

31, 1948

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF THE ISLAND OF CEYLON

No. 77 of 1946.

UNIVERSITY OF LONDON
W.C.1.

-9 OCT 1956

INSTITUTE OF ADVANCED
LEGAL STUDIES

44490

CASE FOR THE APPELLANTS.

BETWEEN:—

THE BANK OF CHETTINAD LIMITED OF
COLOMBO *Appellants*

— AND —

THE COMMISSIONER OF INCOME TAX OF
COLOMBO *Respondent.*

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CASE FOR THE APPELLANTS.

RECORD.

1. This is an appeal from a Judgment and Decree of the Supreme Court of the Island of Ceylon dated the 17th January, 1946, whereby it was held on a Case Stated by the Income Tax Board of Review Colombo—reversing the decision of the Board—that the Appellants were not entitled to have allowed as a deduction for income tax purposes in respect of the year ending the 31st March, 1940, the sum of Rs. 53,226/- paid by their Ceylon branch by way of interest to their head office in Rangoon.

p. 17.
p. 21.

20 2. The general question which arises on this appeal is whether the deduction sought is allowable under Rule 1 of the Rules made by the Board of Income Tax applicable to companies or bodies of persons carrying on the business of banking. The Rule prescribes the method of ascertainment and determination of the profits of Ceylon branches of non-resident bankers. It is agreed that if the case falls within the Rule the Rs. 53,226 are deductible in arriving at the amount of the assessment on the Bank in respect of the profits of its Ceylon branch.

p. 1.

3. The Rule is printed in the Record.

The relevant definitions in the Rule are:—

“Bank” means any non-resident banker within the meaning of these expressions as defined in Section 2 of Ordinance No. 2 of 1932.

“Ceylon branch” means the business carried on in Ceylon by any such bank.

By Section 2 of the Income Tax Ordinance (No. 2 of 1932) “Banker” is defined as “any company or body of persons carrying “on the business of banking”.

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4. The facts of the case are to be found in the Case Stated by the Income Tax Board of Review (and the exhibits thereto) for the opinion of the Supreme Court, and may be summarised as follows:—

p. 15, l. 13.
p. 23, l. 1.

The Appellants were incorporated in 1929. They had their head office in Rangoon until the occupation of Burma by the Japanese, and had a branch in Ceylon at the material dates.

p. 15, l. 18.

In the course of carrying on their business in Ceylon the Ceylon branch paid Rs. 53,226 to the head office by way of interest for the year ending 31st March, 1940, this sum being credited in the books of the branch as a payment to the head office by way of interest for the year. 20

p. 15, l. 30.

5. The Ceylon branch had been mainly carrying on the business of lending money on promissory notes or on mortgages of immovable property in Ceylon, and the management of estates and house properties owned by the Appellants in Ceylon.

p. 15, l. 37.
p. 55, l. 14.
p. 57.

In the course of the Appellants' financial year to the 31st March, 1940, eleven current accounts were on the books of the branch, seven of these being closed during the year.

p. 58.

p. 59.

At the 1st April, 1939, there were 50 loan accounts outstanding secured by borrowers' promissory notes and 56 mortgage accounts. 30

p. 48.

The published Balance Sheet for the year showed among the Appellants' liabilities “Deposits—fixed current and other” Rs. 19,179,341, and among the assets “loans overdrafts and other debts” Rs. 14,614,034. The Profit and Loss account showed income from investments Rs. 1,227,733 mostly from landed property.

p. 15, l. 41.

p. 15, l. 44.

The Ceylon branch was financed mainly from the head office.

6. No cheque books had been issued by the Appellants nor was there evidence that money on deposit could have been withdrawn

by cheque, draft or order. Likewise there was no evidence as to how moneys on deposit with the Appellants could be withdrawn if not by some form of cheque, draft or order.

7. On representation made to the Registrar of Companies, Colombo, by the Ceylon Agent of the Appellants, their name was on the 12th December, 1939, directed by the Governor of Ceylon to be omitted from the 11th Schedule to the Company's Ordinance No. 51 of 1938. The ground of the direction was that the principal business of the Appellants was not "the accepting of deposits of moneys on current account or otherwise subject to withdrawal by cheque draft or order" and that therefore the Appellants were not a banking company as defined by the Ordinance and their name was erroneously entered in the 11th Schedule to that Ordinance. p. 23, l. 20.
p. 24.
p. 23, l. 32.
p. 15, l. 3.
- 10 8. As stated, the Appellants claimed the benefit of Rule 1 of the relevant Rules in respect of the sum of Rs. 53,226/- paid by them in the year ending 31st March, 1940, to their head office in Rangoon. The Assessor would not allow the Claim and the Appellants appealed to the Commissioner of Income Tax. The Commissioner on the 24th January, 1944, upheld the Assessor's decision, taking the view that the Rule postulated the carrying on of banking business not only by the head office, but also by the Ceylon branch, and that a business was only a banking business if "it carried on as its principal business "the accepting of deposits of money on current account or otherwise "subject to withdrawal by cheque, draft or order". The words in quotation marks he derived from Section 330 of the Companies Ordinance No. 51 of 1938. He placed considerable stress on the fact that the Appellants had claimed and received exemption from the provisions of this Ordinance though he had himself found as a fact that the Appellants' main activities in Ceylon consisted of the lending of money on promissory notes or on mortgages of immoveable property in Ceylon and the management of its estates and house properties there. p. 3, l. 25.
pp. 3-5.
p. 5, ll. 10-20.
p. 4, ll. 11-15.
p. 4, ll. 31-48.
p. 23, ll. 20-40.
p. 3, l. 30.
- 30 9. The Appellants appealed from this decision to the Income Tax Board of Review who on the 22nd August, 1944, allowed their appeal and directed that the deduction which they claimed be admitted. They held that it was illegitimate, for the purposes of interpreting the Income Tax Ordinance of 1932, to resort to an Ordinance relating to Companies not passed until 1938, and that it was not an indispensable condition of carrying on banking business that cheque books should be issued to customers for the purpose of enabling them to withdraw their deposits. Approaching the matter from the general point of view they found as facts that the Appellants pp. 5-6.
pp. 7-15.
p. 9, ll. 32-36.
p. 12, ll. 37-3 .
- 40 p. 11, ll. 15-20.
p. 14, ll. 25-29.

p. 8, ll. 1-2.
 p.14, ll. 47-51.
 p. 16, l. 46.

were carrying on the business of banking both at their head office in Rangoon and at their Ceylon branch, although in the view of the Board the latter finding was not essential to the allowance of the deduction. They thought the Commissioner had erred in regarding the claim to exemption from the obligations as to returns and the like imposed by the Companies Ordinance as an abandonment for all purposes of their claim to be carrying on banking business. The decision of the Board is exhibited to the Case stated by them.

pp. 15-17.
 p. 17.
 p. 19, ll. 5-20.
 p.15, l. 20.
 p. 19, l. 19.
 p. 18, ll. 29-31.
 p. 20, ll. 20-23.
 p. 20, l. 21.

10. The Commissioner having required the Income Tax Board of Review to state a Case, the Case was stated and came before the Supreme Court of the Island of Ceylon on the 19th and 20th December, 1945. On the 17th January, 1946, judgment was delivered by Rose J., the Acting Chief Justice, Soertsz S.P.J., concurring, allowing the Commissioner's appeal. The view of the Supreme Court was that it was legitimate to have regard to the definition of "a banking company" contained in Section 330 of the Companies Ordinance No. 51 of 1938 on the ground that it crystallised what was already the legal conception of a bank in England and therefore in Ceylon, and that since the Appellants did not fulfil the requirements of the Ordinance they were not bankers for the purposes of the Income Tax Rules in that they were not a company or person carrying on as its or his principal business the accepting of deposits of money on current account or otherwise, subject to withdrawal by cheque, draft or order. They further expressed the opinion that the true interpretation of the relevant Rule required banking business to be carried on by the Ceylon branch as well as by the head office, and held that it had not been established by the evidence that banking business in the meaning they gave to the term was carried on in Ceylon. The Court accordingly did not consider the question whether the Appellants were carrying on the business of banking at Rangoon.

11. On the basic question whether the Appellants were "a company or body of persons carrying on the business of banking" [Section 2, Income Tax Ordinance No. 2 of 1932] the Appellants respectfully submit that the Supreme Court was wrong. The specific definition contained in the Companies Ordinance was dictated by the fact that special obligations as regards returns and the like were being imposed on banking companies whose principal business consisted of accepting deposits subject to withdrawal by cheque, draft or order and did not, it is submitted, purport to express any general conception. Nor can it be said, it is submitted, that the Appellants were not carrying on the business of banking because there was no issue of cheque books to customers, and it was not legitimate, in the absence of evidence on the point, to infer that moneys

on deposit with the Appellants, and accepted by them pursuant to a power in their Memorandum of Association, could not be withdrawn by draft or by some form of order other than a cheque. The Appellants had no right to appropriate to themselves moneys deposited by customers with them to the exclusion of the rights of the depositor. p. 29, l. 40.

12. There was, it is submitted, evidence on which the Income Tax Board of Review could find, as they did, that the Appellants carried on the business of banking at Rangoon.

10 13. On the subsidiary question as to whether, assuming that the Appellants carried on the business of banking, it was necessary to show that they also carried on the business of banking in Ceylon, the Appellants submit that it is incorrect to split up the activities of a single concern in the manner postulated by the Supreme Court's judgment. If, as an entity, a concern is carrying on the business of banking, it cannot make any difference if one side of that business is concentrated in one branch or if one branch concentrates on one side of that business. As long as the branch is a branch of a business which carries on banking, the requirements of the Income Tax Rule
20 are fulfilled. In any event the business carried on in Ceylon was, it is submitted, the business of banking. Admittedly, as recorded in the Case stated by the Commissioner, the main activities in Ceylon consisted of the lending of money on promissory notes or on the mortgage of immoveable property in Ceylon and the management of property owned in Ceylon. The making of advances of money is, however, one of the main functions of any bank, and in so far as its assets comprise landed properties these inevitably need to be managed; a bank does not cease to be a bank because it manages the properties in which it has invested. p. 15, l. 20.

30 14. The Supreme Court having delivered its judgment on the 17th January, 1946, a Decree of the Supreme Court of the same date was duly entered allowing the Commissioner's appeal and ordering the Appellants to pay the costs of the proceedings in the Supreme Court and before the Board of Review and before the Commissioner. p. 21.

15. By decree of the Supreme Court dated the 12th February, 1946, the Appellants were granted conditional leave to appeal to His Majesty in Council and this leave was made final by decree of the Supreme Court dated the 19th March, 1946. p. 21, l. 31.

40 16. The Appellants humbly submit that the judgment and decree of the Supreme Court dated the 17th January, 1946, ought to be set aside and the decision of the Income Tax Board of Review p. 22.

ought to be restored with costs of the appeal here and below for the following amongst other

REASONS.

1. BECAUSE it is not the law in England or Ceylon that the only concern which can properly be described as a bank is one which accepts deposits withdrawable by cheques;
2. BECAUSE the Companies Ordinance of 1938, Section 330, did not crystallise any already current legal conception of a bank or of the business of banking;
3. BECAUSE there was evidence on which the Board of Review could come to the conclusion that the Appellants carried on in Rangoon business which was the business of banking; 10
4. BECAUSE it was not, on the true interpretation of the Income Tax Rule, necessary to show that the business done by the branch in Ceylon was the business of banking;
5. BECAUSE, in the alternative, there was evidence on which the Board of Review could come to the conclusion that the Appellants' branch in Ceylon carried on the 20 business of banking;
6. BECAUSE the decision of the Income Tax Board of Review was right;
7. BECAUSE the decision of the Supreme Court was wrong.

CYRIL L. KING.

STEPHEN CHAPMAN.

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— AND —

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CASE FOR THE APPELLANTS.

DARLEY CUMBERLAND & Co.,
36, John Street,
Bedford Row, W.C.1,
Solicitors for the Appellants.