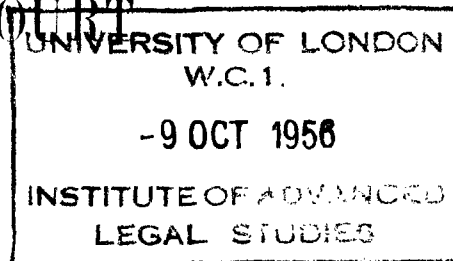


31, 1948

In the Privy Council.

No. 77 of 1946.

ON APPEAL FROM THE SUPREME COURT
OF THE ISLAND OF CEYLON.



44491

BETWEEN

THE BANK OF CHETTINAD LIMITED, OF COLOMBO

APPELLANTS

AND

THE COMMISSIONER OF INCOME TAX, COLOMBO

RESPONDENT.

CASE FOR THE RESPONDENT.

1.—This is an Appeal from a Judgment of the Supreme Court of the Island of Ceylon dated the 17th January, 1946, allowing an appeal by the Respondent by way of Case Stated from a decision of the Income Tax Board of Review dated the 22nd August, 1944, whereby an appeal by the Appellant from a decision of the Respondent dated the 24th January, 1944, was allowed and the determination of the Respondent was reversed.

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10 2.—The Appeal relates to the amount at which the Appellant Company (which at the material time was a Company non-resident in Ceylon and having its head office in Rangoon) is liable to be assessed to income tax under the Income Tax Ordinance of Ceylon in respect of the income and profits of its Ceylon branch, which is conducted at an office in Colombo. The ultimate question for decision is whether in computing the amount of the said income and profits a deduction should be allowed in respect of interest debited to the Ceylon branch in respect of balances due to the head office from the Ceylon branch.

20 The matter depends upon the construction of Rules made under the said Ordinance dealing specially with the taxation of the Ceylon branch of a non-resident bank, and upon the application of those Rules to the facts of the case. It has not been disputed that apart from these Rules, the deduction claimed is inadmissible, inasmuch as debits and credits as

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between a head office and the branches of a company are not expenses or receipts which come into account in computing the profits of the business of a branch. But the Rules in question provide (generally stated) that in computing the profits of the Ceylon branch of a non-resident bank, deductions (as therein prescribed) are to be allowed in respect of interest debited upon balances due from the Ceylon branch to other branches of the Bank.

3.—The question to be decided is whether upon the facts and the construction of the Rules the Appellant Company can show (1) that at the material times it was “a bank,” and (2) that, even if it was such a bank, its Ceylon branch was “a business carried on by the Bank in Ceylon.” 10

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The decision of the Supreme Court (which the Respondent contends to be right) is that even if the Appellant Company was itself such a bank, its Ceylon branch was not a business carried on by the bank in Ceylon. The ground of the decision, shortly stated, is that the business carried on by the bank in Ceylon must be banking business, and that the business in fact carried on was substantially only a business of moneylending, inasmuch as the essential business of banking, namely, the receipt of customers' money on current account and the cashing of customers' cheques was not done to any material extent or at all. The Court also thought (though it was not necessary to decide the point) that for the same reason the Appellant Company probably did not carry on a banking business at its head office either. 20

The contention for the Appellant Company, stated generally, has been that to constitute a bank for the purpose of the Rules in question it is not necessary that all the functions of banking should be carried on, and that sufficient activities in the use of money characteristic of banking business were established both as regards the Appellant Company itself and as regards its Ceylon branch to bring the case within the Rules.

4.—Income tax is empowered in Ceylon by the Income Tax Ordinances which was originally enacted in 1932. 30

By Section 35 of the Ordinance it is provided that a non-resident person shall be assessable either directly or in the name of his agent, in respect of all his profits and income arising in or derived from Ceylon.

By Section 90 the Board of Income Tax make rules (*inter alia*) for the ascertainment and determination of any class of income and in particular may prescribe the manner in which and the procedure by which the income, profits and gains shall be arrived at in the case of insurance companies and non-resident companies.

In Section 2 of the Ordinance which contains definitions it is provided that— 40

“ ‘banker’ means any company or body of persons carrying
“ on the business of banking.”

Rules have been made under Section 90 of the Ordinance with regard

to the method of ascertainment and determination of the profits of Ceylon branches of non-resident bankers. RECORD

Rule I is as follows :—

(1) In this rule, unless the context otherwise requires :

“ bank ” means any non-resident banker within the meaning of these expressions, as defined in Section 2 of Ordinance No. 2 of 1932 ; p. 1

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

10 “ other branch ” means the business carried on by a bank in any country outside Ceylon, including that carried on at its principal place of business.

The said Rules further provide for a deduction for interest where the Ceylon branch owes an average amount in an accounting period to other branches, and it was a deduction pursuant to this provision which was claimed by the Appellant in respect of the year of assessment ended the 31st March, 1941.

5.—In Section 330 of the Companies Ordinance No. 51 of 1938, a “ banking company ” is defined to mean “ a company which carries on
20 “ as its principal business the accepting of deposits of money on current
“ account or otherwise, subject to withdrawal by cheque, draft or order,
“ notwithstanding that it engages in addition in any one or more of
“ the . . . forms of business ” as there set out in the said section.

Section 3 of the Civil Law Ordinance, 1853 (Cap. 66 of the Legislative Enactments of Ceylon) provides as follows :—

30 “ In all questions or issues which may hereafter arise or which
“ may have to be decided in this Island with respect to the law
“ of partnership, joint stock companies, corporations, banks, and
“ banking, principal and agents, carriers by land, life and fire
“ insurance, the law to be administered shall be the same as
“ would be administered in England in the like case, at the
“ corresponding period if such question or issue had arisen or
“ had to be decided in England, unless in any case other provision
“ is or shall be made by any Ordinance now in force in this Island
“ or hereafter to be enacted.”

6.—The facts of the case appear from the Case Stated by the Board of Review under Section 74 of the Income Tax Ordinance for the opinion of the Supreme Court and the documents exhibited thereto, and are summarised below. p. 15

40 The Appellant Company at the material times had its head office in Rangoon, and a branch in Ceylon. It is common ground that the Company is a non-resident person, and that it carries on some business in Ceylon through its Ceylon branch. In the course of carrying on its business in

RECORD — Ceylon the Ceylon branch paid a sum of Rs.53,226 to the head office in Rangoon by way of interest for the year ended 31st March, 1940. It is claimed that this sum shall be allowed as a deduction under Rule I of the above-cited Rules in assessing the bank in respect of the profits of the Ceylon branch for the year of assessment, 1st April, 1940, to 31st March, 1941.

p. 3 7.—The assessor having disallowed the claim, the Appellant Company appealed to the Respondent under Section 69 of the Income Tax Ordinance, but the Respondent dismissed the appeal and confirmed the assessment, subject to an agreed deduction on other grounds.

p. 3, l. 5 8.—For the purpose of that appeal the Respondent had before him 10 the documents relating to the business of the Appellant Company and its Ceylon branch mentioned in his determination under Section 71 (2) of the Ordinance.

The Respondent held that upon the facts before him the Appellant Company's main activities in Ceylon consisted of the lending of money on promissory notes or on the mortgage of immovable property in Ceylon and the management of estates and house property in Ceylon. It was financed mainly from its head office in Rangoon. In his determination the Respondent referred to Section 330 and other provisions of the Companies Ordinance No. 51 of 1938. The facts he considered showed that 20 substantially there were no moneys on deposit or current account at the Ceylon branch during the year, and that it did not appear that the Appellant Company carried on as its principal business the accepting of deposits of money on current account within the meaning of Section 330 of the Companies Ordinance. No cheque books were issued by the Appellant Company, and there was no evidence that moneys on deposit, if there should be any, might be withdrawn within the meaning of Section 330 of the Companies Ordinance.

p. 23, l. 17 The Respondent referred in particular to the fact that the Appellant Company had by a letter written on its behalf to the Registrar of Companies on the 4th August, 1939, represented that it was not a banking company 30 within the meaning of Part XIII (which contains Section 330) of the Companies Ordinance and was therefore not affected by the obligation of banking companies to make returns thereunder, stating therein that the principal business of the Company was not the accepting of deposits of moneys on current account or otherwise subject to the withdrawal by cheque, draft or order.

p. 5, l. 32 9.—The Appellants appealed to the Board of Review under Section 71 of the Income Tax Ordinance, stating his grounds therefor in a letter to the Clerk to the said Board dated the 16th February, 1944. In the said letter it was contended, *inter alia*, that the Ceylon branch had been 40 essentially carrying on the business of moneylending, that it was not essential that a banker should carry on all the functions of a banker to be

styled as a banker and that, whatever was the position under the Companies Ordinance 51 of 1938, the Appellant Company did not forfeit its character of a banker within the Income Tax Ordinance because it had ceased to accept deposits subject to withdrawal by cheque.

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10.—The said appeal was in due course heard by the Board of Review under Section 73 of the Income Tax Ordinance and the decision was given on the 22nd August, 1944. p. 7

By Section 73 (4) of the Ordinance it is provided that the onus of proving that the assessment as determined by the Commissioner on appeal is excessive shall be on the Appellant. 10

The Board of Review were of opinion that the said Rule I would apply to a non-resident banker, even if the business carried on in Ceylon was non-banking business, but they thought it was clear that for the purpose of the definition of "banker" contained in the Income Tax Ordinance, the Appellant should be held to be carrying on the business of banking both at the head office at Rangoon and at the Ceylon branch. They accordingly held that the appeal should be allowed and that the Appellant was entitled to the deduction claimed under the said Rule I. p. 7, l. 19

The decision of the Board of Review must be referred to for its full terms. The Board considered in particular that the definition of banking company in the Companies Ordinance was not relevant to the construction of the Income Tax Ordinance, that the issue of cheque books and the drawing by customers upon their bank deposits by means of cheques was not an essential ingredient of the business of banking, and that the lending of other people's money was a primary function of banking. 20

11.—The Respondent required the Board of Review to state a case on a question of law for the opinion of the Supreme Court, pursuant to Section 74 (1) of the Income Tax Ordinance, and a case was stated accordingly by the said Board. p. 15, l. 9

12.—In addition to the documents produced in evidence at the hearing before the Respondent, there are attached to the Case Stated by the Board of Review a list of loan accounts with promissory note security and a list of mortgage accounts. pp. 58 and 59

It is stated as a fact in paragraph 4 of the said Case Stated that no cheque books had been issued by the Appellant and that no evidence was placed before the Respondent that any moneys on deposit could have been withdrawn by cheque, draft or order. p. 15, l. 44

13.—The formal conclusions of the Board of Review are set out in paragraph 9 of the Case Stated, as follows:— p. 17, l. 3

40 (A) The Bank of Chettinad Limited was at the material dates a "non-resident banker" within the meaning of Rule I of the

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Rules made under Section 90 of the Ordinance, in that it carried on the business of a banker at its head office in Rangoon ;

- (B) The Ceylon branch also carried on the business of a banker, on the facts before the Board ;
- (c) It is not necessary, in order to be entitled to the deduction claimed, that the business in Ceylon of the non-resident banker should be banking business.

p. 17, l. 26

14.—The case came on for hearing in the Supreme Court of Ceylon (Soeretsz, Acting Chief Justice, and Rose, J.) on the 19th and 20th December, 1945, and on the 17th January, 1946, the Court delivered Judgment, 10 setting aside the Order of the Board of Review and declaring that the Appellant was not entitled to the relief claimed.

Rose, J., considered that it was necessary for the Appellant to establish both that its head office in Rangoon carried on the business of banking and also that the Ceylon office did likewise in Ceylon, and noted that, as regards the latter condition being requisite, the contrary had not been seriously argued before him for the Appellant.

The learned Judge considered that Section 330 of the Companies Ordinance merely crystallized what was already the legal conception of a "bank" in Ceylon, which was substantially the same as that of English 20 law. He was of opinion that a banker meant 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. Whether, or not, the Appellant could be held to have satisfied this test was a matter of law, or of mixed fact and law which was open to review by the Court. On the facts found in the Case the learned Judge concluded that it was not reasonably possible to hold that the Ceylon branch was carrying on the business of banking. It was unnecessary to decide whether the same applied to the Appellant's head office in Rangoon, but the learned Judge observed that the Appellant might find difficulty in establishing 30 that the head office in Rangoon was carrying on a banking business in view of the statement made by its Proctor in the letter to the Registrar of Companies, Colombo, dated the 4th August, 1939.

p. 20, l. 48

The Senior Puisne Judge agreed.

15.—The Respondent humbly submits that the decision of the Supreme Court of Ceylon is right, and should be affirmed, and that this appeal should be dismissed with costs for the following amongst other

REASONS

1. Because, neither the sum of Rs.53,226 nor any other sum for interest paid by the Ceylon branch to the head office in 40 Rangoon falls to be deducted from the income as assessed of

the Appellant Company in respect of its Ceylon branch for the year of assessment ended the 31st March, 1941.

2. Because the Appellant Company was not at the material time a non-resident "banker" within the meaning of Rule I (i) of the Rules made by the Board of Income Tax pursuant to Section 90 of the Income Tax Ordinance.
3. Because the business of the Ceylon branch of the Appellant Company was not a "Ceylon branch" within the meaning of the said Rule I.
- 10 4. Because the business carried on in Ceylon by the Appellant Company was not banking business, but was primarily only moneylending business.
5. Because the course of business carried on in Ceylon by the Appellant Company did not comprise the issuing of cheque books, the receipt of customers' money on current account and the cashing of customers' cheques and the business so carried on was not banking business for the purpose of Rule I aforesaid.
- 20 6. Because there was no evidence before the Board of Review that any moneys which might be on deposit with the Appellant Company could have been withdrawn by cheque, draft or order.
7. Because in the interpretation of the Income Tax Ordinance and the Rules made thereunder with regard to non-resident banks it is relevant to consider and proper to apply the definition of banking company in Section 330 of the Companies Ordinance No. 51 of 1938.
8. Because there was no evidence before the Board of Review which enabled the Board to reverse the determination of the Respondent.
- 30 9. Because the decision of the Board of Review in reversing the determination of the Respondent and allowing the deduction claimed by the Appellant Company in computing the income assessed was erroneous in law.
10. Because the reasoning of the Judgment of Mr. Justice Rose in the Supreme Court is well-founded.

DAVID MAXWELL FYFE.

REGINALD HILLS.

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CASE FOR THE RESPONDENT

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