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TEK CHAND J.

HARRISON J.

the parties. As the case is a very old one, the learned Senior Subordinate Judge will proceed with the hearing with all possible speed.

The Deputy Registrar is directed to take steps to transmit the records to the lower Court forthwith.

HARRISON J.—I agree.

A. N. C.

Appeal accepted in part.
Case remanded.

FULL BENCH.

Before Sir Shadi Lal, Chief Justice, Justice Sir Alan Broadway, Mr. Justice Zafar Ali, Mr. Justice Tek Chand and Mr. Justice Jai Lal.

JIWAN DAS AND OTHERS—Petitioners

versus

INCOME-TAX COMMISSIONER, LAHORE
Respondent.

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June 10.

Civil Reference No. 18 of 1927.

Indian Income Tax Act, XI of 1922, sections 4 (1), 42 (1)—Resident in British India—Profits—derived from sale in a foreign country of goods purchased by him in British India —whether liable to be taxed—when the profits are neither received in, nor brought into, British India.

Held, that a person residing in British India is not liable to be assessed to income-tax under the Indian Income Tax Act, XI of 1922, on any part of the profits derived from sale in a foreign country of the goods purchased by him in British India when the profits have neither been received in, nor brought into, British India.

The Secretary, Board of Revenue v. *The Madras Export Co.* (1), and *Sulley* v. *Attorney General* (2), relied upon.

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(1) (1923) I. L. R. 46 Mad. 360. (2) (1880) 5 H. and N. 711.

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Re Rogers Pyatt Shellac and Co. v. *Secretary of State* (1), *The Commissioner of Income-Tax, Burma* v. *Steel Brothers and Co., Ltd.* (2), *The Commissioners of Taxation* v. *Kirk* (3), and *Board of Revenue* v. *Ramanadhan Chetty* (4), distinguished.

Quinn v. *Leathem* (5), per Lord Halsbury, referred to, also *Partington* v. *Attorney General* (6), and *Greenwood* v. *Smidth and Co.* (7).

Case referred under section 66 (2) of the Income Tax Act by M. L. Darling, Esquire, Commissioner of Income-Tax, Punjab and N.-W. F. Province, for orders of the High Court.

MOTI SAGAR, MEHR CHAND MAHAJAN and AMAR NATH CHONA, for Petitioners.

JAGAN NATH AGGARWAL and R. C. SONI, for Respondent.

ORDER.

SHADI LAL C.J.

SIR SHADI LAL C. J.—The question submitted to us may be stated in a few words. A person, who resides and carries on business in British India, purchases goods in British India and sends them for sale to his shop in Kashmir, a country outside British India. Is he liable to be assessed to income-tax under the Indian Income Tax Act, XI of 1922, in respect of any part of the profits derived from the sale of the goods; and if so, what part?

We may clear the ground by stating at the outset that we are not here concerned with the profits of the business which is carried on in British India, or with any part of the profits derived from the sale of the goods in the foreign country which have been received in, or

(1 (1925) I. L. R. 52 Cal. 1.
(2) (1925) I. L. R. 3 Rang. 614 (F.B.).
(3) 1900 A. C. 588.
(4) (1920) I. L. R. 43 Mad. 75.
(5) 1901 A. C. 495.
(6) (1869) L. R. 4 H. L. 100.
(7) (1922) 1 A. C. 417.

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brought into, British India. The profits of both these descriptions are certainly taxable in British India.

The answer to the question depends on the interpretation to be placed upon section 4, sub-section (1) of the Statute, which so far as it is material to the present discussion, is in the following terms :—

" Save as hereinafter provided, this Act shall apply to all income, profits or gains * * * accruing or arising, or received in British India."

Ex concesso, no part of the profits in this case has been received in British India; and the question, stripped of all irrelevant details, is thus narrowed down to the following issue: " Whether a person residing in British India is liable to be assessed to income-tax under the Act on any part of the profits derived from the sale in a foreign country of the goods purchased by him in British India, when the profits have neither been received in, nor brought into, British India." It must be remembered that the Indian law bases the liability of a person to taxation on the place where the income (the word " income " is used in this judgment as a comprehensive term including, not only what is strictly called income, but also profits and gains) accrues or arises or is received, but not on the place of his residence. If the place of accrual or arising or receipt is British India, the income is taxable, otherwise it is not, unless the income, though accruing or arising or received outside British India is, by a fiction of law, deemed to have accrued or arisen or to have been received in British India. It is, however, conceded that the question before us is not affected by any such legal fiction, and, as stated above, no part of the profits was received in or brought into British India. We

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must, therefore, concentrate our attention upon the problem whether any part of the profits *accrued* or *arose* in British India.

The learned counsel on both sides are agreed that the expression "arising" as used in section 4, sub-section (1) is, to all intents and purposes, synonymous with the term "accruing." As observed by Mukerji J. in *Re Rogers Pyatt Shellac & Co.* v. *Secretary of State for India* (1) "perhaps the two words seem to denote the same idea or ideas very similar, and the difference only lies in this that one is more appropriate than the other when applied to particular cases." The word "accrue" is not defined in the Act, but according to Murray's Oxford Dictionary it means "to arise or spring as a natural growth or result," and in Webster's Dictionary it has the meaning "to come to by way of increase."

Now, the profits of a transaction in the nature of a sale consist of the difference between the price received for the goods sold and the cost of procuring and selling them. In ordinary cases, profits can be ascertained only when the price is realised, because until realisation it cannot be said that the transaction will result in profits. But we are here concerned, not with the time when the profits accrue, but with the place at which they accrue. It is beyond dispute that the place, where the sale is effected and the price realised, is certainly the principal place, if not *the* place, of the accrual of profits.

Mr. Jagan Nath for the Commissioner of Income Tax, however, contends that a part of the profits accrued in British India where the goods were purchased, and he places his reliance upon the judgment of the

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Calcutta High Court in *Re Rogers Pyatt Shellac & Co.* v. *Secretary of State for India* (1). It was held in that case that a Company incorporated in the United States of America and having its head office in New York and branch offices, agencies and factories in Calcutta, London and other places, which purchases goods in India, for sale in the open market in America, or for another Company in America, and which has also a factory in the United Provinces where raw produce is bought locally and is worked up into a form suitable for export to America is not exempt from assessment to income-tax in British India. It will be observed that that case was decided with reference to section 33, sub-section (1) of the Income Tax Act, VII of 1918, which sub-section corresponded to section 42, sub-section (1) of the present Act, and enacted a special provision to the effect that in the case of any person residing out of British India all profits or gains accruing or arising to such person, whether *directly* or *indirectly*, through or from any *business connection* in British India, shall be deemed to be income accruing or arising within British India, and shall be chargeable to income-tax in the name of the agent of any such person, and such agent shall be deemed for all purposes of the Act the assessee in respect of such income-tax.

The decision of the case proceeded upon the fiction introduced by the Statute under which income, though *actually* accruing out of British India, is *deemed* to accrue in British India. Far from lending any support to the contention of the learned counsel, the judgment contains some observations which go against him. As stated by Chatterjee J, at pages 11 and 13, no part of the Company's income actually accrued,

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arose or was received in British India; but under section 31, sub-section (1) it should be deemed by a fiction of law to have accrued in this country.

The judgment of the Rangoon High Court in *The Commissioner of Income-Tax, Burma* v. *Messrs. Steel Brothers & Co. Ltd.* (1) is also founded upon the same fiction. In that case the assessee was a limited company incorporated under the English law, and was admittedly non-resident in British India, having its headquarters in London. It carried on various large business undertakings in Burma, especially in connection with rice, timber and cotton. It also had numerous rice mills, saw mills, cotton ginning mills and vegetable oil mills in Burma, where commodities or raw material were " worked up into forms suitable for use" and shipped to the United Kingdom. It also exported from Burma raw commodities in the same form as purchased. The learned Judges decided that the profits or gains must be deemed, under section 42, sub-section (1) of the Indian Income-Tax Act, XI of 1922, to have accrued or arisen in British India, and were, therefore, taxable under the Indian law. It was a case in which the profits accrued to a non-resident through or from a business connection or property in British India; and the assessee was clearly liable under the special provision referred to above on the ground that the profits should be deemed to have accrued in British India, irrespective of the fact whether they did, or did not, *actually* accrue there. It is true that there are observations in the judgment which, if divorced from the context, can support the view that a part of the profits may be attributed to the mere fact of the purchase of the goods in British India, but,

(1) (1925) I. L. R. 3 Rang. 614 (F. B.).

as the case clearly came within the language of section 42, sub-section (1), those observations cannot but be treated as *obiter dicta*. Moreover, as pointed out by Lord Halsbury in *Quinn* v. *Leathem* (1) " every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found."

Mr. Mehr Chand *Mahajan* for the assessee invites our attention to two judgments of the Madras High Court in order to establish the proposition that no part of the profits can be held to accrue at the place where the goods are merely purchased. In *Board of Revenue* v. *Ramanadhan Chetty* (2) the rule was laid down that a person residing in British India, who is the proprietor of a money-lending business carried on for him outside British India by agents resident there and keeps himself acquainted with the progress of the business and issues general instructions to his agents carrying on the business, is not assessable to Indian income-tax, if the income from such business is not remitted to British India. This judgment is clearly distinguishable and cannot be of any assistance in the present case. But the decision in *The Secretary, Board of Revenue (Income-Tax), Madras* v. *The Madras Export Co.* (2) has an important bearing upon the question before us. In that case a firm situated in Paris bought raw skins in Madras through an agent who exported them to Paris where they were sold on profit by the firm. A Division Bench of the Madras High Court held that the profits accrued wholly in

(1) 1901 A. C. 495. (2) (1920) I. L. R. 43 Mad. 75.
(3) 1923) I. L. 46 Mad. 360.

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France and were not, therefore, taxable in British India. The principle, upon which that judgment proceeds, is applicable to the present case. In that case, as here, goods were purchased in British India, and exported to a foreign country where they were sold and the sale resulted in profits It is true that in the Madras case the person entitled to the profits was residing in a foreign country, while in the present case the assessee resides in British India. But this difference is wholly immaterial, because, as stated above, the Indian law makes the place of the accrual of the income, and not the place of the residence, as the test of liability. If, as held in the Madras case, income accrued wholly outside British India, and no part of it can be regarded as having accrued in British India on account of the purchase of the goods in British India, there is no reason why a different rule should govern the present case.

It is necessary to point out at this stage that this judgment, in so far as it decided that section 33, sub-section (1) of the Indian Income Tax Act of 1918 was not a charging section, but merely a machinery section (that is to say, a section which provides a method of carrying out the charge imposed by some other section), has been dissented from by the Calcutta High Court in *Re Rogers Pyatt Shellac & Co.* v. *Secretary of State for India* (1) and by the Rangoon High Court in *The Commissioner of Income-Tax, Burma* v. *Messrs. Steel Brothers & Co., Ltd.* (2). In both these cases it was ruled that any income accruing or arising to a non-resident through or from any business connection or property in British India should be *deemed* to be income accruing or arising within British

(1) (1925) I.L.R. 52 Cal. 1. (2) (1925) I. L. R. 3 Rang. 614 (F. B).

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India; and that it was immaterial whether the income did, or did not, actually accrue or arise in British India. But, as observed above, these judgments proceed upon the special rule enacted by the statute by which income actually accruing at one place is deemed in certain circumstances to accrue at another place. It cannot, therefore, be reasonably argued that they enunciate any rule different from that laid down by the Madras High Court, that the profits actually accrue or arise at the place where the goods are sold, and not at the place where they are merely purchased for export.

It would appear from the judgment in *Re Rogers Pyatt Shellac & Co.* v. *Secretary of State for India* (1) that if the charging section had not been enlarged by section 33, sub-section (1) of Act VII of 1918 (section 42, sub-section (1) of the present Act), the learned Judges would have held that the company in that case was not liable to pay income-tax in this country. It is to be observed that while the statute has enacted a special rule making a non-resident having business connection or property in British India liable to Indian income-tax in respect of the income accruing outside the territorial limits of British India, there is no corresponding provision imposing a similar liability on a resident who derives income from the sale in a foreign country of the goods purchased by him in British India. We cannot extend the scope of the statute by analogy or place upon it what is called a beneficent or equitable construction in order to prevent a real or supposed anomaly. As observed by Lord Cairns in *Partington* v. *Attorney General* (1): " As I understand the principle of all fiscal legislation, it is this;

(1) (1925) I. L. R. 52 Cal. 1. (1) (1869) L. R. 4 H. L. 100.

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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."

The same rule of construction has been enunciated by Lord Buckmaster in the recent case of *Greenwood* v. *Smidth & Co.* (2) in the following words:—

"It is important to remember the rule which the Courts ought to obey that when it is desired to impose a new burden by way of taxation it is essential that the intention should be stated in plain terms. The Courts cannot assent to the view that if a section in a taxing statute is of doubtful and ambiguous meaning it is possible out of that ambiguity to extract a new and added obligation not formerly cast upon the taxpayer."

Not only is there no provision identifying the place of the accrual of income with the place where the goods are purchased, but there is some indication in the statute to the contrary. Take the case of a person who purchases goods in a foreign country and sends them to British India for sale. Section 42, sub-section (3) lays down that the profits shall be deemed to have accrued and arisen and to have been received in British India. This sub-section shows that where goods are

(2) (1922) 1 A. C. 417.

purchased in a foreign country and sold in British India, the Indian law regards, by a legal fiction or otherwise, the place of the sale, and not the place of the purchase, as the place of the accrual of profits.

We have been referred by the learned counsel on both sides to some decisions of the English Courts on the Income Tax Acts of England, but they cannot furnish any guidance in the present case because the scheme and the phraseology of the English Acts are wholly different from those of the Indian statute. I must, however, examine the judgment of the Privy Council in *The Commissioners of Taxation* v. *Kirk* (1) which is claimed by Mr. Jagan Nath as a direct authority in support of his contention. In that case, the assessee was a company incorporated in the colony of Victoria and had its head office with a Board of Directors at Melbourne in that colony. The company carried on "the business of mining" on lands held on lease from the Crown in the colony of New South Wales where it had an office and a manager of the mines. The ore extracted from the mines in New South Wales was treated by the company's plant and converted into a merchantable product in that colony, but the sales of the products were made and the purchase money was received either in London or in Victoria. The company made profits from these business operations, and the question arose whether any part of the profits was assessable to taxation under the New South Wales Land and Income-Tax Assessment Act of 1895. Now, section 15 of that statute provided that income-tax was payable in respect of the annual amount of all incomes * * (1) arising or accruing to any person wheresoever residing from any profes-

(1) 1900 A. C. 588.

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sion, trade * * * carried on in New South Wales; (3) derived from lands of the Crown held under lease or license issued by or on behalf of the Crown; (4) arising or accruing to any person wheresoever residing * * * from any other source whatsoever in New South Wales not included in the preceding sub-sections.

Their Lordships of the Privy Council held that the case came under sub-section (3) in so far as the income derived from the extraction of the ore from the Crown lands was concerned, and also under sub-section (4), because of the conversion of the crude ore into a merchantable product which is a manufacturing process, and which, if not within the meaning of "trade" in sub-section (1), was certainly included in the words "any other source whatever" in sub-section (4). It is clear that both the processes referred to in the judgment came within the ambit of section 15, and the income derived therefrom was accordingly held to be taxable in the colony of New South Wales.

Considering that the judgment of the Privy Council deals with a case in which the business was admittedly carried on in New South Wales, I do not think that it can be cited as an authority for the proposition that the mere purchase of goods in a country for the purpose of enabling a person to trade in another country makes him liable to taxation in the former country on the ground that a part of the profits should be treated as having accrued there. The judgment in *Sulley* v. *Attorney General* (1) makes it absolutely clear that the mere purchase of goods in a country does not amount to an exercise of trade in that country. Though the test of liability under the English Act is

(1) (1860) 5 H. and N. 711.

the exercise of trade in the United Kingdom, the following observations of Cockburn C. J. are nevertheless pertinent here :—

"Wherever a merchant is established, in the course of his operations his dealings must extend over various places; he buys in one place and sells in another. But he has one principal place in which he may be said to trade, *viz*., where his profits come home to him. That is where he exercises his trade. It would be very inconvenient if this were otherwise. If a man were liable to income-tax in every country in which his agents are established, it would lead to great injustice. The argument for the Crown must be carried to this extent, that merely buying goods in this country is a trade exercised here so as to subject the purchaser of the goods to income-tax * * * *. It would be most impolitic thus to tax those who come here as customers. The subjects of a foreign state, not resident here, cannot be made amenable to our laws How then are their profits to be made amenable to the fiscal law? Simply by the provision that whosoever carries on the business and receives the profits here shall be assessed. But in the present case no profits are received by the firm, or exist in this country."

The learned counsel for the Commissioner of Income-Tax argues that the purchase of goods is one of the several processes, the combination of which results in profits; and that a part of the profits should, therefore, be attributed to that process. It is, however, conceded by the learned counsel that, if the assessee did not himself purchase the goods in British India, but asked his agent in the foreign country to order them from a firm in British India, no part of the profits could be assigned to any process performed in British India, and that the whole of the profits would,

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in that case, be exempt from taxation under the Indian law. On principle there is little or no difference between the two cases. The same remarks would apply to the case of a person who, instead of buying goods in the market, exported his own goods, *e.g.*, the raw produce of his own land, to a foreign country for sale by his agent there. If the mere purchase of goods in British India would have the effect of making British India as the place of the accrual of a part of the profits, the same result could, by a parity of reasoning, be ascribed to the passage of goods through British India in the course of their transit, say, from one Native State where they are purchased to another Native State where they are sold and result in profits. I do not, however, think that this circumstance alone would render a part of the profits taxable in British India.

The question, upon which we have to pronounce our opinion is not free from difficulty; but after a careful examination of the arguments urged on both sides I have reached the conclusion that the mere purchase of goods in British India has too remote a connection to justify the conclusion that a part of the profits should be held to have accrued in this country. I would, therefore, answer the question by stating that no part of the profits realised by the assessee by the sale of the goods in the foreign country, is taxable under the Income-Tax Act of 1922.

BROADWAY J. — SIR ALAN BROADWAY J.—I concur.

ZAFAR ALI J. — ZAFAR ALI J.—So do I.

TEK CHAND J. — TEK CHAND J.—I concur.

JAI LAL J. — JAI LAL J.—I concur.

A. N. C.