

## CIVIL REFERENCE.

Before Jai Lal and Agha Haidur JJ.

THE LAXMI INSURANCE Co., LTD., LAHORE  
(ASSEESSEE) Petitioner

versus

THE COMMISSIONER OF INCOME-TAX  
Respondent.

Civil Reference No. 7 of 1930.

*Indian Income-tax Act, XI of 1922, section 34—"Escaped Assessment"—meaning of—where no machinery existed under which income in question could have been assessed—whether section applicable—section 59—Central Board of Revenue's Rule No. 25—procedure for assessment of profits of Life Assurance Companies—Life Assurance Companies Act, VI of 1912, section 8—Actuarial Report—average annual net profits disclosed by—effect on assessment to Income-tax—when no profits have been ascertained by actuarial valuation.*

*Held*, that as Rule No. 25, made by the Central Board of Revenue under section 59 of the Indian Income-tax Act (which lays down that in the case of Life Assurance Companies whose profits are periodically ascertained by actuarial valuation, the income, profits and gains of the Life Assurance business shall be the average annual net profits disclosed by the last preceding valuation) is of a mandatory character and provides the *only* manner in which the income, profits and gains of Life Assurance Companies can be determined, it is not open to the assessing officer to depart from its provisions and to have recourse to the other provisions of the Income-tax Act for the purpose of determining and assessing the income, profits and gains of a Life Assurance Company.

*Held also*, that as it was not possible under the provisions of the existing law for the Income-tax Officer to assess the petitioner to income-tax for the year in question, it could not be urged that the income, profits and gains of the Company "escaped assessment" during that year as that term is used in section 34 of the Indian Income-tax Act.

1931

Feb. 9.

1931

THE LAXMI  
INSURANCE  
CO., LTD.  
v.  
THE  
COMMISSIONER  
OF  
INCOME-TAX.

*Case referred by Mr. A. Raisman, Commissioner of Income-tax, Punjab, North-West Frontier and Delhi Provinces, with his No. R-14-(i)-27/29, dated 21st January, 1930, for orders of the High Court.*

BADRI DAS and HAR GOPAL, for Petitioner.

JAGAN NATH AGGARWAL, for Respondent.

JAI LAL J.

JAI LAL J.—This reference under section 66 of the Indian Income-tax Act has been made by the Commissioner of Income-tax under the following circumstances :—

The Lakshmi Insurance Company started business on the 1st of May, 1924, and as provided by section 8 of the Life Assurance Companies Act, 1912, the first actuarial report as to its financial condition and the valuation of its liabilities was prepared for the period ending the 30th of April, 1928, that is to say, for the first four years of its actual working. As a result of this valuation a profit of Rs. 1,25,684 was found to have been made by the Company. In this manner the average net profits for one year have been found to be Rs. 34,707. The Company was for the first time assessed to income-tax for the year 1928-29 on the basis of this income, and there is no dispute as to this. But during the year 1928 the Income-tax Officer also proceeded to assess the Company to income-tax in respect of its profits for the year 1927-28 professing to act under section 34 of the Indian Income-tax Act. To this course an objection was taken on behalf of the Company that the Income-tax Officer had no legal power to proceed under that section in the circumstances of the case. Consequently on the

application of the Company the following question has been referred for the opinion of this Court :—

“Whether in the circumstances of this case the assessment made under section 34 for the year 1927-28 is legal.”

We have heard counsel for both parties, and I am of opinion that our answer should be in the negative.

Now section 34 of the Indian Income-tax Act reads as follows :—

“If for any reason income, profits or gains chargeable to income-tax has escaped assessment in any year \* \* \* \* the Income-tax Officer may, at any time within one year of the end of that year, serve on the person liable to pay income tax \* \* \* \* a notice \* \* \* \* and may proceed to assess or re-assess such income, etc.”

The section, therefore, pre-supposes that the income, profits or gains which can be assessed under it should have been chargeable during the preceding year and must have escaped assessment.

There is no question raised before us that the income, profits or gains in question, if assessable, were chargeable. But it is contended that they did not “escape assessment” because this expression implies that they should have been assessable which, it is further contended, means that they were capable of assessment during the previous year. Now it seems that there is a clear distinction between chargeability and assessability. The former expression connotes liability to pay income-tax; the latter expression has reference primarily to the machinery which ought to be utilized, and the procedure that must be followed in determining the amount which should be levied as

1931

THE LAXMI  
INSURANCE  
Co., LTD.

v.

THE  
COMMISSIONER  
OF  
INCOME-TAX.

JAI LAL J.

1931

THE LAXMI  
INSURANCE  
CO., LTD.

v.

THE  
COMMISSIONER  
OF  
INCOME-TAX.

JAI LAL J.

income-tax. It, therefore, appears to me that during the year 1927-28 no machinery existed which made it possible in law for the Income-tax authorities to assess the income, profits or gains of the Company during that year.

Section 59 of the Indian Income-tax Act provides that the Central Board of Revenue may, \* \*

\* \* make rules for carrying out the purposes of the Act and for the ascertainment and determination of any class of income; it further particularly provides that it may make rules prescribing the manner in which and the procedure by which the income, profits and gains of the insurance companies shall be arrived at. In pursuance of the powers conferred upon the Central Board of Revenue, rules have been framed by it and the relevant rule is rule 25 which is to be found at page 67 of the Income-tax Manual (second edition). That rule lays down that in the case of Life Assurance Companies whose profits are periodically ascertained by actuarial valuation, the income, profits and gains of the Life Assurance Business shall be the average annual net profits disclosed by the last preceding valuation.

Now there is no question that in the year 1927-28 no profits of the Lakshmi Assurance Company had been ascertained by actuarial valuation and consequently no assessment was possible during that year under the Indian Income-tax Act according to the rule cited above. In other words, during that year there were no means provided by law for ascertaining or assessing the income of the Company. But the learned counsel who represented the Income-tax Commissioner before us contended that if the actuarial valuation was not available to the Income-tax Officer during the year 1927-28 it was open to that officer to

proceed in the ordinary way, that is to say, to levy the income-tax after obtaining a return of its income from the Company as is done in the case of ordinary individuals, companies or associations, and in this connection he contended that the provisions of section 59 of the Indian Income-tax are enabling provisions and that it is not incumbent on the Central Board of Revenue to frame rules under that section. This is true but the Central Board of Revenue have made the rules under that section and the rule concerned is of a mandatory character. It provides the only manner in which the income, profits and gains of Life Assurance Companies can be determined. It does not give any discretion to the assessing officer to depart from its provisions and to have recourse to the other provisions of the Income-tax Act for the purpose of determining and assessing the income, profits and gains of a Life Assurance Company.

1931  
 THE LAKSHMI  
 INSURANCE  
 Co., LTD.  
 v.  
 THE  
 COMMISSIONER  
 OF  
 INCOME-TAX.  
 JAI LAL J.

That being so, it is clear, in my opinion, that in the year 1927-28 it was not possible under the provisions of the existing law for the Income-tax Officer to assess the Lakshmi Insurance Company to income-tax. Can it, therefore, be urged that the income, profits and gains of the Company "escaped assessment" during that year as that term is used in section 34 of the Indian Income-tax Act. A thing cannot be said to escape certain consequences unless it is capable of facing or being subjected to those consequences, and as, in my opinion, the income of the Company was not capable of assessment under the rules laid down by the Central Board of Revenue, which have the force of law, during the year 1927-28 in the absence of an actuarial valuation which valuation according to the wording of rule 25 referred to above is to be utilised

1931

THE LAXMI  
INSURANCE  
Co., LTD.

v.

THE  
COMMISSIONER  
OF  
INCOME-TAX.

JAI LAL J.

for assessing the income of the *succeeding years* till the next valuation is made, it cannot be said to have escaped assessment.

It is further to be noted that according to rule 25 cited above the *last preceding* valuation has to be made the basis of the succeeding assessments. In the present case there is no last preceding valuation with reference to the income which should ordinarily be taken as the basis of assessment for 1927-28.

I would, therefore, answer the question in the negative and leave the parties to bear their own costs of these proceedings.

AGHA HAIDAR J.

AGHA HAIDAR J.—I agree.

N. F. E.

*Reference answered in the negative.*

---