Commissioner Of Income-Tax vs Shrimati Singari Bai. on 23 February, 1954

Equivalent citations: [1945]13ITR224(ALL)

JUDGMENT

IQBAL AHMAD, C.J. - This is a reference by the Commissioner of Income-tax, Central and United Provinces, under Section 66 (2) of the Indian Income-tax Act (XI of 1922) and the question referred to this Court is :-

> "Whether on the facts of this case the Income-tax Officer was justified in taking the assessees gross income from money-lending to be Rs. 31,081."

The facts that led to the reference, and as they appear from the statement of the case submitted by the Income-tax Commissioner, are very simple. Shrimati Singari Bai, the assessee, a professional money-lender, regularly kept her accounts according to what is known as the "mercantile accountancy system" or the "book profits system of accountancy" or the "complete double entry book-keeping." Under this system the net profit or loss is calculated after taking into account all the income and all the expenditure relating to the period, whether such income has been actually received or not and, whether such expenditure has been actually paid or not. That is to say, the profit computed under this system is the profits actually earned, though not necessarily realised in cash, or the loss computed under this system is the loss actually sustained, though not necessarily paid in cash. The distinguishing feature of this method of accountancy is that it brings into credit what is due immediately it becomes legally amount for which a legal liability has been incurred before it is actually disbursed. The "mercantile accountancy system" is the opposite of the "cash system of book-keeping" under which a record is kept of actual cash receipts and actual cash payments, entires being made only when money is actually collected or disbursed. In actual business practice, however, the system of book-keeping followed in many cases are such that they can be called neither the full "mercantile accountancy system" nor the cash basis of book-keeping. They are simply mixtures of the two systems and styled as "hybrid systems of book-keeping" (vide Book-keeping and Accounts by Rup Ram Gupta, pp. 269 and 270).

In the case before us, for the accounting year 1933-34 the assessee submitted a return showing her income from money-lending to be Rs. 1,499. For the purpose of this return she chose a cash method of accounting. Her accounts were then called for by the Income-tax Officer, and it was found that they were and had been regularly kept, according to the mercantile system, and that the interest account showed a credit of Rs. 31,081. Even though this amount had not been actually realised, the assessee had debited it in her books to the accounts of the debtors, credited it to the interest account and then transferred it to her own personal account. The Income-tax Officer held that, in view of the provisions of Section 13 of the Income-tax Act, he was not only entitled, but bound, to treat this sum of Rs. 31,081 as the assessees gross money-lending income and, after allowing certain permissible deductions, he assessed her on Rs. 23,400 on account of profits from money-lending business. The

assessee appealed to the Assistant Commissioner who dismissed the appeal. On an application being then made by the assessee the present reference was made by the Commissioner of Income-tax.

The question stated to us by the Commissioner of Income-tax is in effect - though certainly not in form -whether, according to the law in force in respect of the assessment year 1934-35, the Income-tax Officer was entitled to base his assessment of the profits or gains of the assessees money-lending business, as for the accounting year 1933-34, on the "mercantile accountancy system" which was the assessees own regular system, or whether the assessee was entitled to insist on an assessment based only on actual receipts and actual expenditure, that is to say, upon a cash method of accounting.

The answer to the question rests entirely on the construction of five main sections, viz., Sections 3, 4, 6, 10 and 13 of the Income-tax Act (XI of 1922) before it was amended by the Indian Income-tax (Amendment) Act, 1939, and reference in this judgment to the Act of 1922 will be to that Act in its unamended form except where otherwise stated.

Section 3 of the Act of 1922 enacts that "where any Act of the Central Legislature enacts that income-tax shall be charged for any year at any rate or rates applicable to the total income of an assessee, tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions every individual, Hindu undivided family, company, firm and other association of individuals."

That this section casts liability for the payment of income-tax and is, therefore, the charging section is clear from the first paragraph of the judgment of their Lordships of the Privy Council in Raja Raghunandan Prasad Singh v. Commissioner of Income-tax, Bihar & Orissa. It provides for a rate of tax which may be varied from time to time. It enacts that, subject to, and in accordance with, the provisions of the Act, tax shall be charged on "all income, profits and gains" of the assessee. That is the general charge of tax. It makes the income, profits and gains of the year previous to the year of assessment the basis for ascertaining income, profits and gains. And, finally, it casts the income-tax net over associations of individuals and corporations as well as over individuals.

Section 4, while not itself the primary or general charging section, is one of those provisions referred to in Section 3 "in accordance with and subject to" which, the general charge on all income, profits and gains is to operate. The relevant portion of Section 4 is as follows :-

> "4. (1) Save as hereinafter provided, this Act shall apply to all income, profits or gains, as describe or comprised in Section 6, from whatever source derived, accruing or arising, or received in British India or deemed under the provisions of this Act to accrue, arise, or to be received in British India.
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> (2) Profits and gains of a business accruing or arising without British India to a person resident in British India shall be deemed to be profits and gains of the year in which they are received or brought into British India, notwithstanding the fact that they did not so accrue or arise in that year, provided that they are so received or

brought in within three years of the end of the year in which they accrued or arose."

Section 4 is explanatory of the general charging section, Section 3 - in that it explains that (1) income, profits and gains charged are further described in Section 6;

(2) It does not matter for the purpose of chargeability from what source the income, profits and gains are derived, provided they fulfil the condition of accruing or arising or being received to or by the assessee in British India or of being deemed under the provisions of the Act to accrue, arise or be received in British India to or by the assessee; and (3) where income, profits or gains are received in British India - and so become assessable to the general charge of tax - after having accrued or arisen elsewhere, they are taxable in British India as income, profits or gains of the year of actual receipt in British India. Sub-section (3) of Section 4 excludes from the general charge particular classes of income or the income of certain particular classes of persons.

Section 4 is couched in plain and simple language and there is nothing whatever in the section which makes either the actual or the deemed receipt of income, profits and gains the sole test of chargeability to tax. Indeed the very reverse is the case. Section 4 draws the clearest distinction between what is received by the assessee and what has merely accrued or arisen to the assessee. And, with a full consciousness of this distinction, the Act provides that the general charge of tax is to extent not only to what has been received or is to be deemed to have been received, but also to what has accrued or arisen or is to be deemed to have accrued or arisen. It follows that actual or deemed receipt of income, profit, or gain is not the sole test for the levy of tax and that income, profits or gains that have accrued or arisen or are deemed to have accrued or arisen are also liable to the charge of income-tax.

Section 6 enumerates six heads of income, profits and gains that are chargeable to income-tax. Section 6 is followed by six sections each of which is explanatory of each of the six heads of income etc., prescribed by Section 6. Each of the six explanatory sections is introduced by the words "The tax shall be payable under" a particular head, and either further defines the source or head or provides a statutory method of computing the income, profits or gains under that head or source. Section 10 is the section which deals with the source or head comprising business. Section 10 (1) provides that :-

> "10. (1) The tax shall be payable by an assessee under the head Business in respect of the profits or gains of any business carried on by him."

Except that the word income is dropped as being less appropriate to a business than profit or gains, sub-section (1) of Section 10 does in no way curtail or modify the scope of Sections 3 and 4 or alter the charge of income-tax, Sub-section (2) of Section 10 then makes exhaustive provisions of giving allowances to the assessee in the computation or calculation of the profits or gains from his business.

Finally, so far as the directly relevant sections of the Act are concerned, there comes Section 13 :

"13. Income, profits and gains shall be computed for the purposes of Sections 10, 11 and 12 in accordance with the method of accounting regularly employed by the assessee :

Provided that, if no method of accounting has been regularly employed or if the method employed is such that, the opinion of the Income-tax Officer, the income, profits and gains cannot properly be deduced therefrom, then the computation shall be made upon such basis and in such manner as the Income-tax Officer may determine.

It is argued on behalf of the assessee that the only thing in respect of which the Indian Income-tax Act makes tax payable under Sec. 10 is the profit or gain of the business carried on by the assessee. It is pointed out in this connection that it is fundamental to income-tax law that the subject cannot be charged to income-tax on anything which is not income received by the assessee, either actually or in the sense that, by express enactment of the Legislature, it has to be deemed to have been so received. That being so, it is maintained that Section 13 cannot enlarge a fundamental principle of taxation and that, whatever else Section 13 may mean, it certainly cannot mean that something is to be taxed which the assessee has never received and, in whole or in part, may never receive. It is, therefore, urged that the interest which had not been realize by the assessee in the accounting year could not taken into account for the purposes of assessment. In support of these contentions reliance is placed on the decision in Gresham Life Assurance Society, Limited v. Bishop; St. Lucia Usines and Estates Company, Limited v. Colonial Treasurer of St. Lucia; Dewar v. Commissioner of Inland Revenue; Commissioner of Income-tax, Nagpur v. S. M. Chitnavis and Jagmandar Das v. Commissioner of Income-tax.

It is in the other hand argued by the Counsel for the Income-tax Department that the Income-tax Act makes all the income, profits or gains of the assessee chargeable to tax and that there is nothing whatever in the Act which makes receipt (either actual or deemed) of the profits or gains of a business a necessary condition to chargeability. That being so it is contended that the function of Section 13 - and its only possible function, if it is to be given any meaning at all - is that of a statutory definition clause to the effect that, where the assessee has chosen for himself a regular "mercantile accountancy system" then the profits or gains of his business are to be computed according to that system of accountancy and no other. The argument proceeds that inasmuch as receipt is not the sole test of taxability, there is nothing in Section 13 which is opposed either to income-tax law or income-tax practice, and Section 13 is merely an explanation of the statutory means to be adopted, in a certain specified case, for computing or calculating what has arisen or accrued or must be deemed to have arisen or accrued to the assessee by way of profits or gains, as opposed to what has been received by him. In support of these contentions our attention has been drawn to a number of India decisions to which reference will be made in the course of this judgment.

Now Section 13 is unique in certain respects, and there is a small history behind the section. Even though the origin of book-keeping is lost in obscurity, it admits of no doubt that some method of keeping accounts has existed from the remotest times. It is equally manifest that in business it is necessary to record movements of credit, as mere receipts and payments of money would show only a part of the total transactions. The only reliable method of preparing the final accounts of a business for a given period is, therefore, by means of the double entry records. The mercantile accountancy system must, therefore, have been adopted in England hundreds of years ago. We, however, find that in the English statutes relating to income-tax Act of 1922 (XI of 1922) and there was no provision in the Income-tax Acts preceding the Act of 1922 similar to the provisions of Section 13. The section does, to my mind, owe its origin to the controversy that culminated in the decision of a Full Bench of the Madras High Court in Secretary to the Board of Revenue, Income-tax, Madras v. Arunachalam Chettiar. The question that arose for determination in that case was whether interest which had accrued due in the year of account to a money-lending firm that maintained its account on the mercantile basis, but was not realised in cash or by adjustment in the accounts, was liable to tax under the Income-tax Act (VII of 1918). Four of the five learned Judges constituting the Bench answered the question in the negative. In the course of his judgment Sir John Wallis, C.J., made reference to the language of rule 1 of Schedule D of the English Income-tax Act, 1918, and observed that in construing the provisions of Section 9 of the Act of 1918 which dealt with "income derived from business", "and the uniform interpretation which has been put upon the corresponding provisions of English Acts, it must always be borne in mind that in its natural and legal meaning income means periodical receipts; that an income-tax is therefore permissibly a tax on annual receipts". He then went on to observe that "while it is open to the legislature for good and sufficient reason to enact that debts which have not been paid but are still outstanding shall be treated as income for the purposes of the Act, the Court could not be justified in attributing such an intention to the legislature, in the absence of the clearest and most express language". The learned Chief Justice referred to a number of English decision in support of the view held by him that for the purposes of assessment of income-tax only actual and not notional receipts could be taken into account. Towards the close of his judgment he pointed out that "if the present Act is found to admit of extensive evasion in India, the remedy, in my opinion, is to be found in an alteration of the law". Sadasiva Ayyar, J., dissented from the view of the majority of judges constituting the Bench and held that unrealised interest could be taxed only if it was so completely under the assessees control that, by an act of his will, he could receive it in cash without greater trouble than was involved in drawing money from his bankers. The judgment of the Full Bench was delivered in October 1920 and then Section 13 was introduced by the legislature in Act XI of 1922 which received the assent of the Governor-General on March 5, 1922. It is fair to assume that in pursuance of the suggestion contained in the judgment of Sir John Wallis, C. J., for "an alteration of law" and, in order to set at rest the controversy that had arisen in the Madras High Court and has occasioned difference of opinion between the judges of

that Court, Section 13 was enacted by the legislature. The words of that section are clear and of unambiguous import; the section is not involved in legal technicalities.

From and examination of Section 3, 4, 6, 10 and 13 the conclusions that I draw are these. The charge of income-tax is in accordance with the subject to the provisions of the Income-tax Act, a charge on all income, profits and gains of the assessee of the year by reference to which it is to be calculated. The income, profits and gains of an assessee are taxable, subject always to the provisions of the Act, from whatever source they are derived, whether as a matter of origin or of geography, provided they accrue or arise to or are received by the assessee in British India, or are deemed so to accrue or arise or to be received. Receipt, either actual or deemed, as such is not made by income-tax law a condition precedent to taxability. Under the head of source "business" what are charged are the profits and gains of the business; and that profit and those gains do not escape tax by reason only of the fact that they are not received in the accounting year in money or the equivalent of money, or are not deemed to be so received. They are taxable, if they have arisen or accrued, or are under the Act deemed to have arisen or accrued, to the assessee in the accounting year, just as much as if they had been received or were deemed to have been received in that year. Finally, so far as is material for our present purposes, the assessee is given choice of the manner in which the calculation of his profits and gains shall be made by reference to the system of accounting which he has himself adopted for the purposes of his own business. Where the assessee has himself adopted for the purposes of his own business. Where the assessee has himself chosen a mercantile basis, then the Income-tax Officer is bound to concede that basis of the assessee, provided the assessees accounts, regularly kept on that basis, afford a proper and sufficient means of deducing what the profits or gains on that basis have been. In such a case the Income-tax Officer has no option but to do what he has done in the present case, that is to say, to take the assessees own method of accounting and to compute from it what profits or gains had arisen or accrued to (not merely been received by) the assessee according to it. For the purpose of reaching these conclusions, I have deliberately excluded from my mind Section 10 (2) (xi), which was only added to the section by the Income-tax (Amendment) Act, 1939. If it should be the case that the 1922 Income-tax Act, as unamended in this respect, left it open for a case possibly to arise, in spite of Section 48A of the Act, in which the assessee might become liable to pay tax on profits or gains of his business which he never ultimately received, I should still be unable to find in that circumstance a sufficient reason for confining the operation of the charge of tax only to money or its equivalent actually received or deemed to have been actually received by the assessee, in the face of the plain language of the Income-tax Act to the effect that the receipt of money is not the sole test of chargeability.

In this, as in all other cases of the construction of Indian statutes, decisions on the construction of English Acts of Parliament are misleading. Their Lordships of the Privy Council in Commissioner of Income-tax, Bengal v. Shaw Wallace & Company,

after pointing out that the Indian Income-tax Act is not in pari materia with English Income-tax statutes and "is less elaborate in many ways, subject to fewer refinements, and in arrangement and language it differs greatly from the provisions with which the courts in this country have had to deal," observe that "little can be gained by attempting to reason from one to the other". Again in Kamakshya Narain Singh v. Commissioner of Income-tax, Bihar & Orissa, their Lordships observed that "the Indian Income-tax Act of 1922, which was a consolidating Act, is both in the general frame-work and its particular provisions different from the English Income-tax Acts, so that decisions upon the English Acts are in general of no assistance in construing the Indian Act." Nevertheless the assessee in the present case takes as his starting point those English decisions of high authority which, on the construction of the English Income-tax Acts, lay down that mere entries in account do not by themselves attract a charge of income-tax.

In Gresham Life Assurance Society, Ltd. v. Bishop, it was paid by the House of Lords that money not actually received in England was not taxable under the English Income-tax Acts of 1842 and 1853. It was said by Lord Lindley : "First, let us consider what is meant by the receipt of a sum of money. My Lords, I agree with the Court of Appeal that a sum of money may be received in more ways than one, e.g., by the transfer of a coin or a negotiable instrument or other document which represents and produces coin, and is treated as such by businessmen. Even a settlement in account may be equivalent to a receipt of a sum of money, although no money may pass;..... A mere entry in an account which does not represent such a transaction does not prove any receipt whatever else it may be worth." But, the Earl of Halsbury, observed in his speech in the same case, "..... the question in this case seems me to depend upon the actual words used by the legislature". I cannot myself think that this, or any other English case decided on the construction of the English Income-tax Acts should be used to support a construction of the Indian Income-tax Act of 1922, upon a footing that, whatever it says, nothing is to be taxed in India except that which has been "received" in money or moneys worth.

In St. Lucia Usines and Estates Company, Ltd. v. Colonial Treasurer of St. Lucia, the Judicial Committee of the Privy Council considered the construction of the Income-tax Ordinance, 1910, of St. Lucia with reference to the question whether certain interest due, but unpaid, in 1921 could be treated as "income arising accruing" for assessment in that year. It was held in the judgment of the Privy Council delivered by Lord Wrenbury that, on the true construction of this Ordinance, debts arising or accruing were not the equivalent of income arising or accruing. It was held that, while it did not follow that income was confined to that which the tax-payer actually received nevertheless a "debt" was not the same thing as "income". This, again, turned on the construction of the relevant statute of St. Lucia and is no authority for the proposition that in construing the Indian Income-tax Act, with its special provisions as to profits and gains of a business, and as to the manner of computation of those profits and gains according to the method of accounting regularly adopted by

> the assessee, we are bound by some hard and fast rule that nothing can be taxed which has not been, or is not statutorily deemed to have been received.
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> In Dewar v. Commissioner of Inland Revenue, the English Court of Appeal construed this language of the English Income-tax Act, 1918; and, again, in my opinion, neither this case, nor the case of Leigh v. Inland Revenue Commissioners, referred to in it afford to us any assistance in construing the effect of Section 13 of the Indian Income-tax Act, 1922, although in the latter case, Mr. Justice Rowlatt, in reference to the construction of the English Act, said :-
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> "It is to be remembered that for income-tax purposes receivability without receipt is nothing. Before a good debts is paid there is not such thing as income-tax upon it."

But there was no provision in the English Income-tax Acts which compels an Income-tax Officer to calculate profits and gains of a business in accordance with that method of accounting which the assessee himself has adopted.

So far as the Indian decisions are concerned, the weight of authority is decidedly against the assessees contention. In Commissioner of Income-tax, Madras v. A. T. K. P. L. S. P. Subramaniam Chettiar, a question arose in respect of the computation to Indian Income-tax under Sections 10 and 13 of the Indian Income-tax Act, 1922, of a loan by the firm outstanding against an associated business in Penang. The interest had not actually been paid in any form, but a credit entry in respect of it had been made, after the due date, in the books of the Rangoon firm, which firm kept its accounts according to a mercantile method of accounting. Apart from any question of the place of receipt, a Full Bench of the Madras High Court came to the conclusion that the adoption by the assessee of the mercantile method of accounting was conclusive against him upon the computability of the sum in question to Indian Income-tax. Sir Owen Beasley delivered the judgment of the Court, saying :-

> "The Income-tax Commissioner does not seek to tax anything that the Rs. 78,768/- may have earned in Penang. What he has done is to assessee the profits of the Rangoon business under Section 10 of the Indian Income-tax Act, computed in the manner directed by Section 13 of the same Act. Section 13 was, no doubt, introduced to obviate many difficulties. It is a great advantage to both traders and Income-tax Officers. It is open to a trader to adopt either the mercantile basis of accounting or the cash basis. He cannot for the purpose of more conveniently carrying on his own business adopt the mercantile basis of accountancy and not the cash basis. He cannot for the purpose of more conveniently carrying on his own business adopt the mercantile basis and then for the purpose of income-tax assessment adopt the cash basis. What is done in accordance with the mercantile basis is that the debit entries made on account of interest due by the assessee to his creditors in foreign places are treated as payments of interest, though interest has not actually been paid, and such debits are allowed as an expenditure in computing the profits of the assessees business in British India. Similarly, credit entries made on account of interest due by

> debtors in foreign places to the assessee are treated as payments though that interest has not actually been paid..... It would be an impossible position if an assessee after having adopted the mercantile basis were to call upon the Income-tax Officers to make a long difficult enquiry with regard to the various items entered as profits in the accounts of the assessee in order to prove that those sums were actually received in British India....."

I think it is clear that the Full Bench of the Madras High Court rejected the test of "receipt" or "deemed receipt" in reference to the Indian Income-tax, 1922.

In Feroze Shah v. Commissioner of Income-tax, Punjab, the question also arose whether mere credit entries during the accounting year of sales of timber appearing in the books of an assessee, who kept his accounts on the mercantile basis, could be regarded as including profits accruing in that year, when, as a matter of fact the price of such timer were neither realized, nor even formally credited as income during that year and could afford a basis for computing the assessees profits and gains. It was held that they might and that the fact that the assessee had chosen to take the profits into his income account of the following year made not the least difference.

Again in R. B. Dhakeshwar Prasad Narain Singh v. Commissioner of Income-tax, Bihar & Orissa, it was held by a Full Bench of the Madras High Court that an unrealised interest is assessable to income-tax, unless the method of accounting regularly employed by the assessee is a method which ignores such interest.

The question whether interest included in a renewed promissory not, though not actually realized by the assessee, could be deemed to have arisen or accrued to him and was, therefore, liable to be taxed, was considered by a Full Bench of the Rangoon High Court in V. S. A. R. Firm v. Commissioner of Income-tax, Burma, and was answered in the affirmative. In that case the assessee, on renewal of promissory notes in his favour for the principal and interest due on previous promissory notes, made entries in his account books showing the capitalized interest as realised and it was held that as "the assesses regarded the delivery of the fresh promissory notes as amounting to a liquidation of the assessee claim for interest", and the amount of interest due at the time of renewal of the promissory notes "was treated by the assessee, both in the interest account book and the books relating to the accounts of the respective debtors, as being interest that had been received by the assessee from their debtors." the interest, though not actually realised, was liable to tax.

Similarly, in 1935 in Jupudi Kesava Rao v. Commissioner of Income-tax, Madras, the Madras High Court, in a case in which an assessee adopted the mercantile system of accounting, regarded it as unarguable on the part of the assessee that interest on renewed promissory notes and mortgages debited to the debtors accounts and credited in his interest or profit account at the time of renewal should not, according to Section 13 of the Income-tax Act, 1922, be construed as income realised for the purpose of assessment of income-tax. Possibly the case of interest included in and capitalised by a renewed security stands on a different footing from a bare entry under a mercantile system of accounting by an assessee of interest due. In the case of a renewed security capitalizing arrears of interest, it can be said that there has been a constructive actual receipt in the sense at any rate that

the renewed security itself discharges the debtor from the old legal obligation to pay interest. But, I think, that for the purpose of the applicability of Section 13 of the Indian Income-tax Act, 1922, to a case in which there has been no actual "receipt" in fact, the principle is precisely the same.

The converse case arose in Raja Raghunandan Prasad Singh v. Commissioner of Income-tax, Bihar & Orissa, which was also a case of a renewed security. In that case a fresh mortgage had been accepted by the assessee in discharge of the principal and interest due under an earlier mortgage, but the interest due under earlier mortgage was not treated in the assessees books of accounts as having been pair of realized, and it was held by their Lordships of the Judicial Committee that, in view of the method of accounting adopted by the assessee, the interest due on the earlier mortgage and included in the renewed mortgage was not liable to the payment of tax. Their Lordships in the course of their judgment pointed out that "the assessee, it is important to bear in mind, keep their accounts on a cash basis." The interest of the case is that it seems to have been accepted by their Lordships of the Privy Council that the regular method of accounting adopted by the assessee was the test whether the unreceived interest in question was liable or not to be computed for Indian Income-tax purposes as the profits and gains amenable to tax of the money-lending business of the assessee.

In 1936 the Bombay High Court in the case of Messrs. Ramkumar Kedarnath v. Commissioner of Income-tax, Bombay, death with a case in which certain selling agents kept their accounts on a mercantile or earning basis, as opposed to a case basis, but for the purpose of returning their taxable profits and gains for a particular half year showed only the actual commission earned and paid. It was held again that the assessee, in view of Section 13 of the Indian Income-tax Act, 1922, were not justified in departing from their own regular method of accounting and were bound to return their profits and gains for income-tax purposes in accordance with their own mercantile or earnings system. Sir John Beaumont, the learned Chief Justice of Bombay, said that :-

> "The assessee has undoubtedly kept his accounts regularly on the mercantile basis. He could consistently with that basis have shown the commission earned for the half year ended the 31st of December 1933, and as against that shown as a debit item, the same amount as a bad debt, and if the Commissioner had been satisfied that in fact the debt was bad, he would have allowed the debt; if he had not been satisfied and had charged income-tax on the debt, and such debt was ultimately never received. I think the assessee would have been entitled to claim a refund under Section 48A. Here undoubtedly the assessee was trying to alter the basis of accounting from the mercantile basis to a cash basis for this particular half year, and in my view no case is established which justified him in doing that."

The decisions in Commissioner of Income-tax, Nagpur v. S. M. Chitnavis, and R. B. Shau Jagmandar Das v. Commissioner of Income-tax, Central and United Provinces, no doubt support the contention of the assessee but, with all respect, I am unable to agree with those decisions. It was held in the Nagpur case that "it is not just and equitable to treat the unrealised interest although formally credited to the Kassar Khata, as income, profits or gains derived, accruing or arising or received, for purposes of the Income-tax Act", and "the test to be applied is whether any profits in the shape of

interest have become due to the creditor (assessee) in such a manner as to be immediately available to him in the account year so as to be capable of being received by him at his choice and pleasure". On appeal to the Privy Council the decision of the Nagpur Chief Court was reversed, but their Lordships of the Privy Council did not express and opinion on the question which is under consideration in the present case. I, however, find that the learned Judges of Nagpur placed reliance on English decisions some of which have been referred to by me in this judgment, and also on the observations of Sadasiva Ayyar, J., in Secretary to the Board of Revenue, Income-tax, Madras v. Arunachalam Chettiar. I may, however, with great respect, point out that, as Section 13 did not find a place in the Income-tax Act of 1918 and as provisions similar to that contained in Sec. 13 did not exist in the English statues, neither the English decisions nor the Madras decision can be a guide for the true interpretation of Section 13.

In Shau Jagmandar Dass case a mortgage (the assessee) who regularly kept his accounts in accordance with a system of mercantile accounts obtained a decree for Rs. 23,000 odd in respect of the balance of unpaid interest due on his mortgage. Having obtained this decree, he credited the amount to the mortgagor in the mortgagors ledger folio and then he squared the account by crediting the balance in his own (the assessees) interest ledger. No part of the decree had in fact been received at the time of accounting for assessee and the assessee contended that the amount should be excluded from assessment "as it was not likely to be realised." It was argued that, although the sum in question and not been received and might even be unlikely to be realised, it was nevertheless income "accruing or arising" within the meaning of Section 4 (1) of the Act. The two learned Judges who dealt with the matter took the view, however, which seems rather to have followed a line of authority on the construction of the English Acts than those on the construction of the Indian Income-tax Act of 1922, that nothing was taxable except what was strictly "Income" in the sense of what had come in or been received and that the words accruing or arising referred merely "to the connection between the income and the country in question, British India," and did not explain what was income or was not income. I should desire to avoid expressing any concluded view upon the question, but it is possible that this case might be decided upon another principle altogether, viz., that the acceptance by the creditor of a decree in respect of outstanding interest is capitalized by renewed security it also may be said to have been received in a substituted form, particularly where the creditor has taken the substituted security or asset into credit in his account. However that may be, and if the facts of the case with which I am now dealing are identical with those comprised in this reference, I with respect regret that I should find difficulty in accepting the same view as that expressed by the learned Judges of this Court who decided it. To my mind, as explained above, Section 4 (1) of the Act, though not itself the general charging clause, is a clause, explanatory of the general charging clause in the sense that it further expounds what income, profits or gains are to be taxed. It says that income, profits and gains are to be taxed "from whatever source derived, accruing or arising or received in British India." It is true that no income is made chargeable to tax, unless it is income accruing or arising or received in British India. But, on the other hand, all income, profits or gains, from whatever source derived, accruing or arising or received in British India, are taxable. I have great difficulty in following why the words "accruing or arising or received" should refer only to the connection between the income and the country in question. They refer, I think, to what income, profits and gains are to be taxed, and it is made only an additional condition of taxation that nothing which does not accrue or arise or is not received in

British India is to be taxed. It is true that sub-section (2) of Section 4 does go on to deal with income, profits and gains accruing or arising outside British India. But that, to my mind, is no reason for construing sub-section (1) in anything but the sense that everything which accrues or arises to, or is received by, the assessee is taxable, provided it is received by or accrues or arises to, the assessee in British India or is deemed so to accrue, arise or be received. I am, therefore, inclined to take the view, with deference to the learned Judges who decided this case, that, if its facts are materially the same as those before us, it was wrongly decided.

If any other view is accepted of the meaning of Section 13 of the Indian Income-tax Act, 1922, than that, where an assessee has himself adopted a particular method of accounting, the Income-tax Officer also is bound to accept that method for the purpose of computing the profits and gains of the assessee, notwithstanding that it may involve the charge to tax of income which has neither been actually received nor is statutorily deemed to have been received, it would be difficult to give any intelligible meaning to Section 13 at all. The books of account of an assessee are, provided the Income-tax Officer takes the proper steps, always available to the Income-tax authorities for the purpose of arriving at the true computation of the assessees income profits or gains, and it adds nothing to the duties, rights or powers of the Income-tax Officer to say that he shall look at the account books regularly kept by the assessee and be guided by them, unless it is also implied that the assessee, so far as the "method" of computation is concerned, shall also be bound by any system of accounting which he has himself regularly adopted. The section appears to me to mean nothing, where an assessee has adopted a mercantile or earnings method of accounting, if it does not mean that he is to be bound by that method of computing his profit and gains for the purposes. It seems to me, therefore, to constitute a formidable difficulty in the way of the assessee in this case to explain what Section 13 does mean, if it does not mean that an assessee can be taxed upon that which he has not actually received or is not deemed statutorily to have received.

Although we have been referred to a number of other authorities with which I do not propose to deal at length, I should desire to mention the case of Commissioner of Income-tax, Bombay Presidency and Aden v. Sarangpur Cotton Manufacturing Company, Limited, of Ahmedabad, in which the Judicial Committee of the Privy Council made certain observations upon the meaning of Section 13 of the Income-tax Act, 1922. It is, I think, important, in view of what their Lordships have said in that case, to bear in mind what the question before them actually was. An assessee company had been asked for an Income-tax return. It made a return to the Income-tax Officer consisting of (a) a copy of its balance sheet and profit and loss account for the accounting year, (b) a return of its total income for assessment, which included in income, profits and gains according to its profit and loss account, and (c) a covering letter which explained and adjusted difference between the figure of profits shown in the profit and loss account and the figure of profits and gains shown in its return for income-tax purposes. The Income-tax Office seems to have rejected the letter of explanation and to have held himself bound to accept the profit and loss account figure regardless of any explanation of why it was not the true figure for income-tax purposes. The question according which the Judicial Committee was asked to deal with was whether the Income-tax Officer was entitled to proceed on the basis of the actual profit and loss account without regard to the explanation contained in the latter. Their Lordships, however, themselves substituted a variation of the question by asking : "Whether in view of the provisions of Section 13 of the Income-tax Act or otherwise the Income-tax

Officer was right in computing for the purpose of Section 10 of that Act income, profits and gains in accordance with the method of accounting regularly employed by the assessee when that method in fact does not show the true income, profits and gains." If I have understood this case rightly, what was being considered had no reference to any question of what under the charging sections of the Income-tax Act, 1922, was chargeable to tax, but merely whether the Income-tax Officer had adopted the right method of exercising the duties which he was bound to exercise under Section 13 of the Act. It was, I think, never in doubt in the case that the Income-tax Officer was bound to compute the profits and gains of the assessee "in accordance with the method of accounting regularly employed by the assessee." The only question was whether the Income-tax Officer was literally bound to accept the accounts in the words and figures in which they stood or whether, without departing from the method - that is the important point - he ought to have had regard to such adjustments in the profit and loss account as ought to be made to give true effect to that method. If I have understood the case rightly, that was the question with which their Lordships were dealing in this case and it is with reference to this that their Lordships said :-

> "Their Lordships are clearly of opinion that the section relates to a method of accounting regularly employed by the assessee for his own purposes - in this case for the purposes of the companys business - and does not relate to a method of making up a statutory return of assessment to income-tax... it may well be that, though the profit brought out in the accounts is not the true figure for income-tax purposes, the true figure can be accurately deducted therefrom....."

I read that as meaning, if I have understood the case rightly, that it if the method of accounting regularly employed by the assessee himself that the Income-tax Officer is bound to take as the basis for computing profits and gains, but, if the assessees own accounts do not bring out the true income-tax figure according to that method, then it is open to the Income-tax Officer to make any adjustments that is necessary for the purpose of giving full and true effect to the method itself. If this is right, then, so far from conflicting with the view expressed above, it supports it.

For the reasons given above I would, following as far as possible the words of Section 13 of the Indian Income-tax Act, 1922, answered the question referred as follows :-

> "The Income-tax Officer, on the facts set out in the case stated, was for the purpose of Section 10 of the Indian Income-tax Act, 1922, entitled, and bound, to compute the profits and gains of the assessee in accordance with the method of accounting regularly adopted by the assessee, that is to say the mercantile method of accounting, notwithstanding that, as a result of a such computation, profits and gains of the assessees business would or might, subject to any allowances proper to be made under the said Act, become chargeable to income-tax without having been actually received, or deemed by the said Act to have been received, by the assessee."

A copy of this judgment under the seal of the Court and the signature of the Registrar will be sent to the Commissioner so that the case may be disposed of by him accordingly.

A fee of Rs. 500/- is allowed to the counsel appearing on behalf of the Income-tax Department upon his filing the usual certificate within a period of one month.

BRAUND, J. - I agree and have nothing to add.

HAMILTON, J. - I agree.

MALIK, J. - I agree.

SINHA, J. - I concur and have nothing to add.

BY THE COURT. - "The Income-tax Officer, on the facts set out in the case stated, was, for the purposes of Section 10 of the Indian Income-tax Act, 1922, entitled, and bound, to compute the profits and gains of the assessee in accordance with the method of accounting regularly adopted by the assessee, that is to say the mercantile method of accounting, notwithstanding that, as a result of such computation, profits and gains of the assessees business would or might, subject to any allowances proper to be made under the said Act, become chargeable to income-tax without having been actually received, or deemed by the said Act to have been received by the assessee."

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Reference answered accordingly.