A **PR. AL. M. M. ANNAMALAI CHETTIAR**

v.

COMMISSIONER OF INCOME-TAX, MADRAS

October 26, 1964

B (K. SUBBA RAO, J. C. SHAH AND S. M. SIKRI JJ.)

Income Tax—Purchase and sale of property in Malaya—Purchase in Japanese currency and sale in Malayan Currency—Method of computing profit and loss.

The assessee whose head office was in India was also carrying on business in the Federated Malaya States. In respect of the assessment year
C 1951-52, the assessee claimed that a loss was incurred as a result of the sale of house properties and rubber gardens. Those properties were purchased by the assessee, in Malaya, during the Japanese occupation, in Japanese currency, but sold in Malayan currency after enemy occupation had ceased. The Income-tax Officer scaled down the purchase prices in accordance with the Schedule of rates contained in the Debtor and Creditor (Occupation Period) Ordinance, 1948, of the Federated Malaya States. The result was that the assessee was shown to have made a profit instead
D of suffering any loss. On appeal by the assessee, the Appellate Assistant Commissioner and the Appellate Tribunal confirmed the order of the Income-tax Officer. The Tribunal also refused to state a case to the High Court and the High Court rejected the assessee's application to direct the Tribunal to do so. The assessee appealed to the Supreme Court.

HELD : The Income-tax Officer was justified in adopting the schedule appended to the Ordinance for the purpose of ascertaining the cost price
E of the properties in Malayan Currency. [831 A-B]

When a property is purchased in one currency and sold in another, the profit or loss can be ascertained only when the conversion rate of the two currencies is known. The only material available to the officer for determining that common standard was the Schedule in the Ordinance. Though the Ordinance does not in terms apply to the scaling down of the cost price—it was enacted for the purpose of scaling down payments made by debtors to creditors during the occupation period—still, it was
F the result of a careful enquiry made by appropriate and responsible authorities in Malaya. Even if he had adopted some other method in the previous years it did not prevent him from utilizing the correct method for the assessment year. [830 C; 830 G-831 A; 831 B-C]

S. L. N. Sathappa Chettiar v. *Commissioner of Income-tax, Madras,* (1959) 35 I.T.R. 641, approved.

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 131 of 1963.

Appeal by special leave from the order dated July 31, 1961 of the Madras High Court in Tax Case Petition No. 44 of 1961.

K. Srinivasan and *R. Gopalakrishnan,* for the appellant.

H *C. K. Daphtary, Attorney-General, S. V. Gupte, Solicitor-General, N. D. Karkhanis, R. H. Dhebar* and *R. N. Sachthey,* for

The Judgment of the Court was delivered by

Subba Rao J. This appeal by special leave is directed against the order of the High Court of Madras in Tax Case Petition No. 44 of 1961.

The appellant is a Hindu undivided family carrying on business with its head office at Pageneri in Ramanathapuram District, Madras State, and also business at Paritpuntar in the Federated Malaya States. In respect of the assessment year 1951-52, the appellant showed in the return filed on his behalf a total world income of Rs. 2,13,079, which included a sum of $ 21,350 as profit from the business at Paritpuntar. In computing the said profit from the business at Paritpuntar the appellant claimed an aggregate loss of $ 68,405 incurred on the sale of house property and rubber gardens as detailed below :

Sl. No.	Date of Purchase	Cost price	Sale price
			(In dollars)
1.	28 of Ani, Angirasa—14 Silama House.		500
2.	28 Ani, Angirasa—No. 2) Silama House.	4154	3920
3.	23rd Avani, Angirasa—No. 23 Silama House.	2333	1425
4.	5th Avani, Subhanu—(21-8-43) Siradan House.	25453	7000
5.	24th Avani, Tharana (15-9-44)—38 Garden.	53686	5880
6.	8th Purattasai Tharana (23-9-44)—35 Garden.	2668	1164
	TOTAL	88294	19880

In respect of items Nos. 1, 2 and 3 above the Income-tax Officer accepted the claim of the appellant, but in regard to the remaining three items, namely, items Nos. 4, 5 and 6, he held that as the said purchases of property and the outlay thereon were all made during the Japanese occupation of Malaya and in Occupation Currency, then in circulation, the purchase prices of the same required to be scaled down in accordance with the schedule of rates contained in the Debtor and Creditor (Occupation Period) Ordinance, 1948, passed by the Legislative Council of Federated Malaya States and on that basis the profit and loss in respect of the last 3 items of the property were worked out by him as under :

S. No.	Sale of Property	Purchase price in occupation currency	Scaled down value of purchase price	Sale amount	Profit	Loss
		$	$	$	$	$
1.	Siradan House	25453	9000	7000	—	2000
2.	38 Garden	53686	3830	5880	2050	—
3.	35 Garden	2668	190	1164	974	—

In the result the Income-tax Officer computed a profit of $ 382 in respect of the sale of the above gardens as against the loss of $ 68,405 claimed by the appellant. On appeal, the Appellate Assistant Commissioner confirmed the order of the Income-tax Officer. On further appeal, the Income-tax Appellate Tribunal took the same view as the Income-tax Officer had taken. The appellant applied to the Tribunal under s. 66(1) of the Income-tax Act requiring it to state a case and refer the following question of law arising out of its order to the decision of the High Court:

> "Whether on the facts and in the circumstances of the case the disallowance of the loss of $67,764 as claimed and the computation of the profit at $382 is valid in law."

The Appellate Tribunal rejected the application. Thereupon, the appellant moved the High Court under s. 66(2) of the Income-tax Act praying for an order directing the Appellate Tribunal to state a case and refer the question of law arising out of its order. The High Court, following the decision in *S.L.N. Sathappa Chettiar* v. *Commissioner of Income-tax, Madras*(1), dismissed the application. Hence the appeal.

Mr. Srinivasan, learned counsel for the appellant, raised before us two points, namely, (1) the conversion table given in the Schedule to the Debtor and Creditor (Occupation Period) Ordinance, 1948, of Malaya, hereinafter called the Ordinance, was not intended to provide the rates of conversion for any purpose beyond what the Ordinance was expressly specified to achieve, namely, the determination of the rights and liabilities of debtors and creditors and that the adoption of the conversion rates given in the said Schedule to scale down the cost of properties in question was unwarranted; (2) the appellant maintained regular accounts for all the years including the Japanese occupation period; the original cost of acquisition of the 3 properties was adopted for the

(1) (1959) 35 I.T.R. 641.

purpose of business balance-sheets all these years; no loss on revaluation of the said assets by scaling down their values at any time was allowed in any of the earlier years by the Department; and, therefore, there was no justification for a departure in the year of account.

He also contended that if the properties were purchased for dollars and sold for dollars, the fact of inflation or deflation of currency would be irrelevant in ascertaining the profits. That may be so in the case of a country's currency, but when a property is purchased and sold in different currencies, say Japanese and Malayan currencies as in the present case, it is not possible to ascertain the profit or loss unless the exchange or conversion rate is ascertained. When a property is purchased in one currency and sold in another currency, how can the profit or loss be ascertained unless the conversion rate of the two currencies is known? There should be a common standard. The two currencies in the present case are essentially different though they were current in the same country during the same or different periods. The extraordinary situation of two currencies coexisting during the occupation period or the situation of one property being purchased during the enemy occupation period in Japanese currency and sold in Malayan currency after the vacation of the enemy occupation cannot be equated with fluctuations in the value of a nation's currency. Unless the cost price expressed in Japanese currency is computed in terms of the Malayan currency, it is not possible to arrive at the real profit accrued to the assessee. That is exactly what the Income-tax Officer did and, in our view, that is the only correct basis.

It is not correct to say that the Income-tax Officer applied the said Ordinance to ascertain the profit in the present case. The scheme and the details of the Ordinance have already been considered by us in Civil Appeals Nos. 55 of 1962 etc. The Ordinance was enacted for the purpose of scaling down the payments made by debtors to creditors during the occupation period. A Schedule was appended to the Ordinance providing a table of conversion of the depreciated Japanese currency into Malayan currency. In terms the Ordinance does not directly apply to the scaling down of the cost price of properties purchased in Japanese currency. But to ascertain the real profit, as we have stated earlier, it is necessary to adopt a reasonable conversion rate. The only material that was available to the Income-tax Officer was the Schedule appended to the Ordinance. Though that Schedule

A was appended to the Ordinance enacted for a different purpose, it was the result of a careful inquiry made by the appropriate and responsible authorities in Malaya. The Income-tax Officer was, therefore, justified in adopting that Schedule for the purpose of ascertaining the cost price of the properties purchased in Japanese B currency and sold in the Malayan currency. The fact that the Income-tax Officer adopted some other method in the previous years—no material has been placed before us in regard to the method adopted by the Income-tax Officer—does not prevent him from ascertaining the correct method for the assesment year with which we are concerned.

C The questions raised before us were the subject-matter of the decision of the Madras High Court in *S.L.N. Sathappa Chettiar* v. *Commissioner of Income-tax, Madras*(1). There, as here, the assessee, which carried on a moneylending business and had its head office in India and a branch in the Federated Malaya States, D purchased some properties when Malaya was under enemy occupation and sold them after the vacation of the enemy occupation in Malayan currency. In order to ascertain the profits resulting from the sale for the purpose of assessment of the assessee for the year 1952-53 the Department valued the cost of the properties in Malayan currency in accordance with the Schedule appended to E the Ordinance. The assessee contended that the cost price of the properties must be taken at the figure accepted by the Department for the purpose of the Government scheme. The High Court held that to ascertain the real profits the Department was right in computing the cost price of the properties in Malayan currency in accordance with the Schedule appended to the Ordinance. The F reason for the conclusion is stated thus at p. 649.

> "The purchase was paid for in Japanese currency. The sale price was realised in Malayan currency. There was no parity between the two on the date of purchase. Certainly the Japanese currency ceased to be in use on G the date of sale. To arrive at a computation of profits or losses where property was purchased in one currency and sold in another, it should be obvious that there should be a common standard; in the circumstances of this case the purchase price had to be computed in terms of Malayan currency in which the property was sold."

H The principle adopted by the High Court appears to be unexceptionable. It accords with our view. Adverting to the second

(1) (1959) 35 I.T.R. 641.

argument that the schedule to the Ordinance should be confined only to the scaling down of debts, the learned Judges pointed out at p. 650 : A

> "The Report of the Select Committee which preceded the issue of the Malayan Ordinance has also been made part of the record. That showed that the Committee made a real attempt to ascertain the value of the Japanese currency in relation to the Malayan currency at every stage of the occupation period. Besides, we have to point out that no other basis of conversion was proposed by the assessee at any stage. We are unable to hold that the Department and the Tribunal were in error in adopting the conversion table furnished in the Schedule to the Malayan Ordinance." B C

We also agree with this view.

In the result the appeal fails and is dismissed with costs.

Appeal dismissed.