

## INCOME-TAX REFERENCE.

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

1937  
Mar. 17.

## THE COMMISSIONER OF INCOME-TAX, BURMA

v.

## HAJEE MOHAMED HAJEE OOSMAN.\*

*Income-tax—Assessee resident in Native State—Rice-business in Colombo—  
Agent of assessee with office in Rangoon—Part of rice bought in, and  
exported from Rangoon—Liability to tax on profits—Business connection—  
Income-tax Act (XI of 1922), s. 42 (1).*

In the case of an assessee who resides out of British India all profits or gains accruing to him, even indirectly, through his business connection in Burma must be deemed to be income arising within British India and chargeable to income-tax as such.

The assessee was a resident of a Native State and carried on rice business in Colombo. Part of the rice sold in Colombo was purchased from time to time by his agent stationed in Rangoon and shipped to Colombo. *Held* that the assessee was liable on the profit made on rice shipped from Burma under s. 42 (1) of the Income-tax Act.

*Kalyanwala* for the assessee. The assessee resides and carries on business outside British India. He has a business connection in Burma and can only be assessed on that portion of the profits which is attributable to his business connection in Burma. *The Commissioner of Income-tax, Burma v. Steel Bros. & Co., Ltd.* (1), at p. 653, last paragraph; *Rogers Pyatt Shellac Co. v. Secretary of State for India* (2).

The only portion of the profits which can be stated to have arisen through the business connection in Burma is the notional commission which the assessee would have to pay had he employed a general

\* Civil Reference No. 1 of 1937.

(1) I.L.R. 3 Ran, 614.

(2) I.L.R. 52 Cal. 1.

commission agent here and not maintained an office in Rangoon.

*Tun Byu* (Assistant Government Advocate) for the Crown was not called upon.

ROBERTS, C.J.—In this case the Commissioner of Income-tax has referred to the High Court in accordance with the provisions of section 66 (2) of the Indian Income-tax Act (XI of 1922) the following question :

“Whether in the circumstances of this case the assessee's profits made in Ceylon on the sale of rice purchased in Burma are assessable under section 42 (1) of the Indian Income-tax Act, 1922.”

The facts of the case may be stated very shortly. The assessee, one Hajee Mohamed Hajee Oosman, lives in Kathiawar, outside British India, and he carries on a business in Colombo where rice is sold and where he makes a profit. Part of the rice so sold in his business in Colombo is purchased by him or by his agent at an office kept on his behalf at Rangoon where purchases of rice from time to time are made and the rice exported to Colombo for the purpose of re-sale. In these circumstances it is conceded by the learned advocate for the assessee—and he could have obviously taken no other course than do so—that the appellant maintained a business connection in British India, and the short point which we are asked is whether his profits made in Ceylon on the sale of rice purchased in Burma are assessable under section 42 (1) of the Act. Looking at the section and sub-section it is manifest that in the case of the assessee who resides out of British India all profits or gains accruing to him, even indirectly, through his business connection in Burma must be deemed to be income arising within

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British India and chargeable to income-tax as such, and I would therefore answer the question propounded in the affirmative.

LEACH, J.—I agree.

MACKNEY, J.—I agree.

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### INCOME-TAX REFERENCE

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

1937  
 Apr. 2.

THE COMMISSIONER OF INCOME-TAX, BURMA

v.

P.V.R.M. VISALAKSHI ACHI.\*

*Income-tax—Money lender residing and carrying on business outside British India—Isolated loans to persons in British India—"Business connection"—Income-tax Act (XI of 1922), s. 42 (1)—Reference by Commissioner—Right to begin.*

A person residing and carrying on money-lending business in a Native State and making single loans to three or four persons residing or carrying on business in British India only once in the course of the assessment year cannot be said to have a business connection in British India within the meaning of s. 42 (1) of the Income-tax Act. The mere fact that a business transaction like a loan takes place between two parties does not mean that a business connection has also been established between them. Business connection means an adventure or concern in the nature of trade, commerce or manufacture with which a person is connected, and isolated loan transactions entered into outside British India do not come within the purview of the section.

*The Commissioner of Income-tax, Bombay v. Currimbhoy Ebrahim & Sons, I.L.R. 60 Bom. 172, followed.*

*Commissioner of Income-tax, Bombay v. Bombay Trust Corporation, I.L.R. 52 Bom. 702; I.L.R. 54 Bom. 216, distinguished.*

When at the instance of the assessee the Commissioner of Income-tax refers a question of law to the High Court under s. 66 (2) of the Act, the assessee has normally the right to begin. Only in special circumstances, the Commissioner may be heard first.

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\* Civil Reference No. 9 of 1936.