

1927

IN THE
MATTER OF
MAKUND
SARUP.

the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible, in any Statute, what is called an equitable construction, certainly such a construction is not admissible in a Taxing Statute, where you can simply adhere to the words of the Statute :” *Partington v. Attorney-General* (1).

For the above reasons I would concur in answering the question propounded in the affirmative.

BY THE COURT.—The order of the Court is that the annual payments made to the mortgagee in the circumstances mentioned in the reference are excluded from the assessment of the profits and gains of his business, as being agricultural income. It would appear that this case had three hearings. We fix Rs. 100 per day as fee for both sides. The assessee will have his costs from the Crown.

Reference answered in the affirmative.

*Before Mr. Justice Sulaiman, Mr. Justice Banerji and
Mr. Justice Ashworth.*

IN THE MATTER OF SHIAM SUNDAR LAL,
SHANKAR LAL.*

1927
December,
2.

Act No. II of 1899 (Indian Stamp Act), section 57(1), sub-clause (b)—Stamp—Agreement—Document containing an agreement to pay interest, but also containing items constituting a two-sided account.

The first portion of a document, called a *sarkhat*, contained an agreement to pay interest, and was signed by two persons. Below their signatures was an entry of Rs. 500 as having been advanced to these persons on the same date, and then followed entries of a number of items on the credit and debit sides respectively, which were neither totalled nor signed. *Held*, on a reference by the Board of Revenue, that the document did not constitute more than one agreement and was properly stamped with a stamp of the value of eight annas.

*Miscellaneous Case No. 815 of 1927.
(1) (1869) L.R., 4 E. and J. App., 100.

THIS was a reference under section 57 (1), sub-clause (b), of the Indian Stamp Act of 1899, from the Secretary, Board of Revenue, United Provinces. The facts which gave rise to the reference are set forth in the judgement of the Bench before which it was laid for disposal.

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Pandit *Uma Shankar Bajpai*, for the Crown.

SULAIMAN, BANERJI and ASHWORTH, JJ. :—This is a reference under section 57(1), sub-clause (b), of the Indian Stamp Act of 1899. The facts as stated in the reference are that a document, called a *sarkhat*, was executed by Messrs. Shiam Sundar Lal, Shankar Lal, agreeing to pay interest at Rs. 1-4-0 per cent. per mensem. The top portion, which contained the agreement to pay interest, was signed by these two persons. Below their signatures there was a first entry of Rs. 500 as having been advanced to these men on the same date. Then followed entries of a number of items on the credit side and also entries of a number of items on the debit side. These, however, were neither totalled nor signed again. The document bore a stamp of eight annas. The impounding officer seems to be of opinion that every entry of borrowing is a separate agreement and ought to be stamped separately.

The document is very peculiar and is, on the facts stated in the reference, not like an ordinary mahajan's receipt written by the creditor and handed over to the debtor in order to be kept by him as a proof of the payment. As the facts are stated, the entries on both the sides of this *sarkhat* are made by the debtors, Shiam Sundar Lal, Shankar Lal, themselves. The reference does not mention whether they themselves kept the document or whether it was handed over to the creditors. It is, however, clear that there were various borrowings made on different dates.

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There can be no doubt that the top portion of the document amounted to an agreement which required a stamp duty of eight annas. So far as that portion is concerned, the document is sufficiently stamped. As regards the entries, other than the first entry of Rs. 500, it is difficult to hold that each of them constituted a separate agreement in itself. Under section 17 of the Indian Stamp Act, instruments chargeable with duty which are executed are required to be stamped before or at the time of their execution. The word "executed" has been defined in section 2, sub-clause (12), as meaning "signed, with reference to instrument." It is clear that none of the other entries was signed by the debtors. It cannot, therefore, be said that they were separate agreements executed by the debtors on various dates. The impounding officer seems to think that the signatures of the executants below the top entry would govern all the entries that follow underneath those signatures. We are unable to accept this view. In order to be so many different agreements, they should have been separately "executed," which cannot be the case here when there is only one set of signatures. In our opinion, therefore, the document does not constitute more than one agreement, and is not understamped on that ground. It is unnecessary for us to consider the further question whether the other entries amount to receipts within the meaning of section 2, sub-clause (23), which do not require the signature of any person. The reference does not state to whom this document was handed over and there are not sufficient materials before us to come to any conclusion as to whether each entry amounted to a note, memorandum or writing signifying or importing an acknowledgment within the meaning of section 2, sub-clause (23).

Our answer to the reference is that it does not constitute more than one agreement.

Reference answered