INCOME-TAX REFERENCE.

Before Sir Lionel Leach, Chief Justice, Mr. Justice King and Mr. Justice Krishnaswami Ayyangar.

THE COMMISSIONER OF INCOME-TAX, MADRAS, PETITIONER,

1940, February 6.

v.

THE SALEM DISTRICT URBAN BANK, LTD., SALEM, RESPONDENT.*

Indian Income-Tax Act (XI of 1922), sec. 3—Co-operative Central Bank registered under Indian Co-operative Societies Act (II of 1912)—Shareholders consisting of persons and societies, if "association of individuals" within sec. 3 of Income-Tax Act—Bank doing business with non-members also, if a mutual benefit society.

The assessee, a Co-operative Central Bank, registered under the Indian Co-operative Societies Act, 1912, had 671 shareholders, consisting of 138 persons and 533 co-operative societies. The assessee did not confine its business to its shareholders but carried on ordinary banking business as well. In respect of the assessment of the Bank for the year 1937–38, a reference under section 66 (2) of the Income-Tax Act, 1922, was made to the High Court on the following two questions :—

(i) "Whether the Bank is an association of individuals within the meaning of section 3 of the Act and whether it can be assessed to income-tax as an association of individuals ?"

(ii) "Whether the Bank is not a mutual benefit society and as such can be said to have derived a profit of Rs. 26,624 as a co-operative society to be included in its total income ?"

Held : (i) The first question should be answered in the affirmative. The word "individual" in section 3 of the Act does not mean a person merely, but includes a corporation. The word "association of individuals" in the section must

* Original Petition No. 256 of 1939.

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consequently embrace an association of corporate bodies. The assessee was, therefore, an "association of individuals" within the meaning of that section.

Commissioner of Income-tax, Bombay v. *Ahmedabad Millowners' Association*(1), dissented from.

(ii) The assessee carried on a banking business with non-members and therefore could not maintain the claim to be a mutual benefit society.

Trichinopoly Tennore Hindu Permanent Fund, Ltd. v. *Commissioner of Income-tax*(2), applied and followed.

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

P. R. Srinivasan for respondent.—The assessee is a Co-operative Central Bank. Its members consist of primary Co-operative Societies and persons. It is registered under the Indian Co-operative Societies Act, 1912. It is not a company incorporated under the Companies Act. It is not one of the entities mentioned in section 3 of the Income-Tax Act, 1922, which is the charging section. The bank is therefore not liable to assessment. It is not an "association of individuals" within the meaning of the section. The word "individual" must be given the same meaning in both places in the section. To interpret differently would be opposed to canons of construction. The word "individual" has not been defined in the Income-Tax Act or in the General Clauses Act, but the word "person" has been. The word "person" is used in contrast with the word "individual" in section 3, clause 39 of the General Clauses Act of 1897. Though the word "individual" is given a number of different meanings, wide as well as restricted, in the Oxford Dictionary, the restricted meaning of human being applies to it in the earlier part of section 3 of the Income-tax Act and the same restricted meaning must be given to it in the later part also, in the phrase "association of individuals." The phrase "other association of individuals" in the section must be read disjunctively. It does not necessarily follow that the other classes mentioned just preceding that phrase must be construed as being "associations of individuals." It has been held that

(1) I.L.R. [1939] Bom. 451. (2) I.L.R. [1938] Mad. 183.

a partnership cannot consist of persons other than human beings.

[LEACH C.J.—Cannot two limited companies carry on business in partnership, if their respective memoranda of association permit it ?]

In a firm, a company cannot be a partner.

[LEACH C.J.—You must go further and establish that an incorporated company consisting of corporate bodies is not an association of individuals.]

The latest decision of the Bombay High Court in *Commissioner of Income-tax, Bombay* v. *Ahmedabad Millowners' Association*(1) is directly in point. It was held in that case that an association of limited liability companies is not an "association of individuals." "Association of individuals" in section 3 means "association of human beings" and no other. Having regard to this difficulty, the Legislature has, by amendment in 1938, used the word "persons" instead of "individuals" in section 3 of the Income-Tax Act.

On the second question, the Income-tax authorities erred in including the profits derived from its own members as part of the total income for determining the rate of tax applicable to the assessee. A Co-operative Society does not make any profits in the technical sense from its transactions with its members. Such receipts from the members do not constitute income at all and should not be taken into consideration, even for the purpose of determining the rate of tax.

[KRISHNASWAMI AYYANGAR J.—It depends upon the question whether the bank is a mutual benefit society, confining its dealings to its members only.]

The bank does banking business. But it does not open current accounts except for its members only. Deposits are received from strangers; but loans are granted mainly to its members.

K. V. Sesha Ayyangar for petitioner.—The bank does not confine its business to its members. It gives loans to stranger-depositors on the security of their deposits. Income is derived from transactions with members as well as non-members.

(1) I.L.R. [1939] Bom. 451.

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The bank is therefore not a mutual benefit society. See *Trichinopoly Tennore Fund* v. *Commissioner of Income-tax*(1) and *Trichinopoly Tennore Hindu Permanent Fund, Ltd.* v. *Commissioner of Income-tax*(2). The Income-tax authorities were justified under the notification of the Government of India issued under section 60 of the Income-Tax Act in including the income from its members in the total income for determining the rate of tax applicable to the assessee.

The bank is an "association of individuals" and is liable as such to assessment. In *Currimbhoy Ebrahim Baronetcy Trust* v. *The Commissioner of Income-tax, Bombay*(3) a statutory trust-corporation was held by the Bombay High Court to be an individual and was assessed to tax accordingly. The decision was affirmed by the Privy Council; see *Trustees of Sir C. Ebrahim Baronetcy Trust* v. *The Commissioner of Income-tax, Bombay*(4). So also a joint family firm has been held to be an individual by the Allahabad High Court in *Messrs. Ram Ratan Das Madan Gopal* v. *The Commissioner of Income-tax, Central and United Provinces*(5). The word "individual" in the proviso to section 55 was held to include a joint family firm. A union consisting of two firms and a joint family was assessed to tax as an association of individuals by the Lahore High Court in *Mian Channu Factories Union* v. *The Commissioner of Income-tax, Punjab*(6). If a corporate body is an individual, an association of corporate bodies should be an association of individuals. The decision in the *Ahmedabad Millowners' Association* case(7) is opposed to the decision of the Privy Council in *Currimbhoy Trust* Case (4) and has been decided wrongly.

P. R. Srinivasan in reply:—The observations of the Bombay High Court in *Currimbhoy Trust* case(3) are *obiter*. It did not matter to the assessee in that case whether it was assessed as an individual or as an association of individuals. The question whether the assessee was an individual or association of individuals was not one of the matters referred to the High Court. No such question was raised either before the Privy Council. In *Messrs. Ram Ratan Das Madan Gopal* v. *The*

(1) (1927) 2 I.T.C. 386.
(2) I.L.R. [1938] Mad. 183.
(3) (1931) 5 I.T.C. 434.
(4) (1934) 7 I.T.C. 195 (P.C.).
(5) (1934) 8 I.T.C. 69.
(6) (1936) 9 I.T.C. 246.
(7) I.L.R. [1939] Bom. 451.

Commissioner of Income-tax, Central and United Provinces(1) the Allahabad High Court itself recognized that the word "individual", in the main portion of section 55, meant "human being." The decision of the Lahore High Court is not opposed to the interpretation of "individuals" as "human beings" in section 3 of the Act.

JUDGMENT.

LEACH C.J.

LEACH C.J.—The assessee is a Co-operative Central Bank registered under the Indian Co-operative Societies Act of 1912. This statute has been replaced, so far as this Presidency is concerned, by the Madras Co-operative Societies Act VI of 1932, but nothing turns on this. The assessee corporation consists of 671 shareholders. Of the shareholders 138 are *persons* and 533 *co-operative societies*. For the year of assessment 1937–38 the Income-tax authorities have held that the assessee had a total income of Rs. 37,445 made up as follows: Rs. 5,293 interest on taxed securities; Rs. 1,519 interest on tax-free securities; Rs. 4,009 interest obtained on deposits and Rs. 26,624 profits made on its transactions. The assessee does not confine its business to its shareholders but carries on an ordinary banking business as well. By virtue of a notification of the Government of India under Section 60 of the Indian Income-Tax Act of 1922 the "profits" of a co-operative society are exempt from income-tax, but the notification stipulates that the profits shall be taken into account in determining the total income for the purposes of the Indian Income-Tax Act. After excluding the Rs. 1,519 representing the interest on tax-free securities of the assessee and the Rs. 26,624 made on its business, the Income-tax authorities have assessed

(1) (1934) 8 I.T.C. 69.

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the assessee on an income of Rs. 9,302 but by taking into account the Rs. 26,624 they have held that the assessee must pay tax on the Rs. 9,302 at the rate which would be payable on an income of Rs. 37,445. The assessee challenged the correctness of this decision and asked the Commissioner of Income-tax to refer to this Court under the provisions of section 66 (2) of the Act certain questions. The Income-tax Commissioner considered that only two questions of law arose and these he has referred. They are as follows :

(*a*) Whether the Bank is an association of individuals within the meaning of section 3 of the Act and whether it can be assessed to income-tax as an association of individuals.

(*b*) Whether the Bank is not a mutual benefit society and as such can be said to have derived a profit of Rs. 26,624 as a co-operative society to be included in its total income.

The assessee is satisfied with the reference of these two questions and therefore the Court is not called upon to go beyond them.

The first question arises out of a contention advanced on behalf of the assessee that the assessee was not liable to income-tax at all as the assessee does not come within the charging section 3. Section 3 says :—

"Where any Act of the Indian 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, this 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."

The argument is that the word "individual" must be taken to be used merely as denoting a person and therefore the words "and other association of individuals" cannot apply to a corporate body which for the most part is composed of co-operative

societies. In support of this contention great reliance is placed on the judgment in *Commissioner of Income-tax, Bombay* v. *Ahmedabad Millowners' Association*(1). In that case it was held that the expression "association of individuals" in section 3 means an association of human beings. The question which the Court had to decide was whether the Ahmedabad Millowners' Association which was composed of 61 members, 60 of whom were limited liability companies and one a person, was assessable to income-tax. The case was decided by BEAUMONT C.J. and WADIA J. In the course of his judgment the learned Chief Justice stated that he was disposed to agree with the Commissioner of Income-tax that if one merely took the dictionary meaning of the word "individual" it would include a limited liability company, but he considered that to do so would not be in accordance with its popular use by people speaking the English language. He concluded his judgment with this statement:

"The question is whether 'other association of individuals' includes an association of companies. It seems to me quite clear on the context that it cannot do so. 'Individual' where first used must mean human being, because it is used as something distinct from a joint-family, firm and company. The whole expression seems to me to mean 'every human being, Hindu undivided family, company, firm and other association of human beings.' One cannot give to the word 'individuals' in the expression 'association of individuals' a different meaning to that which the word 'individual' bears in the same phrase."

This opinion is in direct conflict with the opinion expressed by the learned Chief Justice in an earlier case; *Currimbhoy Ebrahim Baronetcy Trust* v. *The Commissioner of Income-tax, Bombay*(2). One of the

(1) I.L.R. [1939] Bom. 451. (2) (1931) 5 I.T.C. 484.

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questions in that case was whether a corporation styled "The Trustees of the Sir Currimbhoy Ebrahim Baronetcy Trust" which had been created under an Act passed by the Governor-General in Council was to be deemed to be an "individual" within the meaning of section 3 of the Income-Tax Act. The Income-tax authorities had assessed the corporation as an "association of individuals." BEAUMONT C.J. held that the corporation was an "individual" within the meaning of the section and not an "association of indivduals." The question of the legality of the assessment was taken to the Privy Council and although the question of the status of the corporation was not directly raised before the Board it falls to be observed that the decision of the Bombay High Court was affirmed.

I consider that the opinion expressed in *Currimbhoy Ebrahim Baronetcy Trust* v. *The Commissioner of Income-tax, Bombay*(1) is preferable to that expressed in *Commissioner of Income-tax, Bombay* v. *Ahmedabad Millowners' Association*(2). While it is true that ordinarily in conversations the use of the word "individual" would be taken to denote a person, the word has in fact a far wider meaning. The first definition of the word given in the Oxford Dictionary is: "one in substance or essence; forming an indivisible entity; indivisible." It is also defined as "existing as a separate indivisible entity, numerically one, single." If a corporate body created by a statute is an individual within the meaning of the section, and I hold that it is, a co-operative society registered under the Co-operative Societies Act must fall within the same category. It is a corporate

(1) (1931) 5 I.T.C. 484. (2) I.L.R. [1939] Bom. 451.

body and has perpetual succession. I consider that it is not reasonable to suppose that the Legislature intended that there should be a difference in the meaning of the word "individual" and the plural "individuals." If the word "individual" includes a corporation, the words "association of individuals" must embrace an association of corporate bodies, and therefore the assessee is an "association of individuals".

Support for the opinion that the assessee comes within section 3 is to be found in the decision of the Allahabad High Court in *Messrs. Ram Ratan Das Madan Gopal* v. *The Commissioner of Income-tax, Central and United Provinces*(1) and of the Lahore High Court in *Mian Channu Factories Union* v. *The Commissioner of Income-tax, Punjab*(2). In the former case a Bench of the Allahabad High Court held that the word "individual" in the proviso to section 55 of the Income-tax Act includes an undivided Hindu family. In the Lahore case, which was also decided by a Bench, a "ginning factories union," which was composed of two firms and a Hindu undivided family, was assessed to income-tax on the basis that it was an association of individuals. To give the word "individual" the meaning of "person" only, would, it seems to me, be to disregard the scheme of the Act and to rob the word of an accepted meaning. It follows that in my opinion the first question referred should be answered in the affirmative.

The second question requires little discussion. The Income-tax authorities have held that the assessee is carrying on an ordinary banking business. It carried on a banking business with non-members and

(1) (1934) 8 I.T.C. 69. (2) (1936) 9 I.T.C. 246.

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therefore cannot maintain the claim to be a mutual benefit society. It can only escape taxation under the provisions of the notification which the Central Government has published under section 60 of the Act, which means that it must pay tax at the rate applicable to the amount of its total profits, namely, Rs. 37,445. The principle stated in *Trichinopoly Tennore Fund* v. *Commissioner of Income-tax*(1) and repeated in *Trichinopoly Tennore Hindu Permanent Fund, Ltd.* v. *Commissioner of Income-tax*(2) applied.

I would answer the second question in that sense.

As my learned brothers agree with me, the assessee must pay the costs which we fix at Rs. 250.

KING J.—I agree.

KRISHNASWAMI AYYANGAR J.—I agree.

N.S.

APPELLATE CIVIL.

Before Sir Lionel Leach, Chief Justice, and Mr. Justice Krishnaswami Ayyangar.

1940, January 24.

V. C. MANICKA MUDALIAR (DEFENDANT), APPELLANT

v.

ANDALAMMAL (PLAINTIFF), RESPONDENT.*

High Court—Original Side Rules—Practice—Reference of material questions of law and fact to Official Referee—Not only irregular but invalid—Official Referee, a commissioner only.

The procedure of referring material questions of law or fact relating to substantive rights of parties in a case, to the Official Referee for decision and report is not only irregular

(1927) 2 I.T.C. 386 (2) I.L.R. [1938] Mad. 183.

*Original Side Appeal No. 64 of 1938.