

INCOME-TAX REFERENCE.

Before Sir Ernest H. Goodman Roberts, Kt., Chief Justice, Mr. Justice Leach,
and Mr. Justice Mackney.

THE COMMISSIONER OF INCOME-TAX, BURMA

1937

v.

Apl. 2.

THE KYAUKTAGA GRANT, LTD.*

Income-tax—Purchase by trading company of whole of paddy crop from its tenants—Purchase price higher than market rate—Arrangement for payment by tenants of rent in full—Re-sale of paddy at a loss—Profit if purchased at market rate—Price whether imaginary—Paddy received for rent—Agricultural income—Transaction on cash basis—Income-tax Act (XI of 1922), ss. 2 (1) (b) (iii), 4 (3) (viii)

Where a trading company *bona fide* purchases the whole of the paddy crop of its tenants at a price above the market rate in order to enable the tenants to pay the rent due to the company in full which the company, as a matter of policy, did not want to reduce, and also to enable the tenants to meet the bank dues on advances, and the re-sale of the paddy results in loss to the company the Income-tax Officer cannot treat the transaction as fictitious and the purchase price as imaginary, and require the company to pay the tax on a profit calculated on the basis of the purchase price being at the market rate. On the other hand the company cannot treat the rent it received as being received in kind and claim exemption from taxation under s. 4 (3) (viii) read with s. 2 (1) (b) (iii) of the Income-tax Act as being agricultural income. The transaction was on a cash basis and the company received its rent out of the purchase consideration.

Lambert (Assistant Government Advocate) for the Crown.

Foucar for the assessee.

LEACH, J.—The questions raised in this reference which is made under section 66 (2) of the Indian Income Tax Act, 1922, concern the assessment of the Kyauktaga Grant, Limited, for the year 1935-36. The Kyauktaga Grant, Limited, is a company which owns or leases about 28,000 acres of paddy land in the Pegu District. The land is let out to tenants, the company

* Civil Reference No. 16 of 1936.

1937
 THE
 COMMISSIONER OF
 INCOME-TAX,
 BURMA
 ?
 THE
 KYAUKTAGA
 GRANT, LTD.
 LEACH, J.

paying the land revenue due to Government. Some time before the harvest of 1933 the management of the company considered that at the price then prevailing for paddy the tenants would not be able to pay their rents to the company and interest on advances which they had received from the Lower Burma Bank, Limited, a subsidiary concern. The company did not wish to reduce the rents as it thought that this would create a bad precedent. At the same time the company feared that unless the tenants could be induced to deliver over their paddy they would dispose of it to others and the company would be paid no rent. Questions relating to the Kyauktaga Grant and the tenants on the lands comprised in the Grant have been before this Court from time to time and I am prepared to accept the statement that there was justification for the fear. The company accordingly decided that it would offer to buy from the tenants the whole of their paddy crop at the price of Rs. 60 per 100 baskets. Out of the moneys payable to the tenants by way of purchase consideration the company would deduct the amounts due for rent and pay the balances into the accounts which the tenants had with the Lower Burma Bank. The price of Rs. 60 per 100 baskets was Rs. 15 above the market rate and the arrangement being acceptable to the tenants the company took over the whole of the crop at this price.

The profit and loss account of the company for the year ended 30th September 1934, which is the accounting year for the company's 1935-36 assessment, showed that it had received its rents in full, but a loss of Rs. 52,545-10-9 was shown on paddy trading. This figure represented what the company had lost on sales of paddy bought from the tenants under the arrangement entered into. When the Income-tax Officer examined the accounts he formed the opinion that a loss of

agricultural rents had been wrongly shown as a loss in paddy trading. He therefore re-cast the paddy trading account on the basis of a paddy purchase price of Rs. 45 per 100 baskets, and in this way arrived at a net profit of Rs. 59,622, which he included in the assessment. This decision was upheld by the Assistant Commissioner on appeal.

The company received altogether 812,791 baskets of paddy which it says should be divided up as follows :

	Baskets.
(a) Received as rent in kind ...	605,630
(b) Received as a paddy trader ...	126,521
(c) In stock at the end of the year ...	80,640
	<hr/>
Total ...	812,791
	<hr/>

With regard to (a) the company claims exemption from taxation under section 4 (3) (viii) read with section 2 (1) (b) (iii) as being agricultural income. It admits that any profits made on the sale of the 126,521 baskets which it received as a paddy trader are assessable, but contends that the calculation must be based on a purchase price of Rs. 60 per 100 baskets of paddy and not on a price of Rs. 45 per 100 baskets which the Income-tax Officer has taken.

In paragraph 7 of the order of reference the Commissioner of Income-tax has corrected the figure of 605,630 baskets said to have been received as rent in kind and says that the company should in any event allocate the 812,791 baskets of paddy as follows :

	Baskets.
(a) Received as rent in kind ...	454,223
(b) Received as a paddy trader ...	277,928
(c) In stock at the end of the year ...	80,640
	<hr/>
Total ...	812,791
	<hr/>

1937
 THE
 COMMISSIONER OF
 INCOME-TAX,
 BURMA
 v.
 THE
 KYAUKTAGA
 GRANT, LTD.
 LEACH, J.

It will be observed that the company's figure of 605,630 baskets received as rent in kind has been reduced to 454,223 baskets and that the company's figure of 126,521 baskets received as a paddy trader has been increased to 277,928 baskets. The reason for this is that the Income Tax Commissioner does not accept the contention that the rent has been paid in full and insists that it was only paid to the extent of three-quarters.

The questions which the Commissioner of Income-tax has referred to this Court for decision are—

- " (i) Whether there is material for holding that the company did not receive the 454,223 baskets of paddy specified in paragraph 7 as a receiver of rent-in-kind within the meaning of section 2 (1) (b) (iii) of the Indian Income-tax Act ?
- (ii) If the answer to question (i) is in the affirmative, whether the profit on the sale of the paddy in question was rightly calculated on the basis of a purchase price of Rs. 45 per 100 baskets ?
- (iii) Whether the profit on the sale of the 277,928 baskets of paddy specified in paragraph 7 was rightly calculated on the basis of a purchase price of Rs. 45 per 100 baskets ?
- (iv) If the answer to question (i) is in the negative, whether the closing stock of paddy 80,640 baskets specified in paragraph 7 should be held to be either paddy received as rent-in-kind or paddy held for trading purposes or whether it should be allocated *pro rata* between the two items ? "

There can be no doubt that in this case the company did take over the whole of the paddy crop at the rate of Rs. 60 per 100 baskets and before us no suggestion to the contrary has been made. The Commissioner of Income-tax has however referred to this as an " alleged " purchase and has spoken of an " imaginary " price. There was no imaginary price. The tenants got in full the price which the company agreed to pay them

for their paddy. The entries in the company's books cannot be treated as fictitious entries. On the materials before him the Income-tax Officer was certainly not entitled to re-write the accounts on the basis of a price of Rs. 45 per 100 baskets. He was not entitled to take a lower price than that of Rs. 60 per 100 baskets, the price actually paid.

In paragraph 11 of the Letter of Reference the Commissioner says :

" I know of no principle or practice which entitles the Company as paddy trader to say that it paid Rs. 60 for the paddy when it could get all the paddy which it wanted in the market for Rs. 45."

But this view overlooks a material consideration. The company did not simply want to buy paddy but to secure the whole crop of their tenants. When a commodity is desired from a particular source and to the exclusion of other purchasers, it may very well be that the purchaser will have to pay a higher price than that ruling in the open market.

While the Income-tax Officer was not entitled to write down the price paid by the company for the crop, the company was not entitled to treat the rent it received as being received in kind. The transaction was on a cash basis and the company received its rent out of the purchase consideration.

In accordance with these findings the answers to the questions referred will be as follows :

(1) The first question will be answered in the affirmative. (2) The second and third questions will be answered in the negative. (3) The answer to the fourth question will be that the 80,640 baskets should be treated as paddy held for trading purposes.

The assessee is entitled to the costs of this reference which we fix at 15 gold mohurs. The assessee is also

1937
 THE
 COMMISSIONER OF
 INCOME-TAX,
 BURMA
 v.
 THE
 KYAUKTAGA
 GRANT, LTD.
 LEACH, J.

1937
 THE
 COMMISSIONER OF
 INCOME-TAX,
 BURMA
 v.
 THE
 KYAUKTAGA
 GRANT, LTD.
 LEACH, J.

entitled to a refund of the Rs. 100 paid in connection with the reference.

ROBERTS, C.J.—I agree.

MACKNEY, J.—I agree.

APPELLATE CIVIL.

*Before Sir Ernest H. Goodman Roberts, Kt., Chief Justice, and
 Mr. Justice Leach.*

WILLIAM MOSES EZEKIEL

v.

MRS. SAUL SOFAER.*

Cancellation of instrument—Instrument prima facie duly stamped, executed and cancelled—Averment of subsequent cancellation—Burden of proof—Test of admissibility of instrument—Promissory note—Signature admitted—Line of cancellation in different ink—Other promissory notes not cancelled—Discharge of burden of proof—Stamp Act (I of 1899), ss. 12, 35, 69.

Where an instrument *prima facie* appears to be duly stamped and cancelled by the drawer at the date of execution the burden of proof lies upon the party who avers that the cancellation was not effected at the time of execution. In the absence of evidence to the contrary, it may be inferred that the stamp was duly affixed and cancelled

Bradlaugh v. De Rin, 18 L.T.R. 904; *Doe d. Fryer v. Coombs*, (1842) 3 Q.B. 687; *Jethibai v. Narottam*, I.L.R. 13 Bom. 484; *Raman Chetty v. Mahomed Ghouse*, I.L.R. 16 Cal. 432; *Wilson v. Smith*, 12 M & W. 401, referred to.

The test of admissibility of an instrument is whether the instrument appears when tendered in evidence to be sufficiently stamped.

Bull v. Sullivan, 6 Q.B. 209; *Chandrakant Mookerjee v. Karticharan*, 5 Ben. L.R. 103; *Royal Bank of Scotland v. Tottenham*, (1894) 2 Q.B. 715 referred to.

Dayaram v. Chandulal, 27 Bom. L.R. 1118, distinguished.

The execution of the promissory note in suit by a deceased person was admitted by his executrix, but she denied the cancellation of the two lower stamps by the deceased by a line whose ink was admittedly different from the

* Civil First Appeal No. 154 of 1936 from the judgment of this Court on the Original Side in Civil Regular Suit No. 264 of 1934.