

The Commissioner of Income Tax, Bombay Mofussil *Appellant*

v.

The Western India Life Insurance Company, Limited, Satara  
*Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE 21ST OCTOBER, 1948

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*Present at the Hearing :*

LORD SIMONDS  
LORD OAKSEY  
LORD MACDERMOTT  
SIR MADHAVAN NAIR  
SIR JOHN BEAUMONT

[*Delivered by* LORD OAKSEY]

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This is an appeal from a judgment of the High Court of Judicature at Bombay dated the 26th March, 1945, which was delivered on a reference made under section 66 (1) of the Indian Income-tax Act 1922.

The question for determination in this appeal is whether the respondent Company, being assessed to tax in respect of the profits and gains of its life insurance business under rule 2 (b) of the schedule to the Act, is entitled under the third proviso to section 4 (1) of the Act to a deduction of Rs.4,500 in respect of certain income derived by it from the investment of part of its business funds outside British India, which income however was not brought into or received in British India.

The facts of the case are as follows:—

The respondent Company is resident in British India and carries on the business of Life Insurance in British India with its head office at Satara in the province of Bombay. It has no branches outside British India. All its profits are derived from its Life Insurance business. Among other investments owned by the Company for the purposes of its business are certain foreign investments from which it receives income. Such income is received by it abroad but is not actually brought into British India.

By section 4 of the Act the respondent Company, being a resident company, is liable to assessment to tax under the Act on all its income, profits and gains from every source, wherever such income accrues, arises or is received, the profits and gains of its life insurance business being assessable under the schedule already mentioned. The Company, however, claims that under the third proviso to section 4 (1) of the Act it is entitled for assessment purposes to the allowance therein mentioned of Rs.4,500 for each year of assessment in respect of the said investment income so accruing and arising to it outside British India and not brought into British India.

Sections 4 and 42 and rules 1 and 2 of the schedule are so far as material as follows:—

4.—(1) Subject to the provisions of this Act, the total income of any previous year of any person includes all income, profits and gains from whatever source derived which—

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(b) if such person is resident in British India during such year—

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(ii) accrue or arise to him without British India during such year.

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(third proviso)

Provided further that if in any year the amount of income accruing or arising without British India exceeds the amount brought into British India in that year, there shall not be included in the assessment of the income of that year so much of such excess as does not exceed four thousand five hundred rupees.

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Section 42 (1).—All income profits or gains accruing or arising whether directly or indirectly, through or from any business connection in British India, or through or from any property in British India, or through or from any asset or source of income in British India or through or from any money lent at interest and brought into British India in cash or in kind, shall be deemed to be income accruing or arising within British India, and where the person entitled to the income, profits or gains is not resident in British India, shall be chargeable to income tax either in his name or in the name of his agent and in the latter case such agent shall be deemed to be for all the purposes of this Act the assessee in respect of such income tax:

#### THE SCHEDULE.

##### *Rules for the Computation of the Profits and Gains of Insurance Business.*

1. In the case of any person who carries on, or at any time in the preceding year carried on, life insurance business, the profits and gains of such person from that business shall be computed separately from his income, profits or gains from any other business.

2. The profits and gains of life insurance business shall be taken to be either—

(a) the gross external incomings of the preceding year from that business less the management expenses of that year, or

(b) the annual average of the surplus disclosed by the actuarial valuation made for the last inter-valuation period ending before the year for which the assessment is to be made, after adjusting such surplus so as to exclude from it any surplus or deficit included therein which was made in any earlier intervaluation period and any expenditure other than expenditure which may under the provisions of section 10 of the Act be allowed for in computing the profits and gains of a business, whichever is the greater:

On the 6th September, 1941, the Income-tax Officer for Satara District made his assessment order in respect of the Company's business profits for the year of assessment 1939-40, under and in accordance with the provisions of the schedule to the Act.

For the years 1939-1940 and 1940-1941, he assessed the Company under rule 2 (b) upon the average of the surplus disclosed by the actuarial valuation made for the last intervaluation period, a triennial period ending on the 31st December, 1938, without allowing the deduction of Rs.4,500 under the proviso to section 4 (1). It was common ground that in each year of assessment and in each year of the triennial period the amount of the respondent's income accruing or arising without British India exceeded the amount brought into India in that year.

The Company appealed to the Appellate Assistant Commissioner of Income-tax, Belgaum Range, Belgaum, the only material ground of appeal being that, in respect of the income accruing or arising without British India and not brought into India, there should be deducted from the surplus shown for the three years ended 1938 the total sum of Rs.13,500, being Rs.4,500 for each year under the third proviso to section 4 (1) of the Act, in respect of the income of the Company from its foreign securities which had been collected by the Midland Bank Ltd., in London and retained there.

On the 19th September, 1942, the Appellate Assistant Commissioner allowed the appeal and made a deduction of Rs.4,500 for each of the three years, holding that under the third proviso to section 4 (1) of the Act a deduction of Rs.4,500 for unremitted foreign income was admissible in respect of each of the three years, and that the assessable income computed under rule 2 (b) of the schedule for the year 1939-40 should therefore be reduced by Rs.4,500. He made a similar order in respect of the year of assessment 1940-41. The Income-tax Officer appealed to the Income-Tax Appellate Tribunal who affirmed the decision of the Appellate Assistant Commissioner on this particular point. The Commissioner of Income-tax, Bombay, thereupon applied to the Income-tax Appellate Tribunal to state a case in respect of each year of assessment, and refer it to the High Court of Bombay under section 66 (1) of the Act for its opinion as to whether the Company was entitled to the said deduction of Rs.4,500. On the 22nd June, 1944, the Income-tax Appellate Tribunal accordingly stated the case, for the opinion of the High Court. On the 26th March, 1945, the High Court of Bombay, Kania and Chagla, J.J., delivered judgment, holding that the view of the Income-tax Appellate Tribunal was correct.

The question which now arises was not argued in the High Court, the judgments of the learned Judges being based upon the construction of section 42 of the Act which they held only applied to non-residents and had no application to the present case in which the income in question had clearly accrued to the Company outside British India. Their Lordships agree with the High Court that section 42 has no application but express no opinion upon the question whether the section refers only to non-residents.

The argument before their Lordships' Board was principally directed to the construction of the third proviso to section 4 and to the question of its applicability to an assessment of the profits and gains of a life insurance business under the schedule in view of the decision of the House of Lords in *Inland Revenue Commissioners v. Australian Mutual Provident Society* [1947] A.C. 605.

It was contended on behalf of the appellant that assessments for the years 1939/1940 and 1940/1941 based upon a computation of income under rule 2 (b) by reference to the annual average of the surplus disclosed by the actuarial valuation made for the last intervaluation period, namely, the triennial period ending 31st December, 1938, were assessments of a notional and not of the actual income of the year preceding the year of assessment and that therefore the third proviso to section 4 had no application since the income therein referred to must be the actual income of the year in question and not a notional income arrived at by computing an average income by reference to the income of other years. It could not, therefore, be said that there had been included in the assessment of the income of that year any part of the actual income of the year, whether derived from foreign investments or otherwise.

The case of *Inland Revenue Commissioners v. Australian Mutual Provident Society* (*ubi supra*) was decided upon provisions of the British Income Tax Act of 1918 which are not the same as the proviso to section 4 of the Act now in question but the case does draw attention to the distinction between an assessment upon actual income and an assessment upon a notional income and in so far as an average derived from a triennial period is the basis for computation of the income of one year in this Act the case has an important bearing. But apart from authority their Lordships are of opinion that the appellant's contention is correct and they find it impossible to apply the words of the third proviso to section 4 to an assessment under rule 2 (b) of the schedule and they will therefore humbly advise His Majesty that this appeal should be allowed with the costs of this appeal, and that the assessment of the Income Tax Officer for Satara should be restored. Their Lordships make no order as to the costs in the courts below as the question argued before them was not raised in those courts.

In the Privy Council

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THE COMMISSIONER OF INCOME  
TAX, BOMBAY MOFUSSIL

v.

THE WESTERN INDIA LIFE INSURANCE  
COMPANY, LIMITED, SATARA

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DELIVERED BY LORD OAKSEY