
(1932) 03 MAD CK 0026
In the Madras High Court

Cheena Pena Rena Perianan Chetti

APPELLANT

Vs

Taluk Board

RESPONDENT

Date of Decision : 03-03-1932

Acts Referred:

Madras Local Boards Act, 1884 — Section 93

Citation : (1932) ILR (Mad) 848 : (1932) 36 LW 117 : (1932) 63 MLJ 148

Hon'ble Judges : Waller, J; Krishnan Pandalai, J

Bench : Full Bench

Judgement

Waller, J.—The petitioner, who was the plaintiff in the suit, has a money-lending business at Rangoon, but resides within the limits of the

Taluk Board of Devakottah. The dispute between him and the Board is as to his liability to pay the profession tax. The Board seeks to assess him

on the whole of the income derived by him from his business at Rangoon. His first contention is that he is not assessable at all, as income cannot be

received as income more than once. Alternatively, he pleads that, in any event, he cannot be assessed on more than that part of his income which

has been remitted to him from Rangoon.

2. In regard to his first contention, several decisions in Income Tax cases have been cited. Two of them are in his favour. The first is Sundar Das v.

The Collector of Gujrat (1922) I.L.R.3 Lah.349 (F.B.). The assessee had accumulated in Baluchistan, where no Income Tax is leviable, except on

salaries, his profits from military contracts until they amounted to over Rs. 23 lakhs. In 1919-20 he transmitted - by what means does not appear -

this large sum of money to the Punjab, where the Collector sought to assess it to Income Tax. On a reference to the Chief Court, it was held that

the money could not be treated as income received in the Punjab, as it had already been received as income in Baluchistan. With great respect, I

do not understand the ratio decidendi in the case or how income received in an area where it is free from Income Tax cannot, when it is transferred

to another area where it is liable to the tax, be treated as having been received there as income within the meaning and intendment of the Income

Tax Act. The leading case on the point in Madras is Board of Revenue, Madras v. Ramanadan Chetty (1919) ILR 43 Mad. 75 : 37 M.L.J. 663

(F.B.). In that case, it was sought to assess to the tax the whole income derived by a person resident in the Madras Presidency from a business

conducted on his behalf outside British India. It was decided that the income was not assessable, as no part of it had reached British India.

Obviously, if any part of it had reached British India, that part of it would have been held to be taxable. On that ruling, the assessee in Sundar Das

v. The Collector of Gujrati would have been liable to tax. However, one of the learned Judges observed that the Madras case was distinguishable,

though he did not say how. The truth, I think, is that Sundar Das's was a hard case, in which it was sought to assess as the income of one year the

accumulated income of years. The Act then in force made no provision for cases of that nature. The present Act does; it exempts from the tax all

but the accumulated income of the last three years. In an earlier case from Bombay in The Aurangabad Mills, Limited In re (1921) I.L.R.45

Bom.1286 the question was whether the whole income of a company, which worked and earned its profits outside British India but had its head

office in Bombay could be assessed to the tax in Bombay. The question was answered in the negative, but it was admitted on behalf of the

company that, if its profits had been transmitted to Bombay, they would have been taxable. The same question was raised in Madras and decided

in The Secretary, Board of Revenue, Income Tax, Madras v. The Ripon Press (1923) I.L.R.46 Mad.706 : 44 M.L.J.523(S.B.) in the same way.

Sundar Das v. The Collector of Gujrat (1922) ILR 3 Lah. 349 (F.B.) was referred to with approval by one of the three Judges, Courts Trotter, J.,

but the question referred to the Bench was not whether income could be received twice as income, but whether the income of a company which

was received outside British India could be taxed in British India, whether it was received there or not. Sir Walter Schwabe said in his judgment:

Except for the small amount received as the Company's money by the company in Bellary, there is no income which accrues or arises or is received in British India.

3. He was of opinion, I infer, that the Company's money received in Bellary was income received by it in British India, but the assessability of that

income was not the question then in issue. In a later passage he referred to *Sundar Das v. The Collector of Gujrat* (1922) I.L.R.3 Lah.349 (F.B.)

ruling and said that he mentioned it

because that is a point which may be involved in the event of the question being referred to the Court whether such amounts received by the

Company, as stated by me above, in Bellary, are themselves liable to taxation or not.

4. It seems to follow that what *Coutts Trotter, J.*, had to say about *Sundar Das v. The Collector of Gujrat* (1922) I.L.R.3 Lah.349 (F.B.) was

entirely obiter. The last case cited was *Sir Saiyid Ali Imam v. The Crown* (1924) ILR 4 Pat. 210 which followed *Sundar Das v. The Collector of*

Gujrat (1922) I.L.R.3 Lah.349 (F.B.) and assumed that it had been approved by the Bench in *The Secretary, Board of Revenue, Income Tax,*

Madras v. The Ripon Press (1923) ILR 46 Mad. 706 : 44 M.L.J. 523 (S.B.). As I have already pointed out, the question did not arise in the latter

case and all that *Sir Walter Schwabe* said was that the Lahore ruling would have to be considered in relation to it, if and when it did arise. It seems

to me that the law was correctly stated in *Board of Revenue, Madras v. Ramanadan Chetty* (1919) ILR 43 Mad. 75 : 37 M.L.J. 633 (S.B.) and

that the admission made on behalf of the company in *The Aurangabad Mills, Limited, In re* (1921) ILR 45 Bom. 1286 was in accordance with it.

The first contention therefore fails.

5. The second contention and the claim of the Board raise the real question at issue: On what should the petitioner be taxed - on his total income,

wherever it may have accrued to him, or on that part of it which reached him at Devakottah. The answer to those questions is, I think, to be found

in the wording of Section 93 of the Local Boards Act (XIV of 1920). The petitioner is a person who ""within such area (that is within the area of

the Taluk Board, Devakottah)...is in receipt of "an income" from any source other than houses and lands inside the local limits"" of that area. The

plain meaning of the section seems to be that that part of his income is chargeable which he actually receives within the area of the Taluk Board. A

different conclusion was arrived at in Mahadeva Sastri v. The Municipal Council, Kumbakonam (1913) M.W.N. 935 but that was a case

governed by a different Act. What, in effect, the Judges then held was that being in receipt of a pension in a certain area meant the same thing as

being a pensioner residing in that area. If the Act meant that, it might have said so. When it spoke of receiving a pension in a certain area, it did not

mean receiving a pension outside it. I find that the petitioner is assessable only on that part of his profits that reached him at Devakottah and that his

tax, on that basis, is Rs. 18. He will get a decree for Rs. 142. The parties will pay and receive proportionate costs on that amount throughout.

Krishnan Pandalai, J.

6. I agree.