INCOME-TAX REFERENCE.

Before Sir Guy Rutledge, Kt., K.C., Chief Justice, Mr. Justice Chari and Mr. Justice Brown.

M.R.RY. SOMASUNDARAM CHETTYAR

v.

THE COMMISSIONER OF INCOME-TAX.*

1929
May 22.

Income-tax Act (XI of 1922), ss. 22 (4), 42—Non-resident principal—Local agent liable to be assessed for moneys received in British India—Income-tax Officer's powers to call for books of account—Power to call for books from outside British India.

An agent who carries on business in British India for a non-resident principal is liable to be taxed for his principal for all moneys received by him on behalf of the principal in British India. If from an inspection of the local books of account the Income-tax Officer is of opinion that other books of account of the principal in foreign places are of importance in ascertaining the amount of assessment, he has full power under s. 22 (4) of the Income-tax Act to call for those books, provided they are not for accounts relating to a period more than three years prior to the previous year.

Foucar for the applicant.

Gaunt (Officiating Government Advocate) for the Crown.

RUTLEDGE, C.J., BROWN and CHARI, JJ.—The P.K.N. Chettyar firm, the principals of which are resident in Pudukota State outside British India, carry on business in Rangoon through their agent. The agent submitted a return of income for the year 1925-26 to the Income-tax Office, and on the 4th of March 1926 the Income-tax Officer issued a notice on him under the provisions of section 22 (4) of the Income-tax Act to produce books of account of the Jaffna and Alleppey branches of the firm. This notice was issued because inspection of the Rangoon books of account showed that the firm was carrying on business in rice in Rangoon and Akyab

* Civil Miscellaneous Application No. 70 of 1928.

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by purchasing and exporting rice to Jaffna and that it also had business in Alleppey. The books of account not having been produced, the Income-tax Officer made an assessment on the firm under the provisions of section 23 (4), and the question we have now to decide is as to the legality of this assessment.

By an order of this Court the Commissioner of Income-tax has been directed to state the case and refer to this Court the question whether, in the circumstances of this case, it is open to the Income-tax Officer to require the production of the books of the Jaffna and Aleppey branches of the assessee; and, if not, whether the failure to comply with such a requisition is a default within the meaning of section 23 (4) of the Act and renders the assessee liable to assessment under that sub-section. The Commissioner has now stated the case and referre the question to this Court for orders.

The Rangoon agent has presumably been assessed under the provisions of section 42 of the Income-tax Act, and our attention has been drawn to two recent decisions of the High Court of Bombay as to the meaning of the word "agent" in that section. In the cases of the *Commissioner of Income-tax, Bombay Presidency* v. *The Bombay Trust Corporation, Limited, Bombay*, as agent for *The Hongkong Trust Corporation, Limited* (1), and *The Commissioner of Income-tax, Bombay* v. *The Remington Typewriter Company (Bombay), Limited* (2), it was held that sections 40, 42 and 43 of the Indian Income-tax Act, 1922, are to be read jointly and not disjunctively, and that in order to make an agent liable under section 42 it is necessary that he should be in receipt of income on behalf of the non-resident

(1) (1928) 52 Bom. 702. (2) (1928) 52 Bom. 726.

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person for whom he is agent. We understand the contention to be that an agent is not liable save for moneys actually received by him in British India, and that therefore books of account from outside British India cannot be necessary for the purposes of assessing income.

We do not consider it necessary to express any opinion on the question raised in the Bombay cases as we are unable to see how it follows as a corollary to the decision in those cases that the agent was not bound to produce the books of account in question in the present case. We do not understand it to be contended that the agent in this case is in receipt of no income on behalf of the non-resident firm. Section 22 (4) is very wide in its terms. It empowers the Income-tax Officer to serve on any person upon whom a notice has been served under sub-section (2) a notice requiring him to produce, or cause to be produced, such accounts or documents as the Income-tax Officer may require. The only limitation to the powers of the Income-tax Officer in this respect are that he cannot require the production of any accounts relating to a period more than three years prior to the previous year. In the present case the person on whom notice is served is the Rangoon agent of the non-resident firm, but it is the non-resident firm which was being assessed, and it can hardly be contended that it is outside the power of that firm to produce the account books. The Income-tax Officer was of opinion that the books were required to help him to assess the firm to tax, and the section gives the Income-tax Officer full discretion in the matter.

It is impossible for us to hold that the books could not be required and could not give any valuable information as to the amount to which the

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non-resident firm should be assessed. We can find no authority in the Act for varying the plain meaning of the wording of section 22 (4), or for limiting the power given to the Income-tax Officer by that clause. We are therefore of opinion that the Income-tax Officer had the power to call for the account books in question. We answer the first part of the question referred in the affirmative. The second part of the question referred does not therefore arise.

The Chettyar firm will pay the costs of this reference, advocate's fee five gold mohurs.

APPELLATE CIVIL.

Before Mr. Justice Heald and Mr. Justice Maung Ba.

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June 4.

U THWE
v.
A. KIM FEE AND OTHERS.*

Arrest, what is an, under civil process—Advocate's exemption from arrest whilst attending Court—Civil Procedure Code (Act V of 1908), *s.* 135 *—Damages for arrest in Court—Malice and absence of reasonable and probable cause essential for damages.*

A person can be said to be arrested when he is actually touched or confined by a police officer or other person, unless there is a submission to the custody by word or action.

Where a process-server shows to the judgment-debtor the warrant of arrest and the judgment-debtor thereupon pays up, he cannot be said to be arrested.

An advocate can claim exemption from arrest and get himself released if at the time of arrest he is attending a Court in connection with a matter pending before it. But he cannot claim damages for such arrest unless the arrest was procured maliciously and without reasonable and probable cause.

Raj Chunder v. *Shama Sundari*, 4 Cal. 583; *Williams* v. *Taylor*, 6 Bing. 186—*referred to.*

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* Civil First Appeal No. 107 of 1929 from the judgment of the District Court of Hanthawaddy in Civil Regular No. 42 of 192[illegible].