MISCELLANEOUS CIVIL

Before Mr. Justice Niamat-ullah and Mr. Justice Bennet

JAGMANDAR DAS AND OTHERS (APPLICANTS) *v.* COMMISSIONER OF INCOME-TAX (OPPOSITE PARTY)* — 1934 *November*, 30

Income-tax Act (XI of 1922), sections 4, 13—Assessment on account books—Interest credited in account books but not realised, although decreed—Whether taxable income—Interpretation of statutes—Words.

Interest decreed in favour of an assessee, but not actually realised, is not "income" for the purpose of the Income-tax Act. The mere fact that such interest has been credited in the account books of the assessee does not authorise its inclusion in computing the total income in accordance with the account books, under section 13 of the Act.

The words "accruing or arising" in section 4 of the Act merely refer to the connection between the income and the country in question, British India, and do not explain what is income and what is not income; they can not be relied on for the purpose of treating interest which has been decreed, but not yet realised, as income taxable under the Act.

Words used in an Act should be interpreted in their ordinary sense, except where it is shown that they have been used in a special or technical sense. The word "income" has nowhere been defined in the Act; and the ordinary sense of the word is what comes in, that is, what is actually received by the person.

Mr. *Vishwa Mitra*, for the assessee.

Mr. *K. Verma*, for the Crown.

NIAMAT-ULLAH and BENNET, JJ.:—This is a reference by the Income-tax Commissioner at the instance of an assessee, a Hindu undivided family. The two questions referred are: (1) Whether the unrealised decree of Rs.23,269 against Talatuf Husain and others entered in the interest khata is taxable income for the purpose of income-tax, while in fact the amount has not been received at all, and whether the assessment of the applicants is correct under the law; and (2) Whether the system of keeping the account adopted by the assessee is simply for the purpose of ascertaining the financial state

*Miscellaneous Case No. 117 of 1934.

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of the family in a particular year or is open to the interpretation put by the Income-tax Officer?

The assessment was made according to the income-tax authorities on the books of the assessee, and it is claimed that the amount of a decree, Rs.23,012-6, which the assessee obtained in the account year and which was on account of the balance of interest on a certain mortgage, should be shown as the income of the assessee. The books of the assessee showed in the ledger of the mortgagor that there was this decretal amount credited to the mortgagor and also debited. The amount was also shown in what is called the interest ledger as an amount which was to be realised. It is not disputed that no part of the amount was realised during the year in question. The claim for the department is that the books should be used for accounting and assessment in accordance with section 13 of the Indian Income-tax Act. In other words, the proposition is that, although none of the decretal amount was received, the assessee should be charged income-tax on this amount, because the assessee has shown the amount in his books. We consider that the department was correct in claiming that the assessment should be made on the books under section 13; but we do not think that the department had used the books in the right way. The Commissioner claims that under the ruling in *Commissioner of Income-tax* v. *Maharajadhiraj of Darbhanga* (1) he is entitled to charge the assessee income-tax on this decretal amount. We do not consider that this conclusion follows from that ruling. There have been a number of rulings to the contrary such as *Secretary to the Board of Revenue* v. *Arunachalam Chettiar* (2), *Pandurang Ramchandra* v. *Commissioner of Income-tax* (3), *Commissioner of Income-tax* v. *Nanhelal* (4), *Commissioner of Income-tax* v. *S. M. Chitnavis* (5), *Raja Raghu-*

(1) (1938) LL.R., 12 Pat., 518. (2) (1920) I.L.R., 44 Mad., 65.
(3) A.I.R., 1926 Nag., 180. (4) A.I.R., 1928 Nag., 241.
(5) A.I.R., 1929 Nag., 50.

nandan Prasad Singh v. *Commissioner of Income-tax* (1) and *Narain Das Bhagwan Das* v. *Commissioner of Income-tax* (2). Reference was made for the assessee to *Raja Raghunandan Prasad Singh* v. *Commissioner of Income-tax* (3); but we do not consider that this case has any bearing on the point. Learned counsel for the Commissioner referred to section 4 of the Income-tax Act, which states that the Act "shall apply to all income, profits or gains . . . . . 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". His argument was that the words "accruing or arising" would apply to this decree. We consider that those words merely refer to the connection between the income and the country in question, British India, and that they do not explain what is income or what is not income. We consider that words used in an Act should be interpreted in their ordinary sense, except it is shown that they have been used in a special or technical sense. The ordinary sense of "income" is what comes in, that is, what is actually received by an assessee. There is nothing in the Act to show that this ordinary meaning is not attached to the word. "Income" is not defined in the Act; but in section 2(15) "total income" is stated to mean the "total amount of income, profits and gains from all sources to which this Act applies computed in the manner laid down in section 16". There is nothing in this definition or in section 16 which would imply that the "total income" was to include an amount which had been decreed but which had not been received. Accordingly our finding on the first question is in the negative, that the unrealised decree is not taxable income for the purpose of income-tax; and our answer on the second question is that the assessee was correct in stating that

(1) (1929) I.L.R., 9 Pat., 48. (2) (1933) I.L.R., 15 Lah., 486.
(3) (1933) I.L.R., 12 Pat., 305.

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the books were kept simply for the purpose of ascertaining his financial state. Accordingly we direct that this reference be returned to the Commissioner and we allow to Mr. Verma a fee of Rs.150, and the amount which has been certified for the assessee will be allowed as costs against the department.

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GAYA PRASAD CHHOTEY LAL (APPLICANT) *v.* COMMISSIONER OF INCOME-TAX (OPPOSITE PARTY)*

Income-tax Act (XI of 1922), section 4(3)(vii)—"Business"—Receipt arising from business—Income of a casual nature—Single transaction of loan, of a highly speculative character—Money advanced for financing a litigation, payment depending on the result.

A person, who ordinarily did not do any money-lending or other business and whose principal source of income was certain house property, entered into an agreement to finance another person in a litigation which the latter was conducting, the condition being that all sums advanced, together with an additional sum of Rs.21,000, would be repaid in case of the litigation being successful, but nothing would be repaid if the litigation terminated adversely. The litigation terminated favourably, and the sums advanced were repaid together with an addition of Rs.15,000, in place of the Rs.21,000 promised. The question was whether the recipient was liable to pay income-tax on the Rs.15,000 or whether it was exempt as being an income of a casual nature under section 4(3)(vii) of the Income-tax Act:

Held, that the transaction amounted to "business" within the meaning of the Income-tax Act and so the money was a receipt arising from business; and the income could not be held to be of a purely casual nature, but on the contrary it represented a return on the money invested by the assessee. For these reasons it did not come within the exemption contained in section 4(3)(vii). A single transaction or investment may be "business" and any receipts exceeding the capital must be treated as profit. It is not necessary that the source of income must be one which yields income periodically, and not only once, in order that the income derived from it can be assessable to income-tax. The transaction upon which the assessee embarked was one in which

*Miscellaneous Case No. 285 of 1934.