

1946

Present : Soertz A.C.J. and Rose J.

COMMISSIONER OF INCOME TAX, Appellant, and
BANK OF CHETTINAD, Respondent.

CASE STATED UNDER SECTION 74 OF THE INCOME TAX
ORDINANCE, No. 84 (INTY.).

Income Tax—Non-resident Bank—Loan to Ceylon Branch—Claim for deduction of interest—Income Tax Ordinance (Cap. 188), s. 90, Rule 1.

Where the Chettinad Bank which had its Head Office at Rangoon and a Branch at Colombo lent money to the Colombo Branch and the latter claimed that it should be allowed a deduction, in the assessment of its Income Tax, of the amount of the interest on the loan, under Rule 1 of section 90 of the Income Tax Ordinance—

Held, that it was for the assessee to establish affirmatively that both the Head Office and the Ceylon Branch carried on the business of banking.

A Bank contemplated by the Rule is 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.

CASE stated under the provisions of the Income Tax Ordinance for the opinion of the Supreme Court upon the application of the Commissioner of Income Tax.

H. H. Basnayake, Acting Solicitor-General (with him *T. S. Fernando, C.C.*), for the Commissioner of Income Tax, appellant.—This is a case stated under section 74 of the Income Tax Ordinance (Cap. 188). The assessee is a company registered in India. The Head Office is in Rangoon, and there is a Branch Office in Ceylon which transacts business. The Ceylon Branch paid to the Head Office in Rangoon Rs. 53,226 as interest on money advanced by the Head Office for the financial year ending March 31, 1940. This sum was credited in the books of the Ceylon Branch as a payment to the Head Office by way of interest for that year. The Bank claims that this sum should be allowed as a deduction under Rule 1 of the Rules made by the Board of Income Tax under section 90 of the Income Tax Ordinance—*vide* Subsidiary Legislation, Vol. III., p. 212. This rule contemplates a Ceylon Branch of a non-resident banker. The Board of Review was wrong when it held that it was immaterial under Rule 1 whether the Ceylon Branch carried on banking business or not so long as it performed some kind of business. The activities of the Bank of Chettinad were merely of a non-banking nature. The word "banker" is defined in section 2 of the Income Tax Ordinance as "any company or body of persons carrying on the business of banking". As regards the meaning of the word "banking" see *Hart's Law of Banking 4 Ed., Vol. IV., p. 1*. There is no evidence as

to the nature of the activities carried on in Rangoon. There is no material on which a finding could be made that the Bank of Chettinad was either in Ceylon or in Rangoon carrying on banking business. On the evidence it is clear that the Bank of Chettinad merely carries on a money-lending business. See, further, *Stroud: Judicial Dictionary (Supplement) p. 101*, and section 330 of the Companies Ordinance, No. 51 of 1938. It is submitted, therefore, that the assessee is only a non-resident trading Company and does not come within Rule 1.

H. V. Perera, K.C. (with him *N. Nadarajah, K.C.*, and *S. J. Kadirgamer*), for the assessee, respondent.—A wide interpretation should be given to the word “bank”. The correct test is whether the Company utilises for profit its own monies or the monies of others. It is sufficient if the Company carried on some banking business. It is not necessary to show that it carried on all the activities of a banker. Thus in order to constitute a bank a Company need not deal with cheques. Discounting of bills would be sufficient to make its business a banking business. The words “business of banking” do not refer to a particular class or set of activities. In any event the question whether the Rangoon Office and the Ceylon Branch satisfy the definition of a “banker” is a question of fact. The findings of the Board of Review on this question of fact should not be interfered with—*Currie v. Inland Revenue Commissioners*¹.

H. H. Basnayake, in reply.—The Board of Review did not hold that the Ceylon Branch carried on a banking business. What was held was that the Ceylon Branch need not carry on a banking business to fall within Rule 1. A Bank may have various activities but mere money lending does not constitute its business a banking business. On the question as to what are the essential characteristics of a bank, see *Hart on Banking, p. 1*. The definition of a “bank” in the Companies Ordinance covers the legal conception of a “bank”

Cur. adv. vult.

January 17, 1946. ROSE J.—

This is a case stated under section 74 of the Income Tax Ordinance (Chapter 188). The matter concerns the interpretation to be given to Rule 1 (1) of the Rules made by the Board of Income Tax in accordance with the provisions of section 90 of the Income Tax Ordinance.

The Bank of Chettinad, Limited, at the material time had its Head Office at Rangoon and a branch in Ceylon. In the course of carrying on its business in Ceylon the Ceylon Branch paid a sum of Rs. 53,226 to the Head Office in Rangoon by way of interest on money advanced by the Head Office during the financial year ending March 31, 1940. This sum was credited in the books of the Ceylon Branch as a payment to the Head Office by way of interest for that year. The Bank claims that this sum should be allowed as a deduction under Rule 1 of the Board of Income

¹ (1921) 2 K. B. D. 332 at p. 339.

Tax Rules in assessing the income tax payable by the Bank in respect of the year of assessment, April 1, 1940, to March 31, 1941. The assessor disallowed the Bank's claim. There was no argument before us as to the actual figures involved, it being common ground that if the claim is sustainable the amount of tax payable for the year in question should be reduced by Rs. 10,646·30.

The relevant definitions in Rule 1 (1) are as follows :—“ ‘Bank’ means any non-resident banker within the meaning of these expressions as defined in section 2 of the Income Tax Ordinance. ‘Ceylon Branch’ means the business carried on in Ceylon by any such Bank”. It was contended before the Board of Review and held by them that provided the Bank was able to establish that it was a non-resident bank in Rangoon within the meaning of the above definition, it was immaterial whether the Ceylon Branch carried on banking business or not, so long as it performed some kind of commercial activity. This proposition, which in my opinion has only to be stated to show that it cannot be sustained, was not seriously argued before this Court by counsel for the Bank, counsel contenting himself with the proposition that while the Branch must be shown to perform some banking functions it need not necessarily be shown to perform all the functions of a bank.

It is necessary therefore for the Bank to establish two matters, first that the Head Office in Rangoon carried on the business of banking in Burma and secondly that the Ceylon Office did likewise in Ceylon. In order to decide this question it is necessary to discover what the legislature means by the words “bank” and “banking”. The definition of “banker” contained in section 2 of the Income Tax Ordinance carried the matter no further and reads as follows :—“banker” means any company or body of persons carrying on the business of banking.

Counsel for the Bank contends in the first place that a wide interpretation should be given to the word “bank” and suggests that the true test as to whether an institution is a bank or not is whether it utilises for its own monies or the monies of other persons and refers to Volume IV. of the Supplement to Stroud's Judicial Dictionary at page 51 where reference is made to a statement by Fitz Gibbon L.J., that for the purpose of the Irish Act, 33 G. 2, c. 14, a “Banker” is one “who traffics with the money of others for the purpose of making profit” even, apparently, though he issues no cheque books and does not honour drafts on demand.

Whatever may be the position under the Irish Law, it seems to me that that is too wide a conception of a bank according to the law of England and Ceylon. It is to be noted that section 330 of the Companies Ordinance, No. 51 of 1938, gives the following definition : “A ‘banking company’ means a company which carries on 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 to any one or more of the following forms of business”

It is no doubt true, as Counsel for the Bank pointed out, that the Companies Ordinance was enacted in 1938 whereas the Income Tax Ordinance was enacted some six years earlier. The learned Solicitor-General contends, however, that section 330 of the Companies Ordinance merely crystallized what was already the legal conception of a "bank" in Ceylon which he says is substantially the same as that of English law. The relevant definition in Mr. Hart's book on the law of Banking at page 1 reads as follows:—"A Banker or Bank is a person or company carrying on the business of receiving monies, and collecting drafts, for customers subject to the obligation of honouring cheques drawn upon them from time to time by the customers to the extent of the amounts available on their current accounts". It is also perhaps helpful to turn to a layman's view of the matter to be found in an English Dictionary of wide currency and acceptance, the Concise Oxford Dictionary, which defines a "bank" as an "establishment for custody of money, which it pays out on customer's order".

I am of opinion that the contention of the learned Solicitor-General is correct and that the test to be applied is that stated, so far as companies are concerned, in section 330 of the Companies Ordinance, and therefore a banker means 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.

Now, whether the Head Office of the Chettinad Bank in Rangoon and its branch in Ceylon satisfy this test is no doubt, in part at least, a question of fact and Mr. H. V. Perera, Counsel for the Bank, contends that the Board of Review have come to findings with which it would be wrong for us to interfere as our functions are limited in these matters to questions of law. He referred to a passage in the judgment of Scrutton L.J., in *Currie v. Inland Revenue Commissioners*¹, in which after quoting the following words from a judgment of Lord Parker "It may not always be easy to distinguish between questions of fact and questions of law for the purpose of the Taxes Management Act, 1880, or similar provisions in other Acts of Parliament. The views from time to time expressed in this House have been far from unanimous" Scrutton L.J. goes on to say, "I think the reason is, as has been suggested by the Master of the Rolls, that there has been a very strong tendency, arising from the infirmities of human nature, in a judge to say, if he agrees with the decision of the Commissioners, that the question is one of fact, and if he disagrees with them that it is one of law, in order that he may express his own opinion the opposite way".

While giving full weight to this wise and witty pronouncement which, in my opinion, might well be taken to heart by Appellate Courts in matters coming before them even otherwise than by case stated, I consider nevertheless that the question as to whether by the evidence adduced before the Board the Chettinad Bank and its Branch can reasonably be

¹ (1921) 2 K. E. D. at p. 339.

held to have satisfied the test to which I have referred is a matter of law, or at least of mixed fact and law, to which it is proper that this Court should apply its mind.

It must be borne in mind that it is for the person claiming relief to establish affirmatively that he is a "bank" within the meaning of the Rule. As regards the Ceylon Branch, as is pointed out in the case stated, it was not disputed at the hearing before the Commissioner that it had been mainly carrying on the business of lending money on promissory notes or on mortgage of property in Ceylon and the management of estates and house property owned by the bank in Ceylon. Further no cheque books had been issued by the Branch and there was no evidence before the Commissioner that any monies on deposit in any shape or form could have been withdrawn by cheque, draft or order; or *a fortiori* that any such monies were in fact so withdrawn. The only exhibit produced which can be said to have any bearing on the matter, exhibit A3, shows that at the material time the only current and deposit accounts with the Branch were those of the Chettinad Corporation, Limited, and seven other persons, which seven were shown to have closed their accounts during the financial year ending March 31, 1940. Thus, as is pointed out in the case stated, the only current and deposit accounts at that date were those of the Chettinad Corporation, Limited, which at that time showed a debit balance.

It seems to me, with all respect to the Board of Review, that it is impossible on this material to say that it can reasonably be held that the Bank has shown that the Ceylon Branch has satisfied the test as set out above. The Bank having therefore failed to show that the Ceylon Branch was carrying on the business of banking it becomes unnecessary to consider whether the Head Office of the Chettinad Bank in Rangoon was doing so. I will therefore express no opinion on that matter but would merely observe that in a letter dated August 4, 1939, addressed to the Registrar of Companies, Colombo, the Proctor of the Chettinad Bank, Limited, stated as follows:—"I am instructed by the Bank of Chettinad, Limited, to inform you that the principal business of my clients is not the accepting of deposits of monies on current account or otherwise subject to withdrawal by cheque, draft or order. In these circumstances my clients are not a Banking Company as defined by the Ordinance and I have to point out that their name has been incorrectly entered in the 7th Schedule to the above Ordinance. In this connection, I should like to add that a similar application was made by the Head Office in Burma and my client's contention that they were not a Banking Company was accepted by the Registrar of Joint Companies, Rangoon, and the Controller of Currency, Calcutta". In the light of this statement of the position made by the Chettinad Bank's Proctor, it would seem if it was necessary for the point to be decided, that the Chettinad Bank might well experience difficulty in establishing that their Head Office in Rangoon was carrying on a banking business in the sense attributed to that term in Ceylon.

For these reasons I am of opinion that the Chettinad Bank, Limited, is not entitled to the relief it claims. It must pay the costs of the proceedings in this Court, before the Board of Review and before the Commissioner.

SOERTSZ A.C.J.—I agree.

Appeal allowed.

