INCOME-TAX REFERENCE.

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

1938, November 1.

THE COMMISSIONER OF INCOME-TAX, MADRAS.
PETITIONER,

v.

VALLIAMMAI ACHI, wife of S. M. A. M. RAMASAMI CHETTIAR, PALLATHUR, RAMNAD DISTRICT,
RESPONDENT.*

Indian Income-tax Act (XI of 1922), ss. 3, 4 (1) and 24 (1)—Assessment for 1937–38—Business of assessee in Burma—Loss sustained in, in year of account, 1936–37—Set off of, against assessee's income for that year consisting of interest received from investments—Assessee's right of—Burma, part of British India in year of account but not part of British India in year of assessment—"British India", if means what was British India in year of account or what is British India in year of assessment.

The assessee who resided in British India owned a saw mill in Burma. In the account year, that is the year commencing from 1st April 1936, the saw mill business resulted in a loss and the assessee's income consisted solely of interest received from investments. Burma was part of British India in the account year but it ceased to be so on 1st April 1937. The question was whether the loss sustained by the assessee in the saw mill business in the year of account 1936–37 was allowable as a deduction in the year of assessment 1937–38.

Held that as when the assessee sustained the loss in the saw mill business in Burma, Burma was part of British India, the loss must, under section 3 and section 4 (1) of the Indian Income-tax Act of 1922 read together, be deemed to have been sustained in British India and that the assessee was entitled to set off the said loss against the profits from her investments.

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* Original Petition No. 105 of 1938.

Section 4 cannot be divorced from section 3 and, as section 3 charges the tax on the income of the previous year, it must be charged on the income received in what was British India during the previous year.

The Income-tax Act cannot be applied in any year until the Finance Act has been passed, but the Act cannot be treated as being a statute which is passed annually. It is a permanent enactment but it may not be enforced in any particular year until the Finance Act has been passed.

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

Advocate-General (Sir A. Krishnaswami Ayyar, with him *M. Subbaraya Ayyar*) for assessee.—Section 3 of the Indian Income-tax Act of 1922 charges the tax on the income, profits and gains of the previous year. Therefore under the Indian Act, unlike as under the English Act, it is the previous year's income that is the subject of the tax. Therefore what is British India is what was British India in the year for which tax was payable. The tax must be charged on the income received in what was British India during the previous year, i.e., the account year. In *Behari Lal Mullick, In re*(1) and *The Commissioner of Income-tax, Madras* v. *Karuppiah Kangani*(2) it was held that under the Indian Act the income of the year previous to the year of assessment is to be taken not merely as a guide to the ascertainment of the income of the year of assessment but as the actual sum which is subject to taxation. [Reference was made to the Income-tax Manual, Part II (1), pages 76, 77, and Part III, page 79.]

M. Patanjali Sastri for Commissioner of Income-tax.—The fact that under the Indian Act the previous year's profits are the subject-matter of the tax payable for the succeeding year does not affect the question arising in the present case. Section 3 is merely a charging section. Section 4 does not impose a liability. It is the Finance Act of the particular year that imposes the liability. Until the Finance Act is enacted no liability is imposed.

[VARADACHARIAR J.—The Finance Act merely gives the rate for the particular year.]

(1) (1927) I.L.R. 54 Cal. 630.

(2) (1923) 55 M.L.J. 844 (F.B.).

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No; the liability of any income to income-tax is itself imposed by the Finance Act for the particular year. [Reference was made to section 7 of the Finance Act of 1937.] It is after this section is enacted that the liability to income-tax is imposed. On what is that liability to be imposed?—on income accruing, arising or received in British India; section 4 (1). Section 3 says what is British Indian income, i.e., British Indian income after the enactment of the Finance Act of 1937. The various steps are: the Finance Act, section 4 (1) and section 3. British India means what is British India in the year of assessment, in the year in which the liability is imposed or arises. Section 46 (1) of the Government of India Act, 1935, provides that Burma shall cease to be part of British India from 1st April 1937.

[THE CHIEF JUSTICE.—Your contention is that as the Income-tax Act does not come into operation until enacted in any year, until a Finance Act is enacted for that year, British India must mean British India in the year in which the Finance Act is passed, i.e., the year of assessment. The Finance Act cannot alter the operation of the Income-tax Act.]

That is pointed out by RANKIN C. J. in *Behari Lal Mullick, In re*(1) at page 640. "Received in British India" means received last year in British India of the year of assessment. [*Gazette of India*, page 360, was referred to as to the separation of India, Burma and Aden.]

LEACH C.J.

The JUDGMENT of the Court was delivered by LEACH C.J.—The assessee who is a resident of Pallathur in the Madras Presidency owns a saw mill at Gyobingauk in Burma. In the account year, that is the year commencing from 1st April 1936, the saw mill business resulted in a loss of Rs. 8,663 and her income consisted solely of interest received from investments. For the purpose of assessment to income-tax she sought to set off the loss sustained in the saw mill business against the profits from her investments. The Income-tax Officer refused to allow her to do so on the ground that on 1st April 1937

(1) (1927) I.L.R. 54 Cal. 630.

Burma had ceased to be part of British India, and the loss having been sustained outside British India it could not be set off. On these facts the Commissioner of Income-tax has referred to the Court the following question :

"Whether the decision of the Assistant Commissioner that the loss of Rs. 8,663 incurred by the petitioner in Burma in the year of account 1936–37 is not allowable as a deduction in the year of assessment 1937–38 is correct in law ?"

In order to appreciate the arguments advanced on behalf of the income-tax authorities it is necessary to refer to the provisions of section 3 and of section 4 (1) of the Indian Income-tax Act. Section 3 is the charging section and it provides that where any Act of the Central Legislature enacts that income-tax shall be charged for any year at any rate or rates applicable to the total income of an assessee, tax at the rate or those rates shall be charged for that year, in accordance with, and subject to the provisions of, the Act in respect of all income, profits and gains of the previous year of every individual, Hindu undivided family, company, firm and other association of individuals. Section 4 (1) states :

"Save as hereinafter provided, this Act shall apply to all income, profits or gains as described or comprised in section 6, from whatever source derived, accruing, or arising or received in British India, or deemed under the provisions of this Act to accrue, or arise, or to be received in British India."

It is said that as the Income-tax Act does not come into operation in any year until the Finance Act has been passed, the Income-tax Act must be treated as a statute which is passed every year, and the words " British India " must be deemed to mean British India as it stands at the time of the passing of the Finance Act and not what it was in the previous year. We do not accept this argument. It is true

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that the Income-tax Act cannot be applied in any year until the Finance Act has been passed, but the Act cannot be treated as being a statute which is passed annually. It is a permanent enactment, but it may not be enforced in any particular year until the Finance Act has been passed. Section 4 cannot be divorced from section 3, and as section 3 charges the tax on the income of the previous year it must, we consider, be charged on the income received in what was British India during the previous year. In *The Commissioner of Income-tax, Madras* v. *Karuppiah Kangani*(1) a Full Bench of this Court held that under the Act the income of the year previous to the year of assessment is not to be taken as merely a guide to the ascertainment of the income of the year of assessment, but as the actual sum which is subject to taxation. This decision followed a decision of the Calcutta High Court to the same effect—*Behari Lal Mullick, In re*(2).

When the assessee in this case sustained the loss on the working of her saw mill in Burma, Burma was part of British India, and if section 3 and section 4 (1) are to be read together, as in our opinion they must be, the loss must be deemed to have been sustained in British India. Therefore the answer we give to the question referred is that the decision of the Assistant Commissioner in not allowing the deduction is not correct in law. The assessee is entitled to her costs, Rs. 250, and to the refund of her deposit of Rs. 100.

A.S.V.

(1) (1928) 55 M.L.J. 844 (F.B.). (2) (1927) I.L.R. 54 Cal. 630.