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mining operation." Contrasting the wording it appears to me that the Act did intend to give rather more extended protection to persons employed in factories and mines, than to persons employed in other capacities set out in the schedule.

With regard to the facts my Lord the Chief Justice has suggested that the deceased might have met his death in preventing some motor car from running into the pipe stand. It does not appear however on the evidence that it was any part of the coolies' duty to direct the traffic. Two lanterns were placed by the stand pipe to give warning to traffic car. All that the coolies had to do was to see that nobody deliberately removed the recorder. In my view this task cannot be considered to be included in the expression "working of the pipe-line," and I, therefore, think with great respect, that the appeal should be dismissed.

Appeal allowed.

Y. V. D.

APPELLATE CIVIL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Blackwell.

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THE COMMISSIONER OF INCOME-TAX, BOMBAY PRESIDENCY, SIND AND BALUCHISTAN, REFERROR *v.* THE AHMEDABAD ADVANCE MILLS LIMITED OF BOMBAY, ASSESSEES.*

Indian Income-tax Act (XI of 1922), section 4 (2)—Income received by assessees in London—Income invested in machinery and stores in England—Machinery brought into British India—Whether machinery and stores can be regarded as income liable to be taxed.

The assessees, a limited company of Bombay, received certain income amounting to Rs. 18,000 odd in London. They invested that income in the purchase of stores and machinery in England, which they shipped to Bombay. A question was raised whether the stores and machinery could be regarded as income brought into British India :

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Held, that the income received by the assessees in London was capitalized by the purchase of machinery and stores, and therefore it was not income brought into British India within the meaning of section 4 (*2*) of the Indian Income-tax Act, 1922.

Gresham Life Assurance Society v. *Bishop*,[1] referred to.

REFERENCE made by J. B. Vachha, Commissioner of Income-tax, Bombay Presidency, Sind and Baluchistan, under section 66 (*2*) of the Indian Income-tax Act, 1922.

The assessee company, the Ahmedabad Advance Mills, Ltd., was registered in British India. For the financial year 1936–37 the company was assessed to income-tax on a total income of Rs. 1,21,380. The assessee objected *inter alia* to the inclusion in the income assessed of a sum of Rs. 18,333 on account of interest on 5½ per cent. 1936–38 Sterling Bonds of Government of India, on the ground that the said interest was received in England and was actually expended there in the purchase of stores and machinery. The machinery was shipped to Bombay.

The Income-tax Officer was of opinion that the amount in dispute was constructively brought into British India, though the company did not bring it in in cash. He relied on the decision of the Madras High Court in the case of *L. C. T. S. P. Subramaniyam Chettiar* (IX I.T.C. 47).

On appeal, the Assistant Commissioner upheld the view of the Income-tax Officer.

On a revision petition being presented to Income-tax Commissioner, he made a reference to the High Court, submitting the following question for decision :—

"Whether in the circumstances of the case, the Income-tax Officer has rightly included in the income liable to tax, the amount of Rs. 18,333 on account of interest on sterling securities on the ground that though the said income accrued or arose in England, it was received in or brought into British India within the meaning of section 4 (*2*) of the Act."

[1] [1902] A. C. 287.

He answered the question in the affirmative, giving reasons as follows :—

"The relevant section of the Act is 4 (2) which lays down that 'Income, profits and gains accruing or arising without British India to a person resident in British India, shall, if they are received in or brought into British India, be deemed to have accrued or arisen in British India.....' Now there are various methods of bringing into British India what one receives outside it. The Company received in England the said interest in sterling not in rupees. It could have brought the pounds, shillings and pence it actually received or it could have converted the amount into rupees and brought them here or it could have got a draft or a cheque from a Bank in England with a branch in Bombay for the said amount, either in sterling or in rupees or it could have converted it into something else and brought that into British India. Surely the above provision in the Act does not mean that the Company could be said to have brought the income into British India only if it had brought here the very pounds, shillings and pence it actually got in London by way of interest on the sterling loans. In the first place, the section does not say any such thing and secondly its enactment would be useless were such a construction put upon it as income would be received outside British India not in rupees but in some foreign currency almost invariably and any one who converted that into rupees before bringing it here would pay no tax. One may bring pounds, shilling and pence, or convert them into dollars or rupees or gold or silver or any other material before bringing here the amount earned abroad but all that would amount to bringing the income here. Again the section does not say that the income should have been brought here in cash before it could be taxed and I do not think there can be any doubt that in this case, the income was brought into British India within the meaning of this section as soon as the goods purchased were brought here. Even when the foreign income was not brought into British India at all but utilised in paying off an Indian debts, it has been held that the income could be said to have been received constructively in British India (*vide* the case of *L. C. T. S. P. Subramaniyam Chettiar* v. *Commissioner of Income-tax*, Madras, Volume IX, Part I, Srinivasan's Tax Cases, page 47)."

Sir Kenneth Kemp, Advocate General, with *C. M. Eastley*, Government Solicitor, for the referror.

Sir Jamshed Kanga and *Coltman*, with *Ardeshir Hormusji, Dinshaw and Co.*, for the assessees.

BEAUMONT C. J. This is a reference by the Income-tax Commissioner under section 66 (2) of the Act raising a short point. The assessees are a limited company, and in the year of assessment they had certain income amounting to

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Rs. 18,000 odd, which they received in London. They invested that income, or at any rate the bulk of it, in the purchase of stores and machinery in England, which they then shipped to Bombay, and the question is whether they are liable to pay income-tax on so much of the stores and machinery as represent the income received by them in London, in other words, whether the income received by them in London has been constructively brought into British India. The question turns on the construction of section 4 (2) of the Indian Income-tax Act. That sub-section provides :—

"Income, profits and gains accruing or arising without British India to a person resident in British India shall, if they are received in or brought into British India, be deemed to have accrued or arisen in British India and to be income, profits and gains of the year in which they are so received or brought, notwithstanding the fact that they did not so accrue or arise in that year."

The sole question is whether these stores and machinery can be regarded as income brought into British India. There is, in my opinion, no doubt that income received in a foreign country may be brought into India in some form other than that in which it is actually received. Foreign income may be received in sterling or francs or dollars, and may be brought into India in the form of rupees, or income received abroad may be remitted to India by means of a banker's draft. To use Lord Brampton's phrase in the *Gresham* case, *Gresham Life Assurance Society* v. *Bishop*,[1] the income may be received "in specie or in any form known to the commercial world for the transmission of money from one country or place to another." But it seems to me that in order to attract income-tax in India what is brought into this country must be income, profits and gains, and if the assessee has converted income received abroad into capital, and then brings that capital to India, he is not bringing into India income, profits or gains. Whether the foreign income has

[1] [1902] A.C. 287.

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in fact been capitalised or not must be a question of fact in each case. In the present case there is, in my opinion, no doubt that the income was capitalised by the purchase of machinery and stores. It is not suggested that the machinery and stores were brought into this country for the purpose of being sold and the proceeds applied as income. One can easily imagine a case in which an assessee in this country, desirous of bringing into the country foreign income for use as income in India, might convert the foreign income into some form of capital for example by the purchase of bonds, bring the bonds to this country, and then sell them and apply the proceeds as income. In such a case I apprehend the Court would probably hold that what had been brought into this country was in fact income and not capital. But, if the Court comes to the conclusion that in fact what is brought into this country is a capital asset, the fact that that capital asset was acquired out of income in a foreign country is, in my view, irrelevant. The actual question raised by the Commissioner of Income-tax is:—

"Whether in the circumstances of the case, the Income-tax Officer has rightly included in the income liable to tax, the amount of Rs. 18,333 on account of interest on sterling securities on the ground that though the said income accrued or arose in England, it was received in or brought into British India within the meaning of section 4 (2) of the Act."

In my opinion we should answer that question in the negative. The Commissioner to pay the assessees' costs on the Original Side scale to be taxed by the Taxing Master.

BLACKWELL J. I agree, and have nothing to add.

Question answered in the negative.

J. G. R.