

## INCOME-TAX REFERENCE.

*Before Mr. Justice Madhavan Nair, Mr. Justice Stone  
and Mr. Justice King.*

K. M. S. CHIDAMBARAM CHETTIAR, MINOR BY MOTHER  
AND GUARDIAN VISALAKSHI ACHI BY HER DULY AUTHORIZED  
AGENT T. K. SUBBRAHMANYA AYYAR, PETITIONER,

1935,  
September 18.

v.

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

*Indian Income-tax Act (XI of 1922), sec. 4 (2)—Receipt of  
income—Date of—Payment first, then a contract to sell and  
then completion of transaction by execution of a sale deed—  
Receipt of income in case of, only on date of execution of  
sale deed.*

The assessee carried on business, *inter alia*, in Klang outside British India. On 3rd April 1929, a sum of Rs. 50,000 was debited to his account in his Klang books as having been paid on that date to one S. The payment admittedly related to the purchase by the assessee of certain house-sites of S adjoining the assessee's house in British India. The contract to sell the house-sites was entered into on 5th April 1929, and the sale deed was executed on 8th May 1929. The payment of Rs. 50,000 made on 3rd April 1929 was not shown in the accounts of the assessee as remittance to him in that year.

*Held* that the sum of Rs. 50,000 must be considered to have been received by the assessee only on 8th May 1929, and, therefore, during the accounting period, 13th April 1929 to 12th April 1930, and that he was liable to be taxed with respect to that sum, under section 4 (2) of the Income-tax Act of 1922, for the year 1930-31.

The sum of Rs. 50,000 could not be considered to have been received by the assessee on 3rd April 1929.

PETITION under section 66 (3) of the Indian Income-tax Act (XI of 1922).

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\* Original Petition No. 3 of 1935.

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*M. Subbaraya Ayyar* and *C. S. Rama Rao*  
*Sahib* for petitioner.

*M. Patanjali Sastri* for Commissioner of  
Income-tax.

MADHAVAN  
NAIR J.

The JUDGMENT of the Court was delivered by MADHAVAN NAIR J.—The question referred to us by the Commissioner of Income-tax is : “ In what year was the remittance of Rs. 50,000 (Rupees Fifty thousand) received ? ”

This question arises in connection with an additional assessment imposed upon the petitioner for the year 1930-31 with respect to this amount. The accounting year is the period from 13th April 1929 to 12th April 1930. The question is whether this amount may be considered to have been received by the assessee during this period in the following circumstances.

The assessee is a Nattukottai Chetti doing business in Burma, Klang, Kuala Lumpur, Penang, etc. On 3rd April 1929, a sum of Rs. 50,000 was debited to his account in his Klang books as having been paid on that date to S.A.Rm. Penang, a money-lending business owned by another Nattukottai Chetti. The entry does not say in what connection this amount was paid. But it is admitted that it relates to the purchase of house-sites by the petitioner. He was negotiating for the purchase of certain house-sites adjoining his house at Kanadukathan which belonged to S.A. Rm. An agreement to sell land was entered into between the petitioner and S.A.Rm. on 5th April 1929. The sale deed was executed on a later date, on 8th May 1929. The payment of Rs. 50,000 made on 3rd April 1929 was, it may be mentioned, not shown in the accounts of the

petitioner as remittance to him in that year. If that was so shown, we may take it that the Income-tax authorities would have assessed him for that amount for the year 1929-30. On these facts, it was contended by the petitioner that he cannot be taxed under section 4 (2) of the Income-tax Act for that sum of Rs. 50,000 on the ground that he has received that amount during the accounting period, his case being that he could be considered to have received that amount only on 3rd April 1929 and not at a later date. Of course, there is no transfer of money in this case, it being understood that the profits were received in the shape of two house-sites. The Income-tax authorities decided that the profits could be said to have been received only on 8th May 1929 when the sale deed was executed and not earlier.

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The question for us to determine is whether the money could be said to have been received on 3rd April 1929 or on 8th May 1929. An intermediate position was taken up by the petitioner before the Assistant Commissioner of Income-tax, who heard the appeal against the order of assessment. It was argued before him that, if the amount was not received on 3rd April 1929, at any rate it should be deemed to have been received on 5th April 1929, when according to him he obtained possession of the property, which would be anterior to the date of the sale deed, 8th May 1929. If that argument is accepted, of course it will not be possible to assess him for the amount for the year 1930-31. But the Assistant Commissioner refused permission to the assessee to raise that point as it was not raised before the Income-tax authority in the first instance. The point is

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now raised before us and it is pressed that an opportunity should be given to the petitioner to enable him to adduce evidence with a view to establish that he came into possession of the house-sites prior to 8th May 1929.

It is clear on a reading of the order passed by the original taxing officer that this question was not raised before him. His agent appeared on behalf of the petitioner and explained the case, and the contentions raised by him are also referred to by the officer. This question of possession has not been referred to at all in the order. On the other hand, it is said that the assessee actually got possession in the accounting year. The point not having been raised before the taxing officer in the first instance, the appellate authority declined to give permission to the petitioner to raise the point as it was one which could be decided only after hearing the evidence. In the circumstances, we think that the refusal by the appellate authority was perfectly justified. We are not inclined to interfere with the discretion of the Income-tax authorities in refusing the petitioner to adduce fresh evidence.

So, the only question remaining to be considered is whether it can be said that the money was received by the petitioner on 3rd April 1929 or on 8th May 1929. It is contended that on the date when the money was paid a valuable contractual right had arisen in favour of the petitioner and therefore it must be considered that the money was remitted in law on that date. The argument no doubt is ingenious. But it appears to us that there is no substance in it. The question, strictly speaking, would arise only in a case where the

contract to sell stands by itself and has not been followed by any execution of a sale deed. In this case, first of all, there is the payment, then the contract to sell and then there is the final completion of the whole transaction by the execution of the sale deed. The simple question therefore is, when was the money received in the shape of the house-sites? In the circumstances, there can be only one answer and that is that it was received only on 8th May 1929. That date falling within the year of accounting, the assessee is liable to payment of income-tax on that amount.

Various other questions are sought to be raised before us, one of which is that the question arises in connection with the sale of land and not with the remittance of money. That question was not raised at any stage of the case and we are not inclined to hear new points now raised before us.

In the circumstances, we hold that the money was received during the accounting period, 13th April 1929 to 12th April 1930, and that the petitioner is liable to pay income-tax on that amount for the year 1930-31. The reference is answered accordingly. The Commissioner will be entitled to get his costs Rs. 250 from the assessee.

A.S.V.

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