1952

Firm Chhotabhai Jethabai Patel and Co. v. *The State of Madhya Pradesh.*

Chandrasekhara Aiyar J.

petitioners. In cases where the periods under the contracts have expired, or where the proprietors have still to recover anything from the transferees after the date of vesting, the State will be at perfect liberty to assert and enforce its rights standing in the shoes of the proprietors. The respondent will pay the petitioners their respective costs.

Petition allowed.

Agent for the petitioners in Petitions Nos. 232, 233, 286, 309 and 320 : *Rajinder Narain.*

Agent for the petitioners in Petitions Nos. 350 and 351 : *M. S. K. Sastri.*

Agent for the petitioners in Petitions Nos. 319, 354 and 490 : *Harbans Singh.*

Agent for the respondents in all petitions : *G. H. Rajadhyaksha.*

1952

Dec. 22.

COMMISSIONER OF INCOME-TAX, MADRAS

v.

K. SRINIVASAN AND K. GOPALAN.

[MEHR CHAND MAHAJAN, DAS and BHAGWATI JJ.]

Indian Income-tax Act (XI of 1922), ss. 2 (1), 25 (3) & (4), 26 (2)—Firm charged under Act of 1918—Accounting year ending on 30th June each year—Transfer of business on 1st March, 1940—Exemption from tax under s. 25 (4)—Period for which exemption can be granted—"End of previous year", meaning of—Interpretation—Directions in Income-tax Manual, value of.

Two brothers who had been carrying on in partnership a business, which had been assessed to income-tax under the Indian Income-tax Act of 1918 and the accounting year of which was a period of 12 months ending on the 30th June each year, transferred the business to a limited company on the 1st March, 1940, and claimed in the assessment for the year 1940-41 that under s. 25 (4) of the Income-tax Act, 1922, they were not liable to pay income-tax on the income of their business from 1st July, 1938, up to 29th February, 1940, a period of 20 months. The Income-tax authorities were of the view that exemption could be claimed only

for the period from 1st July, 1939, to 29th February, 1940, a period of 8 months:

Held, that the expression "end of the previous year" in subss. (3) and (4) of s. 25 in the context of those sub-sections means the end of the accounting year (a period of full 12 months) expiring immediately preceding the date of discontinuance or succession and the assessee firm was entitled to claim exemption from tax only in respect of the period from the 1st July, 1939, to the 29th February, 1940.

On a true construction of ss. 25 and 26, the Income-tax Officer is not empowered to make an accelerated assessment in the year in which succession occurs on the profits of that year and prematurely assess the successor so that he may be able to give relief to the person succeeded. The exemption provided for in s. 25 (4) and the apportionment mentioned in s. 26 (2) have to be made in the assessment year in which the profits of the year of succession fall to be assessed under s. 3 of the Act.

For the purposes of the charging sections of the Act the expression "previous year" is co-related to a year of assessment immediately following it, but it is not necessarily wedded to an assessment year in all cases and it cannot be said that the expression "previous year" has no meaning unless it is used in relation to a financial year. In a certain context it may well mean a completed accounting year immediately preceding the happening of a contingency.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9 of 1952. Appeal from the Judgment and Order dated 2nd January, 1950, of the High Court of Judicature at Madras (Satyanarayana Rao and Viswanatha Sastri JJ.) in Case Referred No. 68 of 1946.

M. C. Setalvad, Attorney-General for India, (P. A. Mehta, with him) for the appellant.

K. S. Krishnaswami Aiyangar (M. Subbaraya Aiyar, with him) for the respondents.

1952. December 22. The Judgment of the Court was delivered by

MAHAJAN J.—This is an appeal from the judgment of the High Court of Judicature at Madras in a reference made by the Income-tax Appellate Tribunal under section 66 (1) of the Indian Income-tax Act, XI of 1922.

1952

Commissioner of Income-tax, Madras
v.
K. Srinivasan and K. Gopalan

Mahajan J.

For several years prior to 1939-40 the respondents, who are brothers, had been carrying on in partnership the business of "The Hindu," a daily newspaper of Madras. The profits of this business had been charged to income-tax in the hands of the respondents under the Indian Income-tax Act of 1918. The firm's year of account was a period of twelve months ending with 30th June each year. In respect of the profits of the year of account ending 30th June, 1938, assessment was made in the year 1939-40 and the firm was charged to income-tax for that assessment year. On 1st March, 1940, the respondents transferred their business as a going concern to a private limited company called "Kasturi and Co. Ltd."

For the assessment year 1940-41 the respondents claimed that the firm was not liable to pay any income-tax on the income of its business from the end of the accounting year ending 30th June, 1938, to 29th February, 1940, the date on which the limited company succeeded to the business of the firm (*i.e.*, for a period of 20 months) under section 25(4) of the Act, as it had been assessed under the Indian Income-tax Act, 1918. The Income-tax Officer disallowed the claim and held that since the assessment pertained to the year 1940-41 the previous year with reference to that assessment would be the year ending 30th June, 1939, and the period for which exemption could be claimed under section 25(4) of the Act was the interval from the end of that previous year, *i.e.*, 1st July, 1939, upto to the date of succession, *i.e.*, 29th February, 1940, *i.e.*, a period of eight months. This order was confirmed on appeal by the Appellate Assistant Commissioner. On further appeal the Tribunal held that on a proper construction of section 25(4) of the Act, tax was not payable by the firm in respect of the profits and accounts of the business for the whole of the period from 1st July, 1938, to 29th February, 1940, (a period of 20 months). At the instance of the Commissioner of Income-tax (the appellant) the Tribunal stated a case to the High Court and referred to it the following question for its opinion:—

" Whether on the facts of this case, the Appellate Tribunal was right in holding that the period the profits of which were entitled to exemption from the payment of tax under section 25(4) of the Indian Income-tax Act, 1939, was the period commencing from 1st July, 1938, and ending with 29th February, 1940."

The reference was heard by Satyanarayana Rao and Viswanatha Sastri JJ. and they delivered divergent opinions on the question referred. Satyanarayana Rao J. agreed with the conclusion of the Tribunal and answered the question in the affirmative, while Viswanatha Sastri J. answered the question in the negative, with the result that under the provisions of the law the Tribunal's order was confirmed, it being in accordance with the opinion delivered by the senior Judge. Leave to appeal to this Court was granted and this appeal is before us on a certificate given by the High Court.

The principal question to decide in this appeal is whether on a true construction of section 25(4) of the Act, and on the facts stated the period the profits of which were entitled to exemption from the payment of tax is the period between 1st July, 1939, to 29th February, 1940, (a period of eight months) or the period commencing from 1st July, 1938, and ending with 29th February, 1940 (a period of 20 months).

To decide this question it is necessary to set out the relevant provisions of the Act. Section 2(11), which defines " previous year " in so far as it is relevant for purposes of this appeal is :—

" (11) (a) the twelve months ending on the 31st day of March next preceding the year for which the assessment is to be made, or, if the accounts of the assessee have been made up to a date within the said twelve months in respect of a year ending on any date other than the said 31st day of March, then at the option of the assessee the year ending on the day to which his accounts have so been made up."

1952

Commissioner of Income-tax, Madras
v.
K. Srinivasan and K. Gopalan.

Mahajan J.

Section 3 of the Act provides:—

"Where any Central Act enacts that income-tax shall be charged for any year at any rate or rates, tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of the total income of the previous year of every individual, Hindu undivided family, company and local authority, and of every firm and other association of persons or the partners of the firm or the members of the association individually."

This is the charging section. Section 25 of the Act makes different provisions to cover some special cases. The parts of the section relevant to this appeal provide as follows:—

"(1) Where any business, profession or vocation to which sub-section (3) is not applicable, is discontinued in any year, an assessment may be made in that year on the basis of the income, profits or gains of the period between the end of the previous year and the date of such discontinuance in addition to the assessment, if any, made on the basis of the income, profits or gains of the previous year.

(3) Where any business, profession or vocation on which tax was at any time charged under the provisions of the Indian Income-tax Act, 1918 (VII of 1918), is discontinued, then, unless there has been a succession by virtue of which the provisions of sub-section (4) have been rendered applicable no tax shall be payable in respect of the income, profits and gains of the period between the end of the previous year and the date of such discontinuance, and the assessee may further claim that the income, profits and gains of the previous year shall be deemed to have been the income, profits and gains of the said period. Where any such claim is made, an assessment shall be made on the basis of the income, profits and gains of the said period, and if an amount of tax has already been paid in respect of the income, profits and gains of the previous year exceeding the amount payable on

the basis of such assessment, a refund shall be given of the difference.

(4) Where the person who was at the commencement of the Indian Income-tax (Amendment) Act, 1939 (VII of 1939), carrying on any business, profession or vocation on which tax was at any time charged under the provisions of the Indian Income-tax Act, 1918, is succeeded in such capacity by another person, the change not being merely a change in the constitution of a partnership, no tax shall be payable by the first mentioned person in respect of the income, profits and gains of the period between the end of the previous year and the date of such succession, and such person may further claim that the income, profits and gains of the previous year shall be deemed to have been the income, profits and gains of the said period. Where any such claim is made, an assessment shall be made on the basis of the income, profits and gains of the said period, and, if an amount of tax has already been paid in respect of the income, profits and gains of the previous year exceeding the amount payable on the basis of such assessment, a refund shall be given of the difference.

(6) Where an assessment is to be made under sub-section (1), sub-section (3), or sub-section (4) the Income-tax Officer may serve on the person whose income, profits and gains are to be assessed, or, in the case of a firm, on any person who was a member of such firm at the time of its discontinuance, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section."

For a proper construction of section 25 it is also necessary to set out the history and object of this enactment.

Under the Act of 1918 income-tax was levied on the income of the current year, *i.e.*, the year of

1952

Commissioner of Income-tax, Madras v. K. Srinivasan and K. Gopalan.

Mahajan J.

assessment but as the income of that year could not be known till after the expiry of the year, the assessment was made on the basis of the income of the "previous year" but after the close of the assessment year an adjustment used to be made on the basis of the income of the assessment year. The Act of 1922 introduced a change in this respect. Under section 3 of the Act, the income of the previous year is made the subject of the charge and tax is levied on the income of the previous year though it is a tax for the assessment year. On the passing of the Act of 1922, the previous system of assessment was kept alive for one year. The result was that for the year 1922-23, there were two assessments, one under the Act of 1922 on the income of 1921-22 and another under the old system by way of assessment on the income of the same year 1921-22. In other words, the income of the year 1921-22 was assessed twice, once under the Act of 1918, and again under the Act of 1922. To remove this anomaly and in order to make the number of assessments tally with the number of years during which the business existed, section 25(3) of the Act of 1922 was enacted exempting from tax the profits for the period between the end of the previous year and the date of discontinuance in the case of a business whose profits had been assessed to tax under the Act of 1918. There was no provision in section 25 as enacted in 1922 for giving any relief in cases of succession to a business which was taxed under the Act of 1918. In 1939 a provision was made to extend similar relief to cases of succession and with this object section 26(2) of the Act was amended and section 25(4) was added by the amending Act of 1939. The result of the amendment of section 26(2) and the insertion of section 25(4) is that upon a transfer of business the transferor, *i.e.*, the person who was succeeded in the business, would get the same relief as if the business had been discontinued by him.

The scheme of the Act is that by the charging section, *i.e.*, section 3, income-tax is levied for a financial year at the rate prescribed by the annual Finance Act

on the total income of the previous year of every individual, etc. Each previous year's income is the subject of separate assessment in the relative assessment year. Though the year of assessment is the financial year, the previous year of an assessee need not necessarily be the previous financial year, for this expression is to be understood as defined by section 2(11) (a) of the Act.

The respondents were duly assessed to tax for the year of assessment, *i.e.*, the financial year 1939-40, on the income of the previous year ending on 30th June, 1938. Their income of the accounting year ending 30th June, 1939, would in the ordinary course be liable to assessment in the financial year 1940-41, and the profits of the year ending 30th June, 1940, would be assessable in the financial year 1941-42. Succession took place in the accounting year 1939-40. Under sub-section (2) of section 26, as it stood before its amendment in 1939, the person succeeding to a business was liable to tax for the year of succession, as if he had been carrying on business throughout that year and had received the profits of the whole of that year. Thus Kasturi and Company Limited would have been liable to be assessed on the profits earned during the year ending 30th June, 1940, irrespective of the fact that actually they would have only received profits in that year for a period of four months. After the amendment in 1939 sub-section (2) of section 26 provides that the person succeeded and the person succeeding "each be assessed in respect of his actual share, if any, of the income, profits and gains of that year." Thus the profits of the year in which the succession occurs are to be apportioned between the predecessor and the successor according to the actual share of each in the year's profits, the predecessor and the successor are each liable to tax at the rate applicable to each and the profits of each have to be computed separately in accordance with the provisions of section 10 and other sections and each has to be granted the deductions and allowances appropriate to his case and

1952

Commissioner of Income-tax, Madras
v.
K. Srinivasan and K. Gopalan.

Mahajan J.

assessment on each has to be separate and distinct. If the business was charged under the Indian Income-tax Act, 1918, and the person succeeded is exempt from tax under section 25 (4) he would not be charged in respect of the profits of the period from the end of the previous year up to the date of succession, while the person succeeding would be liable under sub-section (2) of section 26 in respect of the profits earned by him after the date of succession. The proviso to sub-section (2) lays down two exceptions to the general rule that the successor is not liable to tax in respect of the profits of the period prior to the date of succession. In two cases, namely, (1) when the predecessor cannot be found, or (2) when the tax assessed on the predecessor cannot be recovered from him, the successor is liable to pay the tax in respect of the profits of the year in which the succession took place up to the date of succession as well and further for the profits earned during the year preceding that year. In this case if either of those contingencies arose, Kasturi and Company Limited would have been liable to pay tax on profits of the whole accounting year ending 30th June, 1939, as well as of the whole of the accounting year ending 30th June, 1940, and end of the preceding year in this context would be 30th June, 1939. It is a question whether in this situation they would be entitled to the relief provided in section 25(4).

On behalf of the Commissioner of Income-tax, Madras, the learned Attorney-General contended that Satyanarayana Rao J. was in error in granting exemption to the firm from tax in respect of the profits earned during a period of 20 months and that under section 25, sub-section (4), the only relief permissible was in respect of profits earned during the period of 8 months from 1st July, 1939, to 1st March, 1940. It was said that the profits of the year of succession were liable to assessment in the usual course in the financial year 1941-42 and the Income-tax Officer had no power to make an accelerated assessment in order to give relief to the persons succeeded in the business

and that being so, it was not right to hold that the expression " previous year" in section 25, sub-section (4), was co-related to the assessment year 1939-40, *i.e.*, the year in which the succession took place or to the assessment year 1941-42 in which in the ordinary course assessment for those profits would have been made but that on a true construction of this sub-section and having regard to the history of its enactment and the object for which it was inserted in section 25, the assessee firm was entitled to exemption from the payment of tax only for the period between 1st July, 1939, and 29th February, 1940, and to no more. It seems to us that there is force in this contention. Section 25 (4) was inserted in the Act of 1922 in the year 1939 at the same time as section 26(2) was amended. On a plain reading of these two sections together, it is quite clear that the Income-tax Officer is not empowered to make an accelerated assessment in the year in which succession occurs on the profits of that year, and prematurely assess the person succeeding to a business so that he may able to give relief to the person succeeded. The exemption provided for in section 25 (4) and the apportionment mentioned in section 26 (2) have to be made in the assessment year in which the profits of the year of succession fall to be assessed under section 3 of the Act, and in this situation the end of the previous year in this case can, in no circumstance, be the end of the accounting year beginning 1st of July, 1937, and ending 30th of June, 1938, because the income, profits and gains of the accounting year of succession (*i.e.*, year beginning 1st July, 1939, and ending 30th June, 1940) which have to be apportioned between the predecessor and successor of the business under section 26(2) and for which the successor becomes liable in case the predecessor commits a default, could only be assessed in the assessment year 1941-42. The income, profits and gains of the accounting year beginning 1st July, 1938, and ending 30th June, 1939, for which the predecessor alone is liable in the first instance to

1952

Commissioner of Income-tax, Madras
v.
K. Srinivasan and K. Gopalan.

Mahajan J.

tax fall for assessment in the assessment year 1940-41. The successor in business, in case of default by the predecessor, is also liable to pay the tax on the profits of that year as well. What sub-section (4) of section 25 provides is that when the profits of the year of succession fall to be assessed, the predecessor of a business can claim exemption from liability to pay tax on the profit earned from the end of the previous year to the date of succession, the "previous year" here meaning the completed accounting year immediately preceding the date of succession (in this case year ending 30th June, 1939). He can further claim that the profits earned between 1st July, 1939, to 29th February, 1940, be deemed the profits of the accounting year 1st July, 1938, to 30th June, 1939, and if on those profits in assessment year 1940-41 tax in excess of what is chargeable on the profits of this broken period has been paid, he be given refund for the excess. Truly speaking, the firm was entitled to the relief provided for in section 25(4) in the assessment year 1941-42 but the Income-tax Officer was prepared to give him that in the assessment year 1940-41 and on that score the assessee can have no grievance.

Satyanarayana Rao J. held that the words "previous year" in sub-section (1) of section 25 refer to the year of account relevant to the year of assessment in which the discontinuance occurs, that the section authorises the Income-tax Officer to make a cumulative assessment in respect of the profits of the period between the end of the last accounting year of which the profits have been assessed before the date of discontinuance and that date, that "sub-section (3) of section 25 is an exception to the general rule contained in sub-section (1) of that section, and that though the language employed in sub-section (3) does not correspond to the language employed in sub-section (1) indicating that in this sub-section also the assessment year should be taken to be the year in which the discontinuance occurs, all the same there is no reason

to depart and to place a different interpretation on the expression 'previous year' in this sub-section from the one placed on sub-section (1)." On the same line of reasoning the learned Judge gave the same meaning to the expression "previous year" in sub-section (4) of section 25 and as a result held that the firm was entitled to exemption from tax for profits earned between the 1st July, 1938, and 29th February, 1940, a period of 20 months.

Mr. Krishnaswami Aiyangar appearing for the respondents, was not prepared to support the whole of the reasoning of Satyanarayana Rao J. but he contended strenuously that the conclusion reached by the learned Judge was the only one that could be reached on a true construction of the phraseology employed in the various sub-sections of section 25. In short, his argument was that sub-section (1) of section 25 confers an option on the Income-tax Officer, in case of discontinuance of a business which was not assessed under the Act of 1918, to make an accelerated assessment in the year of discontinuance itself on the income, profits and gains earned up to the period of discontinuance and not assessed before in any preceding assessment year; that the expression "previous year" in the context of this sub-section means the end of the accounting year the profits of which have been last assessed to tax, which in this case means the year ending 30th June, 1938. It was further contended that any other meaning given to these words would create a hiatus and would lead to the result that on the date of discontinuance the Income-tax Officer would be entitled to assess the profits of the broken period without being entitled to assess the profits of a whole previous year that had expired, the profits of which in the usual course could not be assessed in the year of discontinuance and that such a construction would defeat the very purpose of the power given by the sub-section. On a parity of reasoning it was suggested that the words "between the end of the previous year and the date of such discontinuance" in sub-sections (3) and (4)

1952

Commissioner of Income-tax, Madras v. K. Srinivasan and K. Gopalan.

Mahajan J.

should be given the same meaning as in sub-section (1), and that the assessee should be given exemption in respect of profits earned between the 1st July, 1938, and 29th February, 1940. It was said that the two terminals fixed for the purposes of assessment under section 25(1) were the terminals fixed for exemption from tax in section 25(3) and (4) and it would be wrong to hold that the assessment under section 25(1) could be made for a period different from that for which relief could be given under section 25 (3) and (4). It was urged that the scope of the charge authorised by section 25 (1) was co-extensive with the extent of the relief provided for in sub-sections (3) and (4).

Before proceeding further it is convenient to make a few observations regarding the proposition stated by Satyanarayana Rao J. that section 25 (1) provides for cumulative assessment in cases of discontinuance of business. The words of the section do not justify this conclusion. They do not empower the Income-tax Officer to make a cumulative assessment in respect of profits earned in two different accounting periods or entitle him to merge the profits of two years into one total sum and apply to them the rate of one of the financial years. All that the section authorises the Income-tax Officer to do is that it gives him an option to make a premature assessment on the profits earned up to the date of discontinuance in the year of discontinuance itself instead of in the usual financial year. This assessment he is entitled to make in addition to the normal assessment for the financial year of discontinuance. Mr. Aiyangar very rightly conceded that the construction placed on sub-section (1) of section 25 by the learned Judge in this respect was not right.

As regards the main contention of Mr. Aiyangar based on the analogy of the language employed in sub-section (1) of section 25, we are of the opinion that this contention is based on a fallacy and cannot be sustained. As above pointed out, sub-section (1) of section 25 merely empowers the Income-tax Officer,

if he so chooses to do, to make an accelerated assessment in case of discontinuance of business at the time of discontinuance to save loss of revenue by the disappearance of an assessee. In other words, the subsection imposes a liability of premature assessment on the assessee. It confers no benefit on him. Sub-sections (3) and (4) of section 25 have a different end in view and are not in *pari materia* with sub-section (1). They are in the nature of substantive provisions intended to give relief from tax charged in certain cases. The mere circumstance of their being grouped together with sub-section (1) in section 25 cannot lead to the conclusion that the provisions therein contained are of the same nature and character as the provisions contained in sub-section (1). Satyanarayana Rao J. was clearly in error when he held these two subsections were in the nature of exceptions to the rule laid down in sub-section(1). The truth of the matter is that it is sub-section(1) itself which is an exception to the general rule laid down in the charging section of the Act, namely, section 3. The object of sub-sections (3) and (4) is to provide relief to a business for the double assessment suffered by it in the financial year 1922-23 and it is entitled to this relief in the year of assessment in which the income and profits of the accounting period in which discontinuance or succession takes place fall to be assessed. The Income-tax Officer is not authorised to accelerate the relief by making a premature assessment on these profits. Not only is the language of these two subsections different from the language of sub-section (1), but they deal with two different categories of assessees. Sub-section (1) deals with a category of assessees who were never subjected to double tax, while sub-sections (3) and (4) deal with that class who suffered assessment under the Act of 1918 and paid double tax. The liability for premature assessment imposed under section 25 (1) on the former class of assessees has beed imposed on considerations entirely different from those on which provision has been made for exemption to tax in sub-sections

1952

Commissioner of Income-tax, Madras
v.
K. Srinivasan and K. Gopalan.

Mahajan J.

(3) and (4) for the other class. In these circumstances, such relief cannot be said to be co-extensive with the liability imposed. Moreover, the provisions of the Income-tax Act in respect to exemptions and deductions cannot be construed on the analogy of the provisions contained in the charging sections of the Act even if the language of these provisions is similar. Mr. Aiyangar's contention that sub-section (1) crystallizes the rights of the assessee on the date of discontinuance and that not only does it relieve him from being taxed after the date of discontinuance, but that it entitles him to further relief provided for in sub-section (3) does not seem to be well-founded. Sub-section (1) of section 25 confers no right of any kind on an assessee which can crystallize on the date of discontinuance and which cannot be varied subsequently to his disadvantage. On the other hand, as already said it imposes a premature burden on the assessee which but for this sub-section he could not be called upon to bear till the appropriate year of assessment was reached.

The learned Attorney-General was not prepared to accept the construction placed on sub-section (1) of section 25 by Mr. Aiyangar and contended that that sub-section did not authorise the Income-tax Officer to make an assessment in the year of discontinuance on the profits of an accounting year which had come to a close before the date of discontinuance, and that those profits had to be assessed in the usual way in the appropriate financial year, and that authority given to make an accelerated assessment only related to the broken period beginning with the end of the completed accounting year immediately preceding the date of discontinuance and ending with the date of discontinuance. In our opinion, it is not necessary for the purposes of deciding this case to finally express an opinion as to the true meaning of the words "between the end of the previous year to the date of discontinuance" used in section 25 (1) of the Act.

After a careful consideration of the different provisions of the Act relevant to this enquiry, we have

reached the conclusion that the expression "end of the previous year" in sub-sections (3) and (4) of section 25 in the context of those sub-sections means the end of an accounting year (a period of full 12 months) expiring immediately preceding the date of discontinuance or succession, (in this case 30th June, 1939). We are satisfied that Viswanatha Sastri J. was right when he held that having regard to the object of the legislature in enacting sub-sections (3) and (4) of section 25 and having regard to the plain language of these sub-sections, the assessee's contentions could not be upheld. We are, however, unable to subscribe to the conclusion reached by the learned Judge that the expression "previous year" in sub-sections (3) and (4) of section 25 was co-related to the year of assessment 1940-41. The profits of the year of discontinuance could not, according to the scheme of the Act, be taxed till the financial year 1941-42 and the previous year co-related to that assessment year would be the accounting year ending 30th June, 1940. It is obvious that the end of the accounting year falling after the date of discontinuance could not appositely be said to be the end of the previous year preceding that date. The expression "previous year" substantially means an accounting year comprised of a full period of twelve months and usually corresponding to a financial year preceding the financial year of assessment. It also means an accounting year comprised of a full period of twelve months adopted by the assessee for maintaining his accounts but different from the financial year and preceding a financial year. For purposes of the charging sections of the Act unless otherwise provided for it is co-related to a year of assessment immediately following it, but it is not necessarily wedded to an assessment year in all cases and it cannot be said that the expression "previous year" has no meaning unless it is used in relation to a financial year. In a certain context it may well mean a completed accounting year immediately preceding the happening of a contingency. The construction we have placed on

1952

Commissioner of Income-tax, Madras
v.
K. Srinivasan and K. Gopalan.

Mahajan J.

this expression in sub-sections (3) and (4) of section 25 is in accord with the substance of the definition given in section 2 (11) of the Act. Any other construction of the section is bound to lead to a number of anomalies, the most glaring being that in case of persons whose year of account is the financial year, exemption from tax under section 25 (3) or (4) could never be given for a period of more than twelve months, while in case of persons who adopt different accounting year, exemption would become available for a period extending up to 24 months. Such could never have been the intention of the framers of the Act.

That the "previous year" in the context of section 25(3) and (4) means a completed accounting year immediately preceding the discontinuance or succession is borne out by the provisions as regards non-liability for tax for the broken period and the claim to be made by the assessee that the income, profits and gains of the previous year shall be deemed to have been the income, profits or gains of the broken period. The intention of the legislature being to give relief against double assessment for the year 1922-23, the assessee in the case of discontinuance or succession would be entitled to claim exemption from payment of tax for the broken period and also claim that the income, profits or gains of the previous year, *i.e.*, the year preceding the broken period, should be treated as the income, profits or gains of the broken period.

Reference was made in the judgment of the Appellate Tribunal to the views of the Select Committee when clause (1) of section 25 was considered at the time of the draft Bill No. XXVI of 1921 in support of its conclusion, but it was rightly held by the High Court that it was not a permissible consideration in interpreting a statute and Mr. Aiyangar did not seriously press this matter before us. He, however, drew our attention to the directions contained in the Income-tax Manual in force for a number of years and contended that the department itself placed on sub-sections (3) and (4) of section 25 the same construction as was

placed on them by the senior Judge in the High Court and that was the true construction of these two sub-sections. This argument, in our opinion, has no validity. The department changed its view subsequently and amended the manual. The interpretation placed by the department on these sub-sections cannot be considered to be a proper guide in a matter like this when the construction of a statute is involved.

The result is that we allow the appeal and hold that the answer given by the senior Judge to the question referred was wrong and that the answer given by Viswanatha Sastri J. was the correct one. In the circumstances of this case we would make no order as to costs throughout.

Appeal allowed.

Agent for the appellant: *G. H. Rajadhyaksha.*

Agent for the respondent: *M. S. K. Aiyangar.*

KALIPADA CHAKRABORTI AND ANOTHER

v.

PALANI BALA DEVI AND OTHERS.

1953

Jan. 16.

[MUKHERJEA, CHANDRASEKHARA AIYAR, and GHULAM HASAN JJ.]

Hindu law—Religious endowments—Shebaiti right—Succession by widow—Nature and extent of widow's rights—Alienation by widow—Suit by reversioner against alienee—Limitation—Article applicable—Starting point—Adverse possession against widow, whether adverse to reversioner—Limitation Act (IX of 1908), Arts. 124, 141.

Though there is an element in shebaiti right which has the legal characteristics of property, shebaitship is property of a peculiar and anomalous character and it cannot come under the category of immoveable property as it is known in law. On the other hand it is clear that a shebaiti right is a hereditary office and as