

INCOME-TAX ACT REFERENCE.

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

IN RE THE COMMISSIONER OF INCOME-TAX,
BURMA

1940
Feb. 5.

v.

THE CENTRAL BANK OF INDIA, LTD.*

*Income-tax—Government of India loan, tax-free—Issue prior to 1st April 1937—
Exemption from income-tax in Burma—Subsisting rights—Burma Income-
tax Act, s. 8—Government of Burma Act, s. 148—Adaptation of Laws
Order, cl. 10.*

A loan issued by the Government of India prior to 1st April 1937 and declared to be income-tax free cannot be made liable to income-tax in Burma throughout its currency in view of s. 148 of the Government of Burma Act and clause 10 of the Adaptation of Laws Order. The right is attached to the security itself and is not merely the personal right of the particular person who happens to be the holder of the security at any one time.

The assessee required the Commissioner of Income-tax to refer the following question for the decision of the High Court—

“Whether on a correct interpretation of the second proviso to section 8 of the Income-tax Act and the Government of Burma Adaptation of Laws Order, 1937, the sum of Rs. 8,750, being the interest received by petitioners on 5 per cent 1945-55 securities of the Government of India issued income-tax free and enfaced for payment in India, was not exempt from taxation in Burma?”

The Commissioner, however, referred the following revised question to the High Court—

“Whether under the second proviso to section 8 of the Burma Income-tax Act, as adapted by the Government of Burma (Adaptation of Laws) Order, 1937, the sum of Rs. 8,750 being the interest received by the Central Bank of India, Limited, on 5 per cent 1945-55 securities of the Government of India issued income-tax free, but not enfaced for payment of interest in Burma, is exempt from tax in Burma?”

* Civil Reference No. 15 of 1939.

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On the revised question the Commissioner of Income-tax expressed his opinion thus :

"Section 8 of the Act deals substantively with the Government of India securities enfaced for payment of interest in Burma. The proviso in the section cannot be more extensive than the substantive scope of the section, so that the exemption does not apply to securities not enfaced for payment of interest in Burma. In other words, being a proviso it is merely an exception to what has preceded it in the section and is not a substantive provision. It thus applies only to interest on securities of the Government of India, enfaced for payment of interest in Burma."

Clark for the assessee. The assessee Bank is the holder of the securities of the Government of India loan of 1945-55 which were issued free of income-tax throughout their currency under a series of notifications of the Finance Department of the Government of India in 1919, 1920 and 1923. In view of s. 148 of the Government of Burma Act s. 8 of the Income-tax Act as it stood prior to 1st April 1937 governs the case. Changes made under the Adaptation of Laws Order are subject to the provisions of clause 10 of that Order. The right accrued to the Bank under the law existing at the moment of separation. The right goes with the security and is an incident of the security. It is beside the point to look at other provisions of the Adaptation of Laws Order in view of clause 10 thereof. The question as framed by the Commissioner of Income-tax puts the assessee out of Court, but it has not been correctly framed.

Tun Byu (Government Advocate) for the Crown. The first point for determination is the date on which the Bank acquired the securities. If it is after separation the Burma Income-tax Act, as amended, applies.

ROBERTS, C.J.—In my opinion, the answer to be given to the question which was submitted by the

assessee is that the sum referred to in the question was exempt from taxation in Burma.

The Commissioner of Income-tax has framed an alternative question, but it is framed in an unfortunate way, because the question before us is not merely how far section 8 of the Burma Income-tax Act, as adapted by the Adaptation of Laws Order, operates, but takes into account not merely the proviso to section 8 in the Adaptation of Laws Order, but also the whole of the order itself and, in particular, clause 10, which runs as follows :

“ Nothing in this Order shall affect the previous operation of, or anything duly done or suffered under, any Burman law, or any right, privilege, obligation or liability already acquired, accrued or incurred under any such law or any penalty, forfeiture or punishment incurred in respect of any offence already committed against any such law. ”

To discover the true meaning of this clause, it is necessary to go behind it and look at the Government of Burma Act, section 148, of which says :

“ Notwithstanding the repeal of the Government of India Act, but subject to the provisions of this Act, all the law in force in Burma immediately before the commencement of this Act shall continue in force in Burma until altered or repealed or amended by the Legislature or other competent authority. ”

Now, what was the law in Burma prior to the commencement of the Government of Burma Act? Section 8 then read that the tax shall be payable by an assessee under the head “ interest on securities ” in respect of the interest receivable by him *inter alia* on any security of the Government of India or any Local Government, and it was provided that no income-tax shall be payable on the interest receivable on any security of the Government of India issued or declared to be income-tax free. *Prima facie* that

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law remains unchanged unless it has been amended or repealed by the Legislature or other competent authority.

The nature of these securities is that they are all loans expressly declared to be income-tax free. They are dealt with in a series of notifications of the Finance Department of the Government of India, one dated the 16th June, 1919, being Notification No. 1457-F, another dated the 21st June, 1920, being Notification No. 1691-F, and another dated the 16th June, 1923, being Notification No. 955-F. And each of these notifications stated in terms that the interest on the loans will be income-tax free throughout their currency, but will be taken into account in determining the rate at which the tax will be levied on other income, and will be liable to super-tax.

The position, therefore, was that the holder of stock of this character possessed, as a clear incident of that security, freedom from any liability to pay income-tax in respect of interest accrued on it, and it does not, of course, matter at what time the stock was bought : it seems to me that the loan itself, from its beginning until its end, is a loan which is exempt from liability to income-tax.

When the Government of Burma Act came into effect, the only way in which the law could be altered by the Adaptation of Laws Order was so long as clause 10 of the Order remained unaffected. And it is quite clear that the effort which has been made to suggest that the obligation entered into by the Government of India could be repudiated by the Government of Burma at a later date offends against clause 10 of the Order.

It seems to me, with respect, that the Commissioner has failed to realize what section 8 of the Income-tax Act, as amended, really means. It is

quite clear that it is intended to point to the law by which any future issues of the Government of India shall be governed. The question then of whether they are enfaced for payment of interest in Burma may arise: but what the Commissioner has done in this case is in effect to treat this section as though it were a retrospective section. But it does not affect the exemption from liability to tax of a loan which was issued by the Government of India years ago, having regard to the Government of Burma Act and clause 10 of the Order to which I have referred.

In my opinion, therefore, the answer to this question should be in the affirmative and the Commissioner will have to pay the costs of this reference, advocate's fee twenty gold mohurs. The assessee will be refunded his deposit.

DUNKLEY, J.—I agree with my Lord the Chief Justice.

The Commissioner of Income-tax, in revising the question which was suggested to him by the assessee, has, with the greatest respect, missed the whole point which the assessee was contesting. The assessee was not contesting as to what was the effect of section 8 as it has been amended by the Adaptation of Laws Order, but was raising the point as to what was the effect upon section 8, as it stood prior to the separation of Burma, by reason of the amendment made by the Adaptation of Laws Order. And, clearly, this question must depend, not upon the actual wording of the amendment, which never comes into issue at all, but upon the effect of such amendment in regard to previously accrued rights, and that point is decided by clause 10 of the Order. Clause 10 says, in the plainest terms, that a right, which has already accrued prior to the Government of Burma Act coming into

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force, is not affected by any amendment made by the Adaptation of Laws Order. That right, in this case, is a right which is attached to the securities themselves and is not merely the personal right of the particular person who happens to be the holder of the securities at any one time. Therefore, the point suggested to us by the learned Government Advocate, that the question as to when the purchaser became possessed of these securities is a question which falls to be determined before the question propounded can be decided, does not arise. The securities themselves were issued long before the Government of Burma Act came into force, and, consequently, this right which attached to the securities is a right of which every holder thereof can avail himself, and, therefore, so far as Burma is concerned, these securities cannot be made liable to income-tax in Burma throughout their currency.

MACKNEY, J.—I agree and I have nothing to add.