(1945) 02 BOM CK 0010

Bombay High Court

Case No: Case Referred No. 32 of 1944

S. N. A. AL. CHIDAMBARAM CHETTIAR		APPELLANT
	Vs	
COMMISSIONER OF Income Tax, MADRAS.		RESPONDENT

Date of Decision: Feb. 16, 1945

Acts Referred:

- Income Tax Act, 1961 - Section 66(1)

Citation: (1945) 13 ITR 177

Hon'ble Judges: Patanjali Sastri, J

Bench: Division Bench

Judgement

(Judgment of the Court was delivered by Patanjali Sastri, J.).

This reference arises out of an assessment to Income Tax for the year 1940-41 made on one S. N. A. AL. Chidambaram Chettiar (hereinafter referred to as the assessee), a Nattukottai Chetti money-lender and banker carrying on business at Karaikudi in British India, his headquarters (Oorkadai), and at Penang and Butterworth, in the Federated Malay States.

In the assessment for the year 1939-40 the assessee suffered a loss of Rs. 41,253 at Karaikudi, where he also bought and sold securities on his own account. After setting off the loss against the profits of the business abroad, there was a net loss of Rs. 21,522 which was carried forward to the next year. In the assessment for that year (1940-41) it was found that there was again a loss of Rs. 23,125 at Karaikudi, but the business at Penang resulted in profits. The assessee claimed that not only the loss of Rs. 23,125 but also the unadjusted balance of loss carried forward from 1939-40, viz., Rs. 21,522, should be set off against the foreign profits. The Income Tax Officer disallowed the claim so far as it related to the sum of Rs. 21,522, but allowed the loss of Rs. 23,125 suffered in the year of account and computed the net

profits at Rs. 34,109. An appeal to the Appellate Commissioner and the Income Tax Appellate Tribunal, Madras Bench, on this point having proved unsuccessful, the assessee applied to the Tribunal u/s 66 (1) of the Income Tax Act to state the case and refer it to this Court as a point of law was involved, and the Tribunal has accordingly referred the following question for decision by this Court :-

"Whether in the facts and circumstances of this case the inference drawn by the Bench that the sum of Rs. 21,522, viz., the loss carried forward in British India in 1939-40, cannot be set off against the profits of the business abroad for 1940-41 u/s 24 (2) of the Indian Income Tax Act, is a correct inference in law."

Section 24 (2) (so far as it is material here) runs as follows :-

"Where any assessee sustains a loss of profits or gains in any year, being a previous year not earlier than the previous year for the assessment for the year ending on the 31st day of March, 1940, under the head Profit and gains of business, profession or vocation, and the loss cannot be wholly set off under sub-section (1), the portion not so set off shall be carried forward to the following year and set off against the profits and gains, if any, of the assessee from the same business, profession or vocation for that year; and it cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following year, and so on; but no loss shall be so carried forward for more than six years, and a loss arising in the previous years for the assessment for the years ending on the 31s day of March, 1940, the 31st day of March, 1941, the 31st day of March 1942, the 31st day of March, 1943 and the 31st day of March, 1944, respectively, shall be carried forward only for one, two, three, four and five years, respectively."

It will be seen that the right to carry forward and set off loss against the profits of the following year or years allowed under this provision is subject to the condition that the profits against which the set-off is claimed should have arisen out of the same business as the one which resulted in the loss. The point at issue accordingly is whether the business carried on at the assessees headquarters, Karaikudi, which made the loss in question can be said to be the same business as the one carried on at Penang, which yielded the profits against which the set-off is claimed. The assessee contends that his Penang shop is but a branch of the business carried on by him at Karaikudi, which is his head office, and that the two together constitute one and the same business. The Income Tax authorities have rejected the contention and disallowed the claim holding that the assessees operations at Karaikudi and at Penang are two different businesses.

Now, whether different trading operations constitute a single business or different businesses is largely a question of fact, but, as recognized by the referring authority, the proper legal inference from proved facts is essentially a matter of law. The question really is, in the words of Rowlatt, J., in Scales v. George Thompson & Co., Ltd., "was there any inter-connection, any interlacing, any interdependence, any

unity at all embracing the two business." It has been found by the Income Tax Appellate Tribunal that the money lending and dealing in shares at Karaikudi formed one business and this is not disputed before us. But it is said that the money-lending at Penang is a different business. The only reason for this conclusion are thus stated by the Tribunal : "The affairs of the two are not so interwoven as to constitute one single business; the mere record of the remittances to and from Penang or the incorporation of the final trading result at the end of the year would not be enough to constitute the two activities one single business." We cannot accept this as a conclusive finding of fact. The first part of the statement mentions no facts, but only records a conclusion of law, and the rest is merely concerned with rejecting certain facts relied on by the assessee as "not enough" to justifying an inference in his favour. If there was no other material before us we should have referred the case back to the Tribunal for a proper statement of the case, but this course is rendered unnecessary as the material facts appear in the orders of the Income Tax Officer and the Appellate Assistant Commissioner to which our attention has been drawn. There is no dispute in regard to these facts which are entirely in accordance with the customary features of the usual Nattukottai Chetti business of banking and money-lending. The business operations abroad are conducted by agents appointed for fixed periods, usually three years, and the lending of money is left largely to their discretion. A separate set of accounts is maintained there but copies of the day-book are periodically (usually once in a month) despatched to the headquarters to keep the proprietor informed of the state of the business. There is, besides, frequent correspondence between the agent and the proprietor, who asks for particulars and explanations and issues instructions regarding the conduct of the business. There is a flow of remittances both ways according to the needs of the business, and the final trading result is brought into the headquarters accounts at the end of the year. These facts present, in our view, the picture of a trading organization inter-connected as head officer and branch, with financial inter-dependence and unity of control.

The Appellate Assistant Commissioner has relied on the following facts as supporting his view that the assessee carried on separate business at those places :-

"(a) The business in money-lending at headquarters is on the security of documents or entries in the accounts, whereas the business in Penang is to large measure on the security of rubber gardens.

(b) The income from the headquarters business is derived mostly, if not entirely, from interest and also from stocks and shares, whereas the income from Penang is stated by the Income Tax Officer to be mostly from the produce of the rubber gardens.

(c) The accounts are made up for these two business separately.

(d) The staff for each business is separate and there is no interchange of staff.

(e) The great distance between them is a matter of much importance.

(f) It is not the appellants case that the foreign business is controlled and managed by the appellant himself and not by a separate agent there.

(g) There are no common financial arrangements and bank accounts."

None of these facts is, in our opinion, sufficient to justify the inference that the business at Penang is a separate business. It is to be observed that the reference to the produce of rubber gardens in (b) is somewhat misleading. It is not disputed that these properties, having formed the security for loans advanced as stated in (a) had to be taken over from the constituents in realisations of the debts due from them and thus formed part of the assets of the money-lending business till they are turned over at a profit at a favourable opportunity. (See S. L. S. Chettiappa Chettiar & Others v. Commissioner of Income Tax, Madras, Lakshmanan Chettiar v. Commissioner of Income Tax, Madras, and Chellappa Chettiar v. Commissioner of Income Tax, Madras.) It may also be mentioned that the statement in (f) is not correct. It is true that the business at Penang is actually conducted by a separate agent there. But it is undoubtedly the appellants case and it is indeed conceded that the foreign business is controlled and managed by him from his headquarters. This is why the assessees undivided family was treated in this case as "resident" in British India within the meaning of Section 4-A (b) of the Act and the profits accruing abroad were included in the assessment.

The respondents learned counsel referred to two additional circumstances as tending to show the separate character of the business at Penang :- (1) that separate capital was allotted to the business and (2) interest was charged at Karaikudi in respect of funds remitted as surplus capital (menpanam) to Penang. There is no reference to these facts in the record before us, but they are probably true as they are also among the usual features of a Nattukottai Chetti money lending business. But, even if true, they represent only book-entries designed to show how the branch was working and whether it was a source of profits or loss and do not lead to an inference that a separate business was carried on at Penang. As the Income Tax authorities did not rely on these facts in support of their finding it is unnecessary to pursue the matter further.

Reference was made in the course of the argument to certain decisions wherein different activities were held to constitute separate businesses or to form part of the same business as the case may be. These decisions turned on their own particular facts, and can only be regarded as illustrations of the considerations which are of relevance in such cases. For instance, in Arunachalam Chetti v. Commissioner of Income Tax a Special Bench of three Judges had to deal with a case where a Nattukottai Chetti firm carried on money-lending and banking business is Madras under the vilasam of A. L. A. R., and also a piece-goods business under the name of Ramaswami & Co., in a separate building in another part of the city. Separate sums

were allotted as capital and separate sets of accounts were maintained for each of these business. The cloth business was also financed from time to time with the money borrowed by the banking business and interest was charged on such advances. The cloth business made losses and was finally closed down in 1923-24. In the assessment of the banking business made in the year 1925-26 a deduction was claimed in respect of the interest paid on the borrowed capital utilized and lost in the cloth business. The Court allowed the deduction holding that the two business were only branches of the same undertaking and not separate business. The present, we consider, is an a fortiori case. The decision in Commissioner of Income Tax, Burma v. A. L. V. R. P. Firm was given on facts was that the operations of the family in the different places constituted different branches of a single business. On the other hand the learned counsel for the respondents has cited several English decisions in support of his contention. In Scales v. George Thompson & Co., Ltd., already referred, to an underwriting venture at Lloyds carried on by a ship-owning company through its nominees was held to be a business distinct ship-owners, as "the two things have nothing whatever to do with one another" the learned Judge emphasizing at the same time that it was a question of fact. It is unnecessary to refer to the other cases cited before us as they differ even more widely from the facts we have before us.

For the reasons indicated we hold that the assessees banking and money-lending operations at Karaikudi and at Penang constitute one and the same business, and that he is entitled to the set-off claimed. We answered the question referred accordingly in the negative. The respondent will pay the costs of this reference which we fix at Rs. 250. The reference fee paid, Rs. 100, will refunded to the assessee.

Reference answered in the negative.