

pleader, it may be that after this lapse of time all outstanding have become barred by limitation. *Prima facie* then it is most unfair that the arbitrator should thus allow five years to pass as regards ordinary outstandings without doing anything.

Then there are several other objections which have been urged before us, based on paragraphs 6 and 8 of the award. They are certainly curious provisions. But we have not gone into them, nor required counsel for the respondents to deal with those points, because in our judgment it is unnecessary so to do, having regard to the main point as regards the lapse of time.

Under these circumstances I would allow the appeal, and discharge the order of the learned Judge and dismiss this application.

As regards costs, the appellant has deliberately attempted to deceive the Court by asserting matters which were clearly false to his own knowledge, viz., that he had not signed the reference, and secondly that he had abandoned it at once. That being so, this is one of those exceptional cases where having regard to his conduct, he should be deprived of all his costs. Our order as to cost will therefore be that each party do bear his own costs throughout.

CRUMP, J. :—I agree.

Appeal allowed.

R. R.

PRIVY COUNCIL

COMMISSIONER OF INCOME TAX *v.* WESTERN INDIA TURF CLUB, LTD.

[On Appeal from the High Court at Bombay]

Indian Income Tax Act (XI of 1922), sections 26, 55 and 58—Super-tax—Registered company—Conversion from association—Rate of tax—Act XIII of 1925, Sch. III, Pt. II.

Where an unincorporated association has been converted into a registered company as from April 1, 1925, although the company, having regard to sections 26 and 58 of the Indian Income Tax Act, 1922, is to be assessed for super-tax (charged by section 55) for the year following at the amount of the income of the association in

*Present: Viscount Cave, L.C., Lord Buckmaster, Lord Carson, Lord Darling and Lord Warrington of Clyffe.

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the previous year, the rate leviable is that which Act XIII of 1925, Sch. III, Pt. II, provides in the case of a company, not that which the schedule provides in the case of an unincorporated association.

In the matter of Begg, Sutherland and Co., Ltd.,⁽¹⁾ commented on.

Order of the High Court, 50 Bom. 648, affirmed.

APPEAL (No. 57 of 1927) from an order of the High Court (April 9, 1926) upon a special case stated under section 66, sub-section 2 of the Indian Income Tax Act, 1922.

The respondents were a company registered under the Indian Companies Act (VII of 1913) as a company limited by guarantee; the company was formed on April 1, 1925, to take over the assets and liabilities of the Western India Turf Club, an unincorporated association.

The question raised by the reference was whether the rate of super-tax payable under section 55 of the Act of 1922 by the respondent company for the year commencing April 1, 1925, was the rate applicable to a registered company or that applicable to an unincorporated association.

The relevant statutory provisions appear from the judgment of the Judicial Committee.

The High Court (Macleod, C.J. and Crump, J.) held that the rate was that applicable to a registered company. The judgments are reported at 50 Bom. 648.

Sir George Lowndes, K.C. and *Reginald Hills*, for the appellants.

Latter, K.C. and *R. W. Needham*, for the respondents.

The judgment of their Lordships was delivered by *VISCOUNT CAVE, L.C.* :—The question raised by this appeal is a short one. The Western India Turf Club was originally an unregistered association; but as from April 1, 1925, it was converted into a company by being registered under the Indian Companies Act (Act No. VII of 1913) as a company limited by guarantee, the object of the company being to take over the assets, effects and liabilities of the Western India Turf Club. The question raised in these proceedings is, at what rate that company should pay super-tax for the tax year commencing on April 1, 1925.

⁽¹⁾ (1925) 47 All. 715.

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The enactment chiefly in point is section 55 of the Indian Income Tax Act (XI of 1922). That section is in these terms :—

“In addition to the income-tax charged for any year, there shall be charged, levied and paid for that year in respect of the total income of the previous year of any individual, unregistered firm, Hindu undivided family or company, an additional duty of income tax (in this Act referred to as super-tax) at the rate or rates laid down for that year by Act of the Indian Legislature.”

On that section two questions may arise, which it is necessary to keep distinct.

First, the question may arise on what amount of income the taxpayer is to pay his super-tax. On that point the section provides that he is to pay super-tax in respect of the total income of the previous year. Strictly speaking, this company had no total income in the previous year, for it did not then exist; but that difficulty is removed by section 26 of the same Act, which provides that—

“Where any change occurs in the constitution of a firm or where any person has succeeded to any business, profession or vocation, the assessment shall be made on the firm as constituted, or on the person engaged in the business, profession or vocation, as the case may be, at the time of the making of the assessment.”

It should be added that section 26 is applied to super-tax by section 58. The effect of those sections is that, for the purpose of assessment to super-tax, you must take the total income, not of the respondent company itself, but of the predecessor in title of the company; and the income in this case has been assessed on that basis.

The second question which arises is, at what rate is the taxpayer to pay super-tax. With regard to that point, section 55 provides that the taxpayer is to pay “at the rate or rates laid down for that year”—that is, for the year of assessment—“by Act of the Indian Legislature.” In other words, for the purpose of ascertaining the rate of the tax you are referred to a statute to be afterwards passed. That statute was afterwards passed, and it is Act XIII of 1925. It provides by section 7, sub-section (2), that—

“The rates of super-tax for the year beginning on the 1st day of April, 1925, shall, for the purposes of section 55 of the Indian Income Tax Act, 1922, be those specified in Part II of the Third Schedule.”

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When one turns to Part II of the Third Schedule, one finds these rates specified, namely, "In respect of the excess over 50,000 rupees of the total income (1) in the case of every company, one anna in the rupee." Then follow other rates relating to corporations, individuals or associations not being companies, and some of those rates are calculated on a rising scale. What is the effect of that? It can only be that this particular taxpayer, being a company falling within the first words of Part II of Schedule III, must pay at the rate there specified, namely, at the flat rate of one anna in the rupee.

The argument which has been used in favour of the appeal seems to involve the fallacy that liability to tax attached to the income in the previous year. That is not so. No liability to tax attached to the income of this company until the passing of the Act of 1925, and it was then to be taxed at the rate appropriate to a company.

With regard to the Allahabad case which has been cited (*In the matter of Begg, Sutherland and Co., Ltd.*)⁽¹⁾ it is sufficient to say that, if the question there decided should again arise, that decision will require further consideration.

For the reasons which they have given their Lordships are of opinion that this appeal fails, and they will humbly advise His Majesty that it be dismissed with costs.

Solicitor for appellant : *Solicitor, India Office.*

Solicitors for respondents : *Messrs. E. F. Turner & Sons.*

A. M. T.

ORIGINAL CIVIL

Before Mr. Justice Talyarkhan.

In re HYDERBHAI HUSSENBHAI.*

Presidency Towns Insolvency Act (III of 1909), sections 9 (c) and 12 (1) (c)—Act of insolvency—Attachment for more than twenty-one days—Not continuing act of insolvency—Creditor's petition.

Under section 9 (c) of the Presidency Towns Insolvency Act, 1909, the act of insolvency contemplated is committed on the completion of the first twenty-one

* Insolvency petition No. 262A of 1927.

⁽¹⁾ (1925) 47 All. 715.

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