the assessee to keep the books of his business in British India in a particular manner and they cannot require him to include in his books the details of his business abroad. In addition to producing the books which related to the transactions in respect of the business at headquarters he produced copies of the books of the firms abroad in which he was interested. He was not asked to produce the originals, nor was it suggested that the copies were in any way inaccurate. It comes to this: the books were rejected because they did not include entries relating to foreign business which would have been convenient for the Income-tax authorities when investigating the profits made abroad. In his statement referring this case to the Court the Commissioner of Income-tax attempts to justify the rejection of the books under the provisions of section 13 of the Act. We have pointed out in another case, *Subbayya* v. *Commissioner of Income-tax, Madras*(1), to-day that section 13 relates only to the method of accounting,

(1) I.L.R. [1939] Mad. 404.

and the books cannot be rejected merely because the method of accounting does not appeal to the Income-tax Officer. The Income-tax Officer may adopt the method of accounting which he prefers, but he cannot reject an assessee's books by reason of the provisions of section 13. Nor had the Income-tax Officer the right to reject the books in question because they did not relate to the foreign business. They related to the business which was being assessed, namely that at headquarters, and were not false or incomplete. It follows that there is no evidence to support the rejection of the account books and this being so the Income-tax Officer had no right to make the assessment on an estimate. He should have paid regard to the entries in the books. This is the answer to the first question.

With regard to the disallowance of the sum of Rs. 1,875 in respect of depreciation of machinery in the Wakema rice mill, the Income-tax Officer wrongly held that the deduction claimed was not allowable in law. It was disallowed because the mill had been worked by the lessee and not by the owner. The disallowance was nevertheless proper. When claiming a deduction an assessee must give the particulars required by proviso (*a*) of section 10 (2). This he admittedly failed to do and therefore he was not in a position to claim the deduction. The answer to the second question is that in the circumstances the assessee is not entitled in law to the deduction.

The Income-tax Officer has treated as a remittance of profits a sum of Rs. 88,834 which the assessee received from Singapore on 10th May 1934. The assessee closed his money-lending business in Colombo on 31st May 1930, having made a profit there of $57,650. He then transferred this sum to Singapore,

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where he had carried on a money-lending business for several years previously in partnership with others. The original partnership in Singapore was wound up in 1930 and on the 8th August of that year the assessee entered into a new partnership there. To this new partnership he contributed three sums as his share of the capital, namely: (i) $57,650, the profits which he had made in Colombo; (ii) $51,046, the profits which he had received from the earlier partnership in Singapore, and (iii) $16,000 being the amount of the capital he had invested in the earlier Singapore partnership. These three sums were entered in separate accounts in the books of the new firm. The assessee says that the sum of Rs. 88,834 represents a withdrawal from the account relating to the profits made in Colombo. It is not disputed that if this sum in fact represents profits made in the Colombo business it is not assessable to Indian Income-tax, having been earned four years before the year of assessment. The onus of proving that this sum represented profits made in Colombo was on the assessee and the Income-tax authorities held that he had not discharged it, but this finding must be held to be without foundation in view of the following facts which are beyond dispute: (i) In 1930 the assessee remitted from Colombo to Singapore a sum representing profits which was more than sufficient to provide the remittance in question; (ii) this money was kept in a separate account in Singapore; (iii) the remittance in question was debited to this account; (iv) specific instructions requiring the remittance to be debited to this account were given in a letter written by the assessee. But the matter does not end there. On 13th April 1934 the assessee received from Singapore a remittance of Rs. 15,000 which was debited to the account relating to

his profits in the previous partnership in Singapore and on 17th May 1934 he received a remittance of Rs. 20,000 which was also debited to this account. The Commissioner of Income-tax has recognised that these remittances of Rs. 15,000 and Rs. 20,000 do represent profits made in Singapore before 12th April 1931. In fact he reversed a decision of the Income-tax Officer holding that these remittances represented profits made subsequent to that date. There is no difference whatever between these remittances and the remittance of Rs. 88,834 and, if it was right—as it undoubtedly was—to treat the remittances of Rs. 15,000 and Rs. 20,000 as being remittances of old profits, it follows that the remittance of Rs. 88,834 must be treated in the same way. On the evidence before the Income-tax Officer he was bound to hold that the Rs. 88,834 represented a remittance of profits made in Colombo. It is not a question of the discharge of the burden of proof. There was very positive evidence on one side and no evidence at all on which the Income-tax Officer could base his decision. Therefore the answer to the third question must be in the negative.

The answer to the fourth question must also be in the negative. The debts here referred to represent moneys which the assessee had lent to various people before 1930, some on security and some without security. In cases where moneys were lent on securities they had been realised before 1930 or in the course of that year, but in all cases payments to account had been made in 1930. The debts were not written off as irrecoverable in the assessee's books until 1934. It is said that they should have been written off before 12th April 1931. There is nothing to warrant this assertion. It was not until after 12th April 1931 that the assessee was in a position to know whether the

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debts were irrecoverable or not. The Assistant Commissioner allowed sums to be written off as irrecoverable when payments had been made to account in January or March 1931, but he was not prepared to treat the loans in which part repayments had been made in 1930 as being on the same basis, which is illogical. We consider that there were no materials before the Income-tax Officer from which he could hold that these debts should have been written off before 12th April 1931.

As the assessee has succeeded in three out of the four questions, which refer to the main items, we consider that he is entitled to his costs and these we fix at Rs. 250.

A.S.V.

INCOME-TAX REFERENCE.

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

1938, October 27.

GUNDA SUBBAYYA, PETITIONER,

v.

THE COMMISSIONER OF INCOME-TAX, MADRAS.*

Indian Income-tax Act (XI of 1922), sec. 23 (3)—Assessee's failure to produce evidence on which Income-tax Officer can make proper assessment of his income—Procedure to be followed by Income-tax Officer in case of—Propriety of making assessment in such a case as in a case falling under sec. 23 (4)—Sec. 13 of Act—Effect of—Income-tax Officer making assessment under sec. 23 (3) on material gathered by himself—Disclosure of material to assessee—Necessity—Reference to such material in order of assessment—Desirability of.

Where in a case falling under sub-section 3 of section 23 of the Indian Income-tax Act of 1922 the assessee fails to

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* Original Petition No. 126 of 1937.