FULL BENCH.

Before Sir Shadi Lal, Chief Justice, Mr. Justice Scott-Smith, Mr. Justice Broadway, Mr. Justice Abdul Raoof and Mr. Justice Martineau.

Rai Bahadur SUNDAR DAS—*Petitioner,*

versus

THE COLLECTOR OF GUJRAT—*Respondent.*

1922

May 12.

Civil Reference No. 27 of 1921.

Income Tax Act, VII of 1918, *section* 3 *sub-section (1)*—*Income earned and received in British Baluchistan and subsequently transmitted to the Punjab—whether liable to be assessed to income-tax — rule of interpretation as applicable to fiscal enactments.*

Held, by the Full Bench, that income earned and received in British Baluchistan (which Province is exempt from the operation of the Income Tax Act except as to salaries) and subsequently brought into or transmitted to the Punjab is not liable to be assessed to income tax, as such income was not "received" in the Punjab within the meaning of sub-section (1) of section 3 of the Income Tax Act.

Board of Revenue Madras v. *Ramanadhan Chetty* (1), distinguished.

The principle of all fiscal legislation is that if the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand if the Crown, seeking to recover the tax, cannot bring 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.

Partington v. *Attorney General* (2), per Lord Cairns, followed.

This was a reference made by the Financial Commissioner, as the Chief Revenue Authority of the Punjab, under section 51, sub-section (1), of the Indian Income Tax Act, VII of 1918, on a question of assessment by the Collector of Gujrat (Punjab) on the income earned by the late *Rai Bahadur* Sundar Das in British Baluchistan and subsequently transmitted by him to the Punjab. The only question for decision was whether the income was "received" in the Punjab within the meaning of section 3, sub-section (1), of the Act, assuming that the assessee after receiving the money in Baluchistan brought it into or transmitted it to the Punjab.

(1) (1919) I. L. R. 43 Mad. 75. (2) (1869) L. R. 4 H. L. 100.

1922

SUNDAR DAS v. COLLECTOR OF GUJRAT.

The reference by the Financial Commissioner, dated 20th September 1921, was as follows :—

Rai Bahadur Sundar Das Chopra has been assessed at income tax on an income of Rs 23,76,859 received during the year 1919-20. He has also been assessed prospectively on the same income for the year 1920-21. These assessments were made by the Collector of Gujrat. An appeal to the Commissioner of Rawalpindi has been dismissed. The assessee has applied to me to take action under section 23 of the Income Tax Act, and his application has been forwarded to the Collector of Gujrat and the Commissioner of Rawalpindi because important points of law were raised.

It is necessary to state here that the assessee failed to furnish the return in the prescribed form which is required by section 17 of the Act. Therefore under section 21 of the Act the assessee has forfeited his right to petition the Commissioner. I do not propose therefore to go into the question whether the estimate of income made by the Collector under section 18 is right or wrong. I accept that estimate of income. The assessee is himself to blame if he has been over-assessed, because he has failed to put in a return.

The Assistant Legal Remembrancer has questioned my authority to refer this matter to the High Court under section 51. He urged that section 21 absolutely prohibits such action if section 17 has not been complied with. I have ruled against him on this point, because sections 23 and 51 do not seem to restrict the power of the Chief Revenue Authority in any way. I do not think that the question whether I have or have not this power need be referred to the Hon'ble Judges. I have only mentioned the matter at the request of the Assistant Legal Remembrancer.

The facts of this case on which I make this reference under section 51 are briefly as follows :—

Rai Bahadur Sundar Das Chopra is a contractor residing in the Punjab who has done extensive work for Government on the frontier of Baluchistan. As a result of the payments made to him at Quetta in Baluchistan he has acquired a fortune which he has brought into the Punjab. This fortune which was brought in in the year 1919-20 amounted to Rs. 23,76,859, the whole of which has been treated as income received in British India, and liable to Income Tax.

For the assessee *Bakhshi* Tek Chand urges—

(1) that the income was received in British Baluchistan ;

(2) that the Income Tax Act is not in force in British Baluchistan, except so far as that part of the Act which deals with salaries has been extended to British Baluchistan by Notification No. 1148 R., dated the 19th March 1918, published under the authority of the Chief Commissioner of Baluchistan ;

(3) that consequently the income is not taxable ;

(4) that the subsequent conveyance of the income received in British Baluchistan to the Punjab did not make the income taxable in the Punjab, because it had been previously exempted from taxation in that part of British India in which it had been received—namely, British Baluchistan.

The Assistant Legal Remembrancer admits *Bakhshi* Tek Chand's first two propositions but he denies his conclusions. He asserts that under the *obiter dicta* in the ruling of the Madras High Court in the case of the Secretary to the Commissioner, Salt *Abkari* and Separate Revenue, Madras *versus* S. R M. A. R. Ramanathan Chetti, minor, by guardian Valliamma Achi, the fact that the income accruing in Baluchistan was transmitted to the Punjab made it income received in the Punjab and therefore liable to income tax His argument was that the effect of not extending the Income Tax Act to British Baluchistan was to put Baluchistan in much the same position as foreign territory as far as income was concerned, and that just as income tax might be chargeable, if income were earned in foreign territory and subsequently brought into British India, so Income Tax might be chargeable on income earned in British Baluchistan and brought into British India. The question for determination is, does the fact that *Rai Bahadur* Sundar Das Chopra earned his income at Quetta in British Baluchistan, which is exempted from the operation of the Income Tax Act except certain particulars, prevent his being assessed to income tax in the Punjab when the income which accrued in British Baluchistan is subsequently transmitted to the Punjab? For the purposes of this question it may be assumed that the income is the income of one year, and not the accumulated income of more than one year. It may also be assumed that the residence of the assessee is in the Punjab.

Tek Chand (with him Mehr Chand Mahajan) for Petitioner—The Income Tax Act is not in force in British Baluchistan except that the part of the Act which relates to incomes derived from salaries which was extended to that Province by Notification No. 1148-R., dated 19th March 1918. My client had received this income in British Baluchistan and its subsequent transmission to the Punjab does not make it taxable. The amount had been received as income once for all in Quetta, and it cannot be said to have been "received" again as income here merely because it has been brought or transmitted to the Punjab. The analogy of rulings under the English Income Tax Act does not apply as under the English law it is the residence of the assessee which is the test and not the place where the income arose, accrued or was received.

1922

SUNDAR DAS v. COLLECTOR OF GUJRAT.

The rulings which affirmed the taxability of income accruing to a British Indian subject in foreign countries, but subsequently brought into British India are also not in point because in the present case the income had been actually received in a part of British India which had been expressly exempted from the operation of the Income Tax Act. See General Clauses Act, X of 1897, section 3, sub-section 7 ; The Scheduled Districts Act, XIV of 1874 ; Notification No. 2335-E., dated 18th November 1887 ; Notification No. 63 F. C., dated 18th December 1887 ; Regulation No. II of 1913 and section 123 of the Government of India Act.

All enactments imposing taxation must be strictly construed against the Crown and in favour of the subject and in all doubtful cases the benefit of the doubt should be given to the subject. See Maxwell's Interpretation of Statutes, page 503 ; Wilberforce's Interpretation of Statutes, page 246 ; Beal's Interpretation of Statutes, page 201 ; *Killing Valley Tea Company, Limited,* v. *Secretary of State* (1), *Carr* v. *Fowl* (2), and *Stockton and Darlington Railway Co.* v. *Barret* (3).

Government Advocate for Respondent :- The Income became taxable as soon as it was received in the Punjab. The notification referred to only prohibits the assessment of the tax by the Quetta authorities. It does not touch the power of the Punjab authorities to assess the money when it comes into the Punjab. It is the ultimate destination of the money that has to be seen and not its original source. For the purposes of the Income Tax Act British Baluchistan is on the same footing as any foreign territory and the English and Indian rulings relating to the assessibility of income that had accrued, arisen or been earned in a foreign country but had subsequently been transmitted to British India are in point. According to section 3, subsection (1) of the Act the whole of the income of the assessee accrued or received in British India is assessable. The definition of "British India" given in section 3 clause (7) of the General Clauses Act is not an absolute one, and having regard to the fact that the Income Tax Act does not apply to British Baluchistan the Court must hold that British Baluchistan is outside British

(1) (1920) 34 Cal. L. J. 421. (2) (1893) 1 Q. B. 251.
(3) (1844) 7 M. & G. 870, 879.

India for the purpose of the Act. In the alternative my submission is that the Scheduled Districts Act merely prohibits the assessment to income tax within the Scheduled Districts. If an assessee is assessable in any part of British India where the Income Tax Act applies then the assessing authority is entitled to take into consideration the whole of the income of the assessee wherever it may accrue.

The case of income which accrues in Native States is in point. Such income when brought into British India is assessable—See *Board of Revenue Madras* v. *Ramanadhan Chetty* (1), and this has uniformly been the practice throughout British India.

[C. J.—When does the income become capital ?]

This depends upon the circumstances of each case. The point does not arise in this reference but an income always remains income till it has reached its ultimate destination. In this case the income remained income till it reached the assessee's home. In this connection see Government Circular regarding income of *Banias* in the Tochi Valley.

[C. J —Can there be a receiving of the same property twice over ?]

Section 3 of the Indian Income Tax Act is not concerned with the person receiving. It is concerned only with the place of receiving and the money was received in the Punjab for the first time during the year of assessment.

Tek Chand, replied.

Case referred by the Financial Commissioner, Punjab, with his No. I. T. Review No. 22-4, dated the 20th September 1921, for orders of the High Court.

The judgment of the High Court was delivered by—

SIR SHADI LAL, C. J.—This is a reference under section 51 of the Indian Income Tax Act, VII of 1918, which empowers the Chief Revenue authority, in the event of a question arising with reference to the interpretation of any of the provisions of the Act or of any

(1) (1919) I. L. R. 43 Mad. 75.

1922

SUNDAR DAS v. COLLECTOR OF GUJRAT.

rule thereunder, to "draw up a statement of the case, and refer it with his own opinion thereon, to the High Court." The Financial Commissioner of the Punjab, who is the Chief Revenue Authority contemplated by the section, has drawn up a statement of the case, but has not complied with the provision of the law requiring him to record his own opinion upon the question referred to the High Court. It is, however, unnecessary to delay the matter by remitting the case to him for his opinion, and we accordingly proceed to determine the question.

The statement of the case submitted to us shows that the assessee *Rai Bahadur* Sundar Das (who died during the pendency of the reference) was a contractor residing in the Punjab who had done extensive work for Government on the frontier of Baluchistan.

It is common ground that on account of the work done by him as a contractor during the War he received large sums of money from Government but all the payments were made to him at Quetta in British Baluchistan which is exempted from the operation of the Income Tax Act except that part of the Act which imposes the tax upon salaries. It appears that in the financial year 1919-1920, the assessee invested about 23 lakhs of rupees in the Punjab, mainly in buying immovable property, and the whole of the sum has been treated as the income of one year. We are not concerned with the question whether the aforesaid sum has been rightly held to be income, nor are we called upon to determine the matter whether that sum should be regarded as the income of one year or the accumulated income of more than one year. The only point upon which we are invited to pronounce our opinion is whether the alleged income comes within the purview of section 3, sub-section (1) of the Income Tax Act and is consequently liable to income tax.

Now, the aforesaid sub-section defines taxable income as income which "accrues or arises or is received in British India, or is, under the provisions of this Act, deemed to accrue or arise or to be received in British India." It is not contended that the latter portion of this sub-section has any application to the case before us, and it is also admitted that the income

in question accrued or arose not in the Punjab, but in British Baluchistan, which, as already stated, is exempted from the operation of the Act. The matter then is reduced to this: Was the income "received" in the Punjab? Now the statement of the case makes it absolutely clear that a very large sum of money was received by the assessee at Quetta, and that a portion of it was afterwards invested in the Punjab. Upon the material supplied to us we are not in a position to say whether the sum invested in the Punjab was actually brought into, or transmitted to, the Punjab, or whether it was paid to the vendors of the immovable property by cheques drawn upon a bank in Baluchistan.

Assuming, however, that the assessee after receiving the money in Baluchistan brought it into, or transmitted it to, the Punjab, I do not think that the money thus brought or transmitted can be held to be income "received" in the Punjab. The assessee undoubtedly received it in Baluchistan where he was not chargeable with the tax, and I fail to understand how he can receive the same thing again when he has not parted with it in the interval. Whether he brought the money with himself or transmitted it by a cheque or by any other method, it remained all the time under his control and the process cannot be described as the second receipt of the money.

The Act contains no definition of the word "receive" or "received" but in Murray's Oxford Dictionary the expression "receive" is defined as—

> "To take in one's hand or into one's possession (something held out or offered by another), to take delivery of (a thing) from another, either for oneself or for a third party."

In the Imperial Dictionary the same expression is defined as—

> "To get or obtain; to take, as a thing offered, given, sent, committed, paid, communicated or the like; to accept."

It seems to me that the word "receive" implies two persons, namely, the person who receives and the person from whom he receives. A person cannot receive a thing from himself.

1922

SUNDAR DAS v. COLLECTOR OF GUJRAT.

The rule of interpetation applying to fiscal enactments is thus stated by Lord Cairns in *Partington* v. *Attorney General*(1) :—

"As I understand the principle of all fiscal legislation, it is this : If the person sought to be taxed comes within the letter of the law, he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring 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 should simply adhere to the words of the statute."

It is a sound principle that the subject is not to be taxed without clear words to that effect ; and that *in dubio*, you are always to lean against the construction which imposes a burden on the subject.

Bearing these principles in mind and taking the expression "received" in its ordinary dictionary meaning, I am of opinion that the assessee, who had already received the money in Baluchistan, did not receive it again when he brought it into, or forwarded it to, the Punjab. I would, therefore, hold that he is not taxable on the alleged income mentioned in the reference.

SCOTT-SMITH J.—I entirely agree with the learned Chief Justice.

BROADWAY J.—I agree. I think *Board of Revenue Madras* v. *Ramanadhan Chetty* (2) relied on by Mr. Jai Lal is distinguishable.

ABDUL RAOOF J.—I also agree.

MARTINEAU J.—I agree.

Reference answered in the affirmative.

A. N. C.

---

(1) (1869) L. R. 4 H. L. 100. (2) (1919) I. L. R. 43 Mad. 75.