K. V. A. L. M. RAMANATHAN CHETTIAR BY L.RS.

v.

COMMISSIONER OF INCOME-TAX, MADRAS

October 11, 1972

[K. S. HEGDE, P. JAGANMOHAN REDDY, H. R. KHANNA AND I. D. DUA, JJ.]

Income Tax Act (11 *of* 1922), *s.49-D—Scope of.*

The assessee was carrying on business in Malaya and was owning rubber plantations. He was also carrying on business in India. In respect of the assessment year 1953-54 he declared his foreign income from Malaya at Rs. 2,22,532, income in India at Rs. 39,142 from sources other than business and a loss on business in India at Rs. 68,658. The Income-tax Officer allowed double taxation relief on a sum of Rs. 1,92,816/- by adding the income in India to the foreign income and deducting therefrom the loss in India. The Commissioner, in exercise of his powers under s.48 read with s.49-D of the Income-tax Act, 1922, however, set off the *business loss* in India against the *business profits* in Malaya and held that only the resulting income of Rs. 1,53,674 from Malaya could be considered to have suffered double taxation and hence granted double taxation relief in respect only of that amount. The Tribunal followed the decision of the Madras High Court in C.I.T. *Madras* v. *Arunachalam Chettiar,* 49 I.T.R. 574, and confirmed the order of the Commissioner. The High Court also on reference, was of the view that the relief granted by s.49-D 'on such doubly taxed income' has reference to the factual double incidence under two different jurisdictions of tax on identical amounts of income, and decided against the assessee.

In appeal to this Court, on the scope of the expression 'such doubly taxed income' in s.49-D of the Act, with respect to which double taxation relief is given,

HELD: (*Per* P. Jaganmohan Reddy, H. R. Khanna and I. D. Dua, JJ.) The High Court was in error.

By the year 1950, the Government of India was encouraging more and more Indian citizens to establish branches in countries with which there was no special agreement for the avoidance of double taxation, and s.49-D was substituted in place of the old one, in 1953, for the purpose of giving double taxation relief in respect of taxes on income charged in any country, by deduction or otherwise, under the law in force in that country. The object of the section is that the amount of Indian income-tax paid or the amount of tax in the foreign country, whichever is lower, is allowed as a deduction from the tax payable under the Act on *such doubly taxed income.* Prior to 1953, the section afforded relief at half the Indian income tax or half the tax paid in the other country, *in respect of the same income* whichever is less. If the concession that was being given by the new section for encouraging Indian citizens to start business in foreign countries was only to give relief at the full rate of Indian income-tax instead of half such tax, all that was necessary by the amendment was to delete the words "one half" occurring in the section prior to its amendment. But the Legislature had redrafted the entire section with the result that the phrase 'such doubtly taxed income' in the new section and the phrase 'same income' in the repealed section do not have the same import. The words 'same income' in the context would mean the same kind or species or identical income earned in a foreign country

A on which tax has been paid in that country, in respect of which relief is being claimed from being again subjected to tax under the Act. But the words 'such doubly taxed income' have reference to the foreign income which bears once again the burden of Indian income-tax by its being included in the total income chargeable under s.3 read with s.2(15) of the Act. Under s.4(1)(b)(ii) the income which accrues to an assessee outside the taxable territories is to be included in the total income so that the income under any of the heads enumerated in s.6 which has accrued B or arisen to the assessee outside the taxable territory and is subject to the tax under the law in force in that country, is included in his total income attracting the levy of charge under the Indian Income Tax Act, and is therefore doubly taxed. [667C-D; 672G-H; 673C-E 674B-F, G-H; 675A-B]

Once it is recognized that s.49-D does not make the basis of relief the C tax paid on the income from the *same head or source,* then the relief to which an assessee would be entitled would be the amount of tax on the foreign income which by its inclusion in the total income once again bears tax under the Act. The word 'such' in the phrase 'such doubly taxed income' has reference to the foreign income which is being subjected to tax by its inclusion in the computation of income under the Act and not the 'same income' under an identical head of income under the Act. The income from each head under s. 6 is not, under the Act, sub- D jected to tax separately; but it is the total income which is computed and assessed as such in respect of which relief is given for the inclusion of the foreign income, on which tax has been paid according to law in force in that country. The scheme of the Act is that although income is classified under different heads and the income under each head is separately computed in accordance with the provisions dealing with that particular head of income, the income which is the subject matter of tax under the Act is one income which is the total income. Income-tax is only one E tax levied on the aggregate of the income classified and chargeable under the different heads and not a collection of distinct taxes levied separately on each head of income. There is nothing in the language of s.49-D which, either expressly or by necessary implication, restricts the grant of double taxation relief to incomes under the same head. [675F-H; 676A-D]

Rolls Royce Ltd. v. *Short,* 10 T.C. 59, *Assam Railway and Trading Co. Ltd.* v. *The Commissioner of Inland Revenue,* 18 T.C. 509, *O.A.P.* F *Andippan* v. *Commissioner of Income-tax, Madras,* 82 I.T.R. 876 and *Inland Revenue Commissioners* v. *National Mortgage and Agency Co., of New Zealand,* [1935] A.C. 524, distinguished and explained.

C.I.T., Madras v. *Arunachalam Chettiar,* 49 I.T.R. 574, disapproved.

(*Per* Hegde J. *dissenting*) : The construction of the section given by the Commissioner, Tribunal and the High Court is the proper construction. [653G]

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Under our income-tax law in every assessment year, the total income of an assessee during the previous year is brought to tax. It is made up of income from various sources set out in s.4. The section attracts into the pool income, profits and gains from whatever sources derived, which are received or deemed to be received in the taxable territory in the previous year by the assessee; and one of the components is the income that has accrued or arisen to him in the previous year, outside the taxable H territory. In computing the total income of the assessee the procedure adopted is that income under each head is first determined after giving deductions to which the assessee is entitled under that head, and thereafter, the total income is arrived at for the purpose of determining the

rate of tax as well as for the quantification of tax due. Section 49-D requires that there should be a recalculation of the income which has been doubly taxed. In making that calculation, the authority computing the tax will have to leave those portions of the income which have not been doubly taxed. [654D F; 656A C]

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The ingredients of s.49-D, which gives double taxation relief, are:

(i) the assessee must have been resident in the taxable territory in the year;

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(ii) that some income must have accrued or arisen to him outside the taxable territory during that year;

(iii) in respect of that income he must have paid, by deduction or otherwise, tax under the law in force in the country in question; and

(iv) if he fulfils all the above conditions he will be entitled to deduction from the Indian income-tax payable by him of a sum calculated on *such doubly taxed income* at the Indian rate of tax or the rate of tax of the said country, whichever is lower. [655C-F]

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The expression "such doubly taxed income" involves two aspects: (a) it exclusively relates to the income earned outside India, and (b) it relates only to that part of the income earned outside India which is doubly taxed; that is, the same income must have been doubly taxed. The income that gets relief under s.49-D, is only that income—identified income—which has been subjected to tax not only in the country in which it was earned, but also in this country. The section does not concern itself with the totality of the income or even with the source of income, but, concerns itself with that part of the income which has been subjected to double taxation. [655F-H]

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If the entire tax paid by the assessee in a country outside India is to be deducted while computing his tax liability in this country, then there is no necessity for the Legislature to enact s. 49-A. It is not reasonable to think that s.49-D gives more relief than that is likely to be given under an agreement under s.49-A. Anything more than that, cannot be considered as relief from double taxation, but would amount to tax concession. If the relief given under an agreement under s.49-A and the relief given under s.49-D mean the same thing, the Legislature must be held to have indulged in an exercise of futility. Section 49-D, being a residuary provision, must be understood to cover a field other than that covered by s.49-A. Under the section, as it stood before the amendment in 1953, relief was given in respect of the *same income* which was taxed twice over. After amendment, relief is given on *such doubly taxed income*. The two expressions 'the same income' and 'such doubly taxed income' mean the same thing. [656 G-H; 657 A.O. E.G.]

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Despite the difference in language the section is similar in scope to s.27 of the United Kingdom Finance Act, 1920, and the decisions rendered under the U.K. Act have a bearing on the point in controversy. [657G; 658C-D]

In the present case, the assessee's income from property and other sources amounting to a sum of Rs. 39,142 has not been doubly taxed. Hence that income cannot enter into the calculation of the doubly taxed income of the assessee and that income could not have been included in the return made by the assessee in Malaya. That being so, in calculating the doubly taxed income, that component of the total income has to be

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A kept apart. Further, the entire business income earned in Malaya though taxed in Malaya has not been taxed in this country. Out of that sum only a sum of Rs. 1,53,674 has been taxed in this country. The business loss in this country cannot be said to have been taxed in this country. A relief does not amount to a taxation. Double taxation relief should not be mixed up with tax concessions. It is only that income which can be said to have been doubly taxed, that is entitled to relief under the section. [656 S-G]

B *Rolls Royce Ltd.* v. *Short,* 10 Tax Cas. 59 and *The Assam Railways and Trading Co. Ltd.* v. *The Commissioners of Inland Revenue,* 18 Tax Cas. 509, applied.

Commissioner of Income-tax v. *Arunachalam Chettiar,* 49 I.T.R. 574, approved.

C *Commissioner of Income-tax, Bombay City-II* v. *New Citizen Bank of India Ltd. and Anr.,* 58 I.T.R. 468, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1840 and 1842 of 1972.

Appeal by certificate from the judgment and order dated March 12, 1968 of the Madras High Court in Tax Case No. 202
D of 1962 (Reference No. 5 of 1964).

S. T. Desai and *T. A. Ramachandran,* for the appellant.

B. Sen, P. L. Juneja, B. D. Sharma and *R. N. Sachthey,* for the respondents.

E *M. S. K. Sastri* and *M. S. Narasimhan,* for the intervener.

The majority opinion of P. Jaganmohan Reddy, I. D. Dua and H. R. Khanna, JJ. was delivered by P. Jaganmohan Reddy, J. K. S. Hegde, J. gave a dissenting opinion.

HEGDE, J. I have had the advantage of reading the judgment
F prepared by my learned brother Reddy J. I regret I am unable to agree with the construction placed by him on s. 49-D of the Indian Income-tax Act 1922 (to be hereinafter referred to as the Act). I agree with him that there is considerable difficulty in interpreting that provision but that does not absolve this Court from its duty of properly construing that provision. On a proper construc-
G tion of that provision, I am of the opinion that the conclusion reached by the Commissioner, the Tribunal and the High Court is the proper one.

The facts of the case are fully set out in the judgment of my learned brother Reddy J. It is needless to repeat those facts in their
H entirety. It will be sufficient if I set out the material facts relating to the assessment year 1953-54. During the relevant previous year, the deceased assessee who carried on business in Malaya and also owned rubber gardens abroad declared his foreign income as

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Rs. 222,532. He had been assessed in Malaya in respect of that income. As he was resident in India during the relevant previous year, that income must be considered as having accrued to him in India in view of s. 4(1)(b)(ii) of the Act. During the relevant year, he was carrying on business in India also. In that business he suffered a loss of Rs. 68,858. In this country his income from other sources amounted to Rs. 39,142. It mainly consisted of income from property. In his assessment proceedings in this country, he claimed double taxation relief under s. 49-D. The Income-tax Officer added his income arising outside that taxable territories with his income from other sources in India (Rs. 2,22,532+Rs. 39,142=Rs. 2,61,674 and from that he oeducted Rs. 68,658, the busines loss suffered by him in India and taxed him on a total income of Rs. 1,92,816. The Commissioner revised that order. He came to the conclusion that the income that has suffered double taxation was only Rs. 153,674. He accordingly granted double taxation relief only in respect of that amount. His view was confirmed by the Tribunal in appeal and by the High Court in a Reference under s. 66(1).

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Under our Income-tax law, in every assessment year, the total income of an assessee during the previous year is brought to tax. It is made up of income from various sources. Those sources are set out in s. 4 of the Act. Clause (a) of sub-s. (1) of s. 4 attracts into the pool, income, profits and gains from whatever sources derived which are received or deemed to be received in the taxable territory in the previous year by or on behalf of the assessee. Income is defined in s. 2(C). That is an inclusive definition. One of the components of 'income' is 'dividend' which is defined in s. 2(6)(A). Both the expressions 'income' as well as 'dividend' include certain receipts which are deemed as 'income' or 'dividend'. Section 4(1)(b) enumerates various other sources of income. One of the components which makes up the total income is the income that has accrued or arisen to a resident in India in the previous year, outside the taxable territory.

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We shall now see what s. 49-D says. It is not necessary to quote the entire section. The portion of the section that is material for our present purpose runs thus :

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> "If any person who is resident in the taxable territories in any year proves that, in respect of his income which accrued or arises during that year without the taxable territories..... he has paid in any country... by deduction or otherwise under the law in force in that country, he shall be entitled to the deduction from the Indian income-tax payable by him *of a sum calcu-*

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A *lated on such doubly taxed income at* the Indian rate of tax or the rate of tax of the said country, whichever is the lower." (emphasis supplied).

Before analysing the ingredients of this provision, it is necessary to mention that s. 49-D gives relief to the extent mentioned B in that section in respect of the income accruing or arising in countries outside India with which our country has no reciprocal agreement for relief or avoidance of double taxation. With the countries with which we have reciprocal agreements for the relief from double taxation, s. 49-A applies. In cases falling under that section, relief to be granted depends upon the terms of the C concerned agreement. Now turning back to s. 49-D and analysing that provision, we find the following ingredients :—

(1) The assessee in question must have been resident in the taxable territory in any year;

(2) That the some income must have accrued or arisen D to him outside the taxable territory during that year;

(3) In respect of that income he must have paid by deduction or otherwise tax under the law in force in the country in question and

(4) If he fulfils all the above conditions, he will be en-E titled to deduction from the Indian income-tax payable by him of a sum calculated on such doubly taxed income at the Indian rate of tax or the rate of tax of the said country whichever is lower.

There is no dispute that the first three conditions enumerated F above have been satisfied in the present case. The real question for decision is as to what is the scope of the expression "of a sum calculated on such doubly taxed income". This expression involves two aspects viz. (1) It exclusively relates to the income earned outside India. This is clear from the word "such" and (2) It relates only to that part of the income earned outside G India which is doubly taxed. In other words the same income must have been doubly taxed. The income that gets relief under s. 49-D is only that income—identified income—which has been subjected to tax twice over. In other words the income in question—may be whole or part—must have been subjected to tax not only in the country in which it was earned but also in this country. From the language of s. 49-D, it is clear that H it does not concern itself with the totality of the income or even the source of the income. It merely concerns itself with that part of the income which has been subjected to double taxation.

The provision requires that there should be a recalculation of that income which has been doubly taxed. In making that calculation, the authority computing the tax will have to leave those portions of income which have not been doubly taxed.

In computing the total income of an assessee, the procedure adopted is that income, profits or gains under each head is first determined after giving deductions to which the assessee is entitled under that head and thereafter the total income is arrived at for the purpose of determining the rate of tax as well as for the quantification of the tax due. Supposing an assessee has various sources of income such as salaries, interest on securities, income from property, profits or gains of business, profession or vocation, income from other sources and capital gains, the income under each head has to be first determined. For the determination of the taxable income under each head, the taxing authorities have not only to take into consideration the gross income under each head, they must go further and deduct from the gross income under each head various concessions to which the assessee is entitled to and thereafter arrive at the total income.

Quite clearly the assessee's income from property and other sources amounting to a sum of Rs. 39,142/- has not been doubly taxed. Hence that income cannot enter into the calculation of doubly taxed income of the assessee as that income could not have been included in the return made by the assessee at Malaya. That is not an income earned by the assessee outside the territories of India. That being so in calculating the doubly taxed income, that component of the total income has to be kept apart. Further the entire business income of Rs. 2,22,532/- earned in Malaya though taxed in Malaya, has not been taxed in this country. Out of that sum only a sum of Rs. 1,53,674/- has been taxed in this country. The business loss in this country cannot be said to have been taxed in this country. A relief given does not amount to a taxation. To repeat, it is only that income which can be said to have been doubly taxed, is entitled to relief under s. 49-D. Counsel for the parties rightly conceded that the source of income is not a relevant consideration. What is material under s. 49-D is the income which is doubly taxed.

If the entire tax paid by the assessee in a country outside India is to be deducted while computing his tax liability in this country, then there was no necessity for the Legislature to enact s. 49-A. An agreement under that provision, at the highest could have provided for the deduction from the tax payable in this country by an assessee, the tax paid by him in a foreign country. Anything more than that cannot be considered as relief from double taxation. It would amount to tax concession. It is equally unlikely that the relief given under an agreement entered into under s. 49-A

A can be less than the relief available under s. 49-D. If the relief given under an agreement under s. 49-A and the relief given under s. 49-D mean the same thing, the Legislature must be held to have indulged in an exercise in futility. Such a line of reasoning is impermissible. Section 49-D must be understood to cover a field other than that covered by s. 49-A. Further it is not reasonable to think that s. 49-D gives more relief than that is likely to be given under an agreement under s. 49-A, s. 49-D being a residuary provision.

Section 49-D as it now stands is the result of an amendment made in 1953. Prior to that the section read :

> "If any person who has paid by deduction or otherwise Indian Income-tax for any year in respect of any income arising without the taxable territories in a country the laws of which do not provide for any relief in respect of income-tax charged in the taxable territories proves that he has paid income-tax by deduction or otherwise under the laws of the said country in respect of the same income, he shall be entitled to the deduction from the Indian Income-tax payable of a sum equal to one half of such Indian Income-tax or to one half of such tax payable in the said country, whichever is less."

Under the section as it stood before the amendment in 1953 relief was given "in respect of the same income" which was taxed twice over. Under the present provision relief is given to "such doubly taxed income". I am clear in my mind that so far as the identification of the income which is entitled to double taxation relief is concerned, there has been no change in the law. The expression "the same income" and "such doubly taxed income" mean the same thing. We are not concerned with the other changes effected in s. 49-D. The statement of objects and reasons for bringing about the change in s. 49-D or the Select Committee's report relating to that provision do not throw any light in the matter of identification of the income which is entitled to double taxation relief.

Section 49-D despite the difference in the language employed in my opinion is similar in scope to s. 27 of the United Kingdom Finance Act, 1920. The relevant portion of that section reads as follows :

> "If any person who has paid, by deduction or otherwise, or is liable to pay, United Kingdom income tax for any year of assessment on any part of his income proves to the satisfaction of the Special Commissioners that he has paid Dominion income-tax for that year in

respect of the same part of his income, he shall be entitled to relief from United Kingdom income tax paid or payable by him on that part of his income at a rate thereon to be determined as follows :

(a) If the Dominion rate of tax does not exceed one-half of the appropriate rate of United Kingdom tax, the rate at which relief is to be given shall be the Dominion rate of tax;

(b) In any other case the rate at which relief is to be given shall be one-half of the appropriate rate of United Kingdom tax."

The English provision entitles an assessee to relief from double taxation in respect of that part of his income on which he has paid dominion income-tax and he is also liable to pay income-tax in United Kingdom in respect of that part. The income which is entitled to relief under that provision is "the same part of his income" which is liable to be taxed both in the United Kingdom as well as in the Dominion. That is exactly what is done under s. 49-D. Our Act instead of using the expression "the same part of his income" which is doubly taxed has used the expression "of such doubly taxed income". But the two expressions mean the same thing.

The decisions rendered under the United Kingdom Act bear on the point in controversy in this case.

In *Rolls Royce Ltd.* v. *Short*(1), question arose as to what extent the assessee was entitled to relief from double taxation under the aforementioned s. 27. The facts of the case are not material for our present purpose. But that decision sets out the scope of s. 27. This is how its scope is described by Rowlatt J. sitting on the King's Bench.

"The object of Section 27 of the Finance Act, 1920 was to mitigate the hardship involved in paying Income-Tax in the United Kingdom in full upon profits which has already been subjected to Income Tax in a Dominion, and if the Legislature had thought fit to say that wherever income had been taxed in a Dominion and the same profits came thereafter at any time to form the basis of a tax in the United Kingdom the sum already paid on that income should form a basis of relief, the thing might have worked out very simply. But that has not been done obviously because it is quite clear that before relief can be given in respect of Dominion Income Tax paid on profits brought into charge to Income-tax in this country, it must be shown that the

(1) 10 Tax Cas 59.

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> Dominion Income-tax and the United Kingdom Income Tax are paid in respect of the same year and on the same income or as the phrase is used here, "part of income".

The learned judge equated the expressions "part of income" and "same income" as meaning the same thing.

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In the course of his judgment, his Lordship observed :

> "If you read the first few lines of the section, really on the words of it, the section only appears to apply where this overlapping of taxation has been partial, that is to say, where a man has part of his income taxed doubly and not where he has the whole taxed doubly, which obviously cannot be intended."

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When the matter was taken up in appeal to the Court of Appeal Pollock M. R. set out the conditions on which the relief can be given under s. 27. Those conditions, to put it in the words of the Master of Rolls are :

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> "First, it is the person who has paid the United Kingdom Income Tax by deduction or otherwise for any year of assessment on any part of his income who may claim relief. The second step is that that tax payer must prove to the satisfaction of the Special Commissioners that he has paid Dominion Income Tax for that year of assessment "in respect of the same part of his income" as that on which he has paid United Kingdom Income Tax. And the third step is that if such proof is given, the tax-payer becomes entitled to relief from United Kingdom Income Tax "on that part of his income", that is, on that same part referred to previously on which he has paid United Kingdom Income Tax and Indian Tax."

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Proceeding further the Master of Rolls observed :

> "The fact of paying a tax in a Dominion does not induce relief. The basic condition is that a person has paid tax on his income over here—then, if some part of that income so charged and assessed to tax in the United Kingdom can be identified and proved to have paid Dominion tax, that same part which has suffered dual taxation can be relieved of the tax paid here up to the measure of relief given by the Section."

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The decision which is more appropriate for our present purpose is that rendered in *The Assam Railways and Trading Co. Ltd.* v. *The Commissioners of Land Revenue*(1). The relevant facts of that case are as follows :

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(1) 18 Tax Cas 509.

A The assessee company, which was incorporated and controlled in the United Kingdom, carried on the business of running a railway, working coal mines, brickwords etc., in Assam and also carried on a plantation business there. The whole of its income arose in India with the exception of a small amount arising from investments in England. The company had issued, in the United Kingdom, debenture stock and the interest thereon was paid in B the United Kingdom. In computing the company's liability to United Kingdom income-tax Case I of Schedule D for the years 1928-29 and 1929-30, the debenture interest was not allowed as a deduction and certain profits from a tea garden were included as a receipt. The assessments on the company to Indian income-tax and super-tax for the corresponding years in respect of its busi- C ness profits were, in accordance with the provisions of Indian Income-tax law, arrived at after deducting the amount of debenture interest and excluding the tea garden profits. The assessee claimed that the relief in respect of Dominion income-tax to which it was entitled under Section 27, Finance Act, 1920 should be based on the whole of its income as computed for the purpose of D United Kingdom Income Tax less only the income arising in England, without any deduction for the debenture interest or the tea garden profits. The Special Commissioners refused the relief claimed. The House of Lords affirmed the decision of the Special Commissioners. It held that the company had not borne double taxation on that part of its income which was applied in payment E of debenture interest or on the tea garden profits and hence was not entitled to relief in respect thereof. From this decision, it is seen that the total income of the assessee arising or accruing in United Kingdom for the purpose of double taxation relief was split into four parts i.e. (1) income arising in England (2) the interest on debenture that was given deduction to in India (3) the tea garden profits and (4) the other income.

F There was no dispute that the income from the investments in England was not to be taken into consideration while determining the double taxation relief. This position was conceded by the assessee. If we apply the same ratio to the facts of the case before us, we have to exclude from consideration while determin- G ing the double taxation relief, the income of Rs. 39,142/- an income exclusively earned in India and was not brought to tax in Malaya. Next, deduction given in India in respect of the interest on debenture loans was not taken into consideration while affording double taxation relief because that portion of the Indian income was not subjected to double taxation because of the relief H given under the Indian Income-tax Act. Let us apply that principle to the facts of the present case. The amount deducted in this country as business loss (Rs. 68,858/-) was not subjected to double taxation. That amount was never taxed in this country.

A We should not mix up double taxation relief with tax concessions. The main judgment of the House of Lords in *Assam Railways'* case (supra) was delivered by Lord Wright. Analysing s. 27 of the Finance Act, 1920, Lord Wright observed :

> "The Section requires that the taxpayer should prove (1) that he has paid tax in the United Kingdom for any year on a certain sum which is part of his income; in this connection, I do not think that the word "part" is used to exclude the whole but merely to point to an ascertainable sum of income which is brought into question; (2) that he has paid tax in the Dominion "in respect of" the same part of his income for that year : here the words "in respect of as contrasted with "on" do not, I think, involve any latent distinction, since the word "on" would be inapplicable to the "same income" which becomes a separate taxable subject in the Dominion. The taxpayer then becomes entitled to relief. It seems clear that there must be a definite part of income brought into question, and that can only be expressed in a sum of money. As income *ex vi termini* must be expressed in a sum of money, the words "the same part of his income" must involve a comparison between two sums of money which prove to be the same. The contention of the appellants is to the contrary : it is said on their behalf that the words "the same part of his income" refer solely to what is called the source, and that identity of amount is immaterial and does not come into question except for the purpose of ascertaining the rate of tax to be allowed for. I cannot agree with this argument. No doubt questions of source, as it has been called, that is, such questions as where the income comes from. are essential to identify so far as that aspect goes, what is taxed in the United Kingdom with what is taxed in the Dominion, but, in addition, the income itself that is, the amount of money, must also be identified. I think the words "the same part of his income" are apt to include both elements of comparison and identification."

These observations, if I may say so with respect clearly bring out the legal principles bearing on the issue under discussion.

In my judgment the decision of the Madras High Court in *Commissioner of Income-tax* v. *Arunachalam Chettiar*[1] correctly lays down the law on the subject.

Mr. S. T. Desai, learned Counsel for the assessee placed considerable reliance on the decision of the Bombay High Court in

(1) 49, I. T. R. 574.

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Commissioner of Income-tax Bombay City-II v. *New Citizen Bank of India Ltd. and anr.* (1). Therein the court was called upon to interpret an agreement entered into under s. 49-A. In that case the court was not required to interpret the scope of s. 49-D. There is no doubt that some of the observations made in that case lend support to the arguments advanced on behalf of the assessee. In my opinion the learned judges of the High Court in that case did not bring out correctly the ratio of the decisions in *Assam Railways and Trading Co.* (supra) and *Rolls Royce's* case (supra). They sought to distinguish those cases on the basis of the facts of those cases ignoring the legal principles enunciated therein.

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In the result I dismiss these appeals.

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JAGANMOHAN REDDY, J.—These are appeals by certificate from a common judgment of the Madras High Court rendered in three references under s. 66(1) of the Income-tax Act, 1922 (hereinafter called the 'Act') pertaining to assessment years 1953-54, 1954-55 and 1955-56. In the reference relating to the first assessment year three questions in respect of the last two, two questions were referred by the Tribunal. The three questions relating to the first reference are :—

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1. Whether on the facts and in the circumstances of the case the Tribunal is right in its view that the Commissioner of Income-tax had jurisdiction to revise the order of refund ?

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2. Whether on the facts and in the circumstances of the case, the Tribunal is right in its view that the order of refund under section 48 read with section 49-D is independent and distinct from the assessment order ?

3. Whether on the facts and in the circumstances of the case, the Tribunal is right in confirming the computation of relief as modified by the Commissioner ? In the reference relating to the last two assessment years, the questions were :—

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1. Whether on the facts and in the circumstances of the case, the Tribunal is right in modifying the order of the Appellate Assistant Commissioner ?

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2. Whether on the facts and in the circumstances of the case the Tribunal is right in its interpretation of section 49-D ?

Before the High Court the first question on the first reference was not pressed and therefore was answered against the assessee. The remaining two questions which were considered to be similar to the two questions in the other two references were also answered against the assessee. Before us the second question in the first

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(1) 58, I. T. R. 468.

A reference was not pressed, as such substantially the third question in that reference and the first and second questions in the other two references which deal with the validity of the order of the Commissioner and the High Court need alone be considered in these appeals.

B The assessee who is now dead and is succeeded by legal representatives was doing money lending business in Malaya as well as in this country. He also owned rubber gardens abroad. In respect of the first assessment year 1953-54 the assessee declared his foreign income as Rs. 2,22,532 and showed a loss on business in India as Rs. 68,858 and income from other sources as Rs. C 39,142/-. In the other two references it is not necessary to refer to the incomes earned by him abroad and in India except to say that the Appellate Assistant Commissioner allowed the appeal in part holding that the income from all the sources in India have to be considered together just as income from all sources abroad must be considered together and in that view held that the net assessed income in India from Malaya is what has suffered double D tax. What is to be determined in these appeals is, on what basis should the double taxation relief be afforded to the assessee. It will be sufficient if we take the first assessment as illustrative of the problem which is posed in these appeals.

The Income-tax Officer allowed double taxation relief on a E sum of Rs. 1,92,816/- by adding income from other sources to the foreign income and deducting from the total thus computed the loss of Rs. 68,858. The Commissioner in exercise of his powers under s. 48 read with s. 49-D however held that that computation was wrong because according to him the business loss of Rs. 68,858 incurred by the assessee can be set off only against F the business profits of Rs. 2,22,532 earned in Malaya resulting in a business income of Rs. 1,53,674 being the only income from Malaya which can be considered to have suffered double taxation. In appeal against the order of the Commissioner, the Tribunal following the judgment in *C.I.T. Madras* v. *Arunachalam Chettiar*(1) came to the conclusion that the expression "such G doubly taxed income" can only indicate that it is that portion of the income on which tax in fact has been imposed and paid by the assessee that qualifies for double income relief. The High Court also was of the view that the relief granted by s. 49-D on such doubly taxed income has reference to the factual double incidence under two different jurisdictions of tax on identical amount of income, that is to say, an identical income on which two taxes H have been imposed under the Indian jurisdiction and the other by a foreign authority.

(1) 49 I. T. R. 574.

A It is clear that a decision in these appeals will depend on the construction of s. 49-D which bristles with difficulties and is not easy to resolve. A great deal would depend on the approach to the question and the meaning to be given to 'such doubly taxed income'. If we are to approach the construction of the section on a comparison with the reliefs given under s. 49-A or on the analogy of cases decided under s. 27 of the United Kingdom Finance B Act or on an *a priori* assumption that the relief under s. 49-D could not be greater than that which can be given under s. 49-A or on the basis of reciprocity under s. 27, we venture to think it will not lead to satisfactory conclusion. S. 49-A empowers the Central Government to enter into agreements with the Government of any country outside India for the granting of relief in res- C pect of income on which have been paid both income-tax (including super-tax) under the Act and the income-tax in that country or with the Government of any country outside India for the avoidance of double taxation of income, profits and gains under the Act and under the corresponding law in force in that country and may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreement. Before the D amendment of that section by the Finance Act, 1953 with effect from 1st April 1953, there were other provisions giving relief in respect of Part B States and Dominion income-tax and agreement for avoidance of double taxation in India, Pakistan or U.K. apart from s. 49 which granted relief in respect of income-tax. In 1948 s. 49 which granted relief in respect of income taxed both in India E and in U.K. was omitted and s. 49-A as it then was, was amended to enable Central Government to make provision by notification to grant relief in respect of income on which both India and United Kingdom levied tax. Under the amended s. 49-A the Income-tax Double Taxation in United Kingdom Rules were made. It would appear on the relevant provisions an assessee can claim double taxation relief if he can show that he has *paid* tax on the *same* in- F come both in India and in the foreign country. In order to obtain the relief it was also necessary to show that the income must have been charged to tax in both countries. Where a resident of India earns income in a foreign country with which the Government of India has no arrangement for relief against or avoidance of double taxation, relief has been afforded to him under s. 49-D. G

We may point out that for the first time relief in respect of tax charged in a country which did not provide for relief in respect of the British Indian income-tax was granted under the said section introduced by the Indian Income-tax (Amendment) Act 1939 in the Act of 1922. To this an Explanation was added by Amend- H ment Act 23 of 1941 which makes it clear that the relief extends both to income-tax and to super-tax. Thereafter, a new section 49-D was substituted by the Amendment Act, 1953 with effect

from 1st April 1952 and by the Finance Act, 1956 sub-ss. (3) and (4) were inserted. Since the last two sub-sections deal with income of a resident in the taxable territories accruing or arising to him during that year in Pakistan they do not assume any relevance for the purposes of this case. We give below in juxta position s. 49-D as it was prior to the amendment in 1953 and that inserted by the 1953 Amendment Act :—

Prior to Amendment Act, 1953	After Amendment Act, 1952
49D. Relief in respect of tax in country not providing for relief in respect of Indian Income-tax—if any person who has paid by deduction or otherwise Indian Income-tax for any year in respect of any income arising without the taxable territories in a country the laws of which do not provide for any relief in respect of income-tax charged in the taxable territories provided that he has paid income-tax by deduction or otherwise under the laws of the said country in respect of the same income, he shall be entitled to the deduction from the Indian Income-tax payable of a sum equal to one-half of such Indian income-tax or to one-half of such tax payable in the said country, whichever is less.	49D. (1) If any person who is resident in the taxable territories in any year proves that, in respect of his income which accrues or arises during that year without the taxable territories (and which is not deemed to accrue or arise in the taxable territories), he has paid in any country with which there is no reciprocal arrangement for relief or avoidance of double taxation, income-tax, by deduction or otherwise, under the law in force in that country, he shall be entitled to the deduction from the Indian income-tax payable by him of a sum calculated on such double taxed income at the Indian rate of tax or the rate of tax of the said country, whichever is the lower.
Explanation—The expression 'Indian Income-tax' in this section means income-tax and super-tax charged in accordance with the provisions of this Act.	(2) The Central Government may, by notification in the Official Gazette, declare that the provisions of sub-section (1) shall also apply in relation to any such income accruing or arising in the

United Kingdom and chargeable under this Act for the year ending on the 31st day of March, 1950, or for the year ending on the 31st day of March, 1951, or for the year ending on the 31st day of March, 1952.

Explanation—In this section.—

(i) the expression "Indian income-tax" means income-tax and super-tax charged in accordance with the provisions of this Act;

(ii) the expression "Indian rate of tax" means the rate determined by dividing the amount of Indian income-tax after deduction of any relief due under the other provisions of this Act but before deduction of any relief under this section, by the total income;

(iii) the expression "rate of tax of the said country" means income-tax and super-tax actually paid in the said country in accordance with the corresponding laws of the said country after deduction of all relief, due, but before deduction of any relief due in the said country in respect of double taxation, divided by the whole amount of income assessed in the said country;

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(iv) the expression "income-tax in relation to any country" includes any excess profits tax or business profits tax charged on the profits by the Government of that country and not by the Government of any part of that country or a local authority in that country.

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That section as is obvious, grants double taxation relief in respect of taxes on income charged in any foreign country by deduction or otherwise under the law in force in that country. The object of the section is that the amount of Indian income-tax paid or the amount of tax paid in the foreign country whichever is the lower is allowed as a deduction from the tax payable under the Act *on such doubly taxed income.* The words *"in respect of the same income"* in the preamendment section and *"such doubly taxed income"* emphasised by us assume importance and will be considered in the context of the respective sections and the object with which they were enacted.

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The Tribunal thought that the business loss in India must first be set off wholly against the business profits earned in Malaya and the fact that this results in application of s. 24(1) does not take away the necessity for the limitation. But before us the learned advocate for the Revenue conceded that neither s.24 is applicable nor would it be necessary to submit that the income on which a tax has been paid abroad must be under the same head of income as that specified in s.6 of the Act. What he in fact contends is that the income from interest and from property assessed in India amounting to Rs. 39,142 did not arise outside India, as such it cannot be taken into account in determining whether the tax paid outside is not doubly taxed. This begs the question. Indeed in his earlier contentions he had indicated that the basis upon which the Revenue is resisting the claim is that the identity of the income is not the same, that is, for granting relief (a) there must be numerical identity of the income which is subject to tax both in India and abroad, the numerical identity being the amount of income on which tax is paid, and (b) there should also be the sameness of the head. Secondly, he contended that relief by way of deduction is allowable on such portion of that income which has actually been subjected to tax twice over after allowing for set off or deductions if any. Thirdly, having regard to the scheme of the Act and the method of computation of income arising both within and without India, income must be considered under separate heads in order to

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ascertain whether any income has been actually taxed or not. He therefore submits that Rs. 39,142/- has no relation at all with the income arising in Malaya and cannot be taken into consideration under s.49-D. This would be so, he says, even if it came under the same head. In support of these contentions the decisions of the Court of Appeal in England in *Rolls Royce Ltd.* v. *Short*(1), that of House of Lords in *Assam Railway and Trading Co. Ltd.* v. *The Commissioner of Inland Revenue*(2) and the case of this Court in *O.A.P. Andippan* v. *Commissioner of Income-Tax, Madras*(3) were cited. We may at once state that these decisions are rendered on the provisions which are not in *pari materia* with the provisions in s. 49-D.

The case of this Court in *Andiappan* was under s.49-A-A where the question was, whether the assessee was entitled to abatement in India under Art. III of the agreement for relief and avoidance of double taxation in India and Ceylon read with item 8 of the Schedule to the agreement. It was held on the terms of that article and the clause in the schedule that what was attributable to the Ceylon law was only that tax which was ultimately levied on the assessee and demanded, but he was not entitled to abatement of tax that he would have to pay before deduction of the allowance given by s.45(2) of the Ceylon Income Tax Ordinance 1932. This case therefore does not help us in ascertaining what 'doubly taxed income' is for the purpose of s.49-D as it was decided on the terms of the provisions of the Ceylon law according to which tax was ultimately levied in respect of which relief was claimed.

The other two English cases dealt with the interpretation of s. 27 of the Finance Act 1920. The amendment in 1927 was only in respect of the meaning of "appropriate rate in the United United Kingdom Income Tax" which is not relevant for the present consideration. Section 27 of the Finance Act is as under :—

> "(1) If any person who has paid, by deduction or otherwise, or is liable to pay, United Kingdom income-tax for any year of assessment on any part of his income proves to the satisfaction of the Special Commissioners that he has paid Dominion income-tax for that year in respect of the same part of his income, he shall be entitled to relief from United Kingdom income-tax paid or payable by him on that part of his income at a rate thereon to be determined as follows :—
>
> (a) if the Dominion rate of tax does not exceed one-half of the appropriate rate of United Kingdom

(1) 10 T. C. 59. (2) 18 T. C. 509.
(3) 82 I. T. R. 876.

A income-tax, the rate at which relief is to be given shall be Dominion rate of tax:

(b) in any other case the rate at which relief is to be given shall be one-half of the appropriate rate of the United Kingdom income-tax.

* * * * "

B It will be observed that in this section the words "in respect of the same part of the income" and 'on that part of his income' have significance in understanding the English decisions in respect of the double tax relief given in the United Kingdom. Similar words, viz. "in respect of the same part of his income" and "on that part of his income" are used in the corresponding C provision in clause 3 of the notification of the Government of India issued under s. 49-A.

In the *Rolls Royce* case a British company trading in India was assessed to and paid Indian income-tax for the year 1920-21 on a profit of £4,120, the profits of its Indian branch. It was also assessed to and paid in the United Kingdom income-tax for D the same assessment year under the law of that country on the average of the whole of its profits wherever made for three preceding years. The assessee claimed that as it had paid both United Kingdom tax and Indian income-tax for assessment year on its Indian profits for those years, it was entitled to relief under s. 27 from United Kingdom income-tax. The claim was nega- E tived by Rowlatt, J. as no income-tax was paid in respect of the Indian income of 1920-21. This decision was upheld by the Court of Appeal. Rowlatt, J. at p. 67 gave the reasons for disallowance thus:—

"When the Indian income in the year of assessment calculated according to Indian methods is more than F the Indian income calculated according to British methods, then he will only get relief calculated with reference to the amount of the English-calculated income upon which he has paid English Income Tax. Where the Indian income calculated according to the Indian method is less than the Indian income calculated G for the United Kingdom Income Tax in the United Kingdom method, will he be able conversely to deduct the rate from the English Income Tax although that would be giving him back more tax than he has actually paid in India?"

In the Court of Appeal, Pollock, M.R. said at p. 70—

H "The fact of paying a tax in a Dominion does not induce relief. The basic condition is that a person has paid tax on his income over here—then, if some part of that income so charged and assessed to tax in the United

Kingdom can be identified and proved to have paid Dominion tax, that same part which has suffered dual taxation can be relieved of the tax paid here, up to the measure of relief given by the section."

Warrington, L. J. observed at p. 71-72 :—

"Having regard to the different modes of assessment prevailing in England and India respectively, the profits of the Indian business chargeable in the two countries can never be identical in amount, and it is therefore clear that in separating from the entire income the part of the income to which section 27 is applicable, regard must be had to he source from which it is derived and not to its amount. In this case the part of the income to be considered is the profits of the Indian branch."

In *Assam Railways & Trading Company* case the House of Lords were considering the case of an assessee company which earned profits in India amounting to £186,808 which sum was liable to United Kingdom income-tax. By the Indian Income-tax Act the assessee was allowed to deduct interest on debentures and other items which deducted the profits assessable to Indian income-tax to £129,365 upon which the same tax was paid in India. The company claimed that its total income assessable to tax in the United Kingdom could be treated as having borne income-tax in India. It was held that the Company had not borne double taxation on that part of its income which was applied in payment of debenture interest or on the garden profits and was not entitled to relief in respect thereof. Lord Blanesburgh while pointing out that the more the question raised in the appeal is considered the greater is the difficulty it presents said he was inclined to agree with the construction placed by Lord Warrington who in his speech indicated the reasoning for the particular construction placed by him. The observations of Lord Warrington were stated at pp. 534-535 thus :—

"On the question of construction the contention of the Appellants was that "that part of his income" refers only to the source from which the income is derived. The source in this case was the Indian business of the company, and it was contended that inasmuch as the whole of that income was taxed to United Kingdom Income Tax in the sum of £186,750, it is in respect of that sum that relief should be given. I cannot agree with this contention. The word "part" is not in any sense a word of art with a peculiar meaning derived from the subject matter in connection with which it is used. We are here dealing with a sum of money referred to as income. "Part" of a sum of money means in its ordinary

A signification so many pounds, shillings and pence out of a larger amount. If the income is £100, a small sum, say £50, would properly be described as a part thereof. In the present case the part of his income on which the taxpayer has paid tax in England is £186,750. In India he has paid tax on a smaller part numerically of the same B income. To obtain relief he has to prove that he has paid Dominion tax on the same part of his income as that on which he paid United Kingdom tax. He can only prove this in respect of the smaller sum. I see no reason why, for the purpose of identification, any other meaning should be given to the word "part" than the numerical meaning. "Double taxation" is not in terms mentioned C in the section, but it is obvious that the object of the provision is to obtain *pro tanto* the avoidance of that result. The tax payer has paid Dominion Income Tax in respect of £x of his income; he is entitled to relief in respect of £x part of the same income and to no more."

D Section 27 of the Finance Act and the earlier cases on the interpretation of that section were again considered by the House of Lords—a case not cited at the Bar—in *Inland Revenue Commissioners* v. *National Mortgage and Agency Co., of New Zeland*[1]. It was again pointed out that the true construction and effect of section 27, a difficult section, had led to arguments and differences of opinion in the Courts and had come more than once before E the House of Lords. In that case it was ultimately held that when a company controlled in the United Kingdom carries on business in a Dominion the relief from the United Kingdom Income-tax under s.27(1) in respect of that business is to be determined by ascertaining the assessable income following the legislative directions in those respective countries as to allowances or deductions F and thereafter without scrutinising those allowances or deductions by an individual comparison with a different system in other part of the Commonwealth, relief should be granted to the extent of the smaller amount. There was no need to record anything else except the two statutory incomes of the business taking care to see that neither includes income from any other source. In this G case no deduction was permissible in respect of debenture interest for the purpose of United Kingdom assessment but the Dominion Law excluded from the assessable income the sum paid in respect of the debenture interest to the company under the Dominion law as agent of the debenture holders was assessable in respect of the debenture interest with a right to recoup itself from the debenture H holders for the tax so paid. In fact it was unable to exercise that right as the contracts under which the interest was payable were made in the U.K. and therefore though the company was assessed

(1) [1935] A. C. 524.

on the debenture interest in the Dominion and duly paid the tax ultimately the burden of that tax rested upon the company. This special circumstance alone was therefore held to be sufficient for holding that the relief claimed for an adjusted sum of £633,609 paid by the company under s.27(1) of the Act of 1920 was justified. The decision of the Court of Appeal was affirmed subject to a difference as to the ground on which the question of debenture interest should preferably be decided. The Lord Chancellor agreed in all respects with Romer L. J. on principle namely (1) that the word 'income' in the section does not mean the real income but the statutory or notional income by means of which tax is calculated; (2) That if this statutory income in the Dominion is £ A and in the United Kingdom the statutory income from the same source is £(A+B) relief will be given in respect of £A. (3) That an analysis of the two statutory incomes for the purpose of comparing for example the respective allowances for repairs or depreciation is inadmissible. Lord Macmillen pointed out at pp. 554-555 :—

> "The principle of section 27 is that the same fund of income shall not bear the full burden of both the United Kingdom and Dominion income tax and in the present instance it is clear that £33,609 debenture interest has both here and in New Zeland been subjected though under different schemes to the full burden of income-tax."

These cases show that (1) the actual tax paid on the Dominion income statutorily determined would alone be considered for relief (2) that the relief which under s.27 can be claimed is the statutory income of the Dominion derived from the same source which has been taken into account in the United Kingdom from the same source. The word 'source' has been differently understood by different law Lords but in effect, as Lord Wright observed in the *Assam Railway* case, the words "the same part of his income" are apt to include both elements of comparison and identification. In our view, we can derive no benefit from these cases unless we hold that "such doubly taxed income" in s.49-D as being equivalent to "the same part" of the assessee's income in section 27 or "in respect of the same income" in the notification under s.49-A.

It may be pointed out that s.49-D prior to amendment in 1953 afforded relief calculated at half of the Indian income-tax on the income in question or half of the tax payable in the country in respect of the same income in the year of assessment in which the income arose whichever is less. It may be mentioned that after the Income-tax (Amendment) Act 1939 the residents of India became liable annually to be taxed on their world income which naturally would bring to tax income which has accrued in a foreign country and has been subjected to tax there and would also be subject to tax under the Act. Immediately after the amendment

A of the Act second World War broke out and the Indian citizens earning income outside the taxable territories became the victims of aggression. In many cases their assets suffered damage and they had to leave their business and property and return to India. After the close of war in 1946 conditions in the erstwhile countries in which these citizens were engaged in earning incomes remained B unsettled and uncertain. It took time even for conditions to settle down and become normal and even then the change of outlook in those countries had to be faced particularly in the field of fiscal laws before our citizens could have the confidence to re-invest in ventures abroad. Our own country was troubled with partition upheavals. By 1950 things became more settled and the Government C of India with a view to encourage more and more Indian residents to establish branches in countries with which there is no special agreement for the avoidance of double taxation, by its Press Note, Finance Department, New Delhi dated May 20, 1950, made it known that certain proposals were being considered by it in that behalf and in accordance with that Press Note the Income-tax Amendment Bill 1952 was introduced to amend the section with D effect from the assessment year ending 31st March 1950 covering its operations unilaterally even to the United Kingdom. That Bill as stated earlier, was subsequently enacted by the substitution of a new s.49-D for the old one. The objects and reasons for the amendment of s.49-D of the Act and Clause 25 of the Amendment Bill of 1952 gives the following reasons :—

E "The provision as proposed to be amended secures that this unilateral relief will be increased from one-half to the abatement of tax at the full Indian rate or the full foreign rate whichever is lower. This amendment implements the concession announced in a Press Note on the 20th May, 1950 and would encourage persons resident in F India to establish branch business in foreign countries. As respects the income accruing or arising in the U.K. the Central Government is empowered to make this unilateral basis of relief applicable, if necessary, for the assessment years 1949-50, 1950-51 and 1951-52."

The Select Committee added the words "but before deduction of G any relief due in the said country in respect of double taxation" in Explanation (iii) and also added Explanation (iv). In respect of these amendments it stated :—

"Apart from a clarificatory amendment in section 49-D (2) Explanation (iii) the other amendment is to remove one source of hardship. Generally the Excess H Profits Tax or the Business Profits Tax would be allowed as a deduction in the foreign country in determining the income liable to tax in that country but not so in India.

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> Therefore if the tax were not taken into account the combined relief on income allowable to take in India and in the foreign country would not be adequate."

In interpreting the amended s.49-D where the assessee is entitled to the deduction from Indian income-tax payable by him under the Act, the tax paid in a foreign country are we to give the same meaning to the words "of a sum calculated on such doubly taxed income" as that which has to be given to the words "in respect of the same income" occurring under the repealed s.49-D"? In other words, is the phrase 'such doubly taxed income of similar import as the "same income". In our view the word "same" would connote that it is 'identical' though in all cases it may not mean that. It may also mean not different. It frequently means of the kind or species or corresponding to and therefore the same income in the context would mean the same kind or species or identical income earned in a foreign country on which tax has been paid in that country in respect of which relief is being claimed from being again subjected to tax under the Act. If the concession that was being given by the amendment for encouraging Indian residents to start business in foreign countries, was only to give relief at the full rate of Indian income-tax instead of half of such tax, all that was necessary was to delete the words "one half of" occurring in s.49-D as it was prior to its amendment. But that is not what the legislature has done. It has re-drafted the entire section with a different emphasis and this advantage was also afforded unilaterally under sub-s.(2) in relation to any income accruing or arising in U.K. and chargeable under the Act for the period specified therein. Apart from giving full relief at the Indian rate of tax or the rate of tax of the said country whichever is the lower the assessee has to satisfy certain prerequisites before his claim to double tax relief can be accepted. He must show (a) that he is a resident in the taxable territories in the year in which relief is claimed; (b) that in respect of his income on which relief is claimed that it had accrued or arisen to him without the taxable territories and (c) that he has paid in that country income-tax by deduction or otherwise under the law in force in that country. If he satisfies these requirements he will be entitled to the deduction from the Indian income-tax payable by him of a sum calculated on such doubly taxed income at the Indian rate of tax or the rate of tax of the said country whichever is the lower. The words "such doubly taxed income" can have reference to the tax which the foreign income bears once again the burden of Indian income-tax by its being included in the total income chargeable under s.3 read with s.2(15) which defines it as the total amount of income, profits and gains referred to in sub-.(1) of s.4 computed in the manner laid down in the Act. A reference to s.4(1)(b)(ii) would show that the income which accrues or arises to an assessee without the taxable territories during such year is

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A to be included in the total income so that the income under any of the heads enumerated in s.6 which have accrued or arisen to the assessee without the taxable territory and is subject to the tax under the law in force in that country, is included in his total income attracting the levy of charge under the Act. This would again be taxed under the Act and would therefore be doubly taxed B income. Or, it could mean that the income from the same or similar head or source which accrued or arose to him outside the taxable territories during such year and upon which tax was paid by him, can be considered to be doubly taxed if under the head it is again chargeable to tax under the Act. In other words, is the criteria for determining an income as doubly taxed income, the head or source of income under the Act to be considered with the same C head or source of income in respect of which tax was paid under the foreign law, or is the emphasis on the tax paid by deduction or otherwise under the law in force in a foreign country in respect of which relief is being given by reason of the inclusion of that income in the total income of the assessee which is again subjected to tax under the Act.

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In *Arunachalam Chettiar's* case the Madras High Court gave a similar interpretation to s.49-D as was given by the English cases to s.27 of the United Kingdom Finance Act, 1920 for holding that "such doubly taxed income" really purports to indicate that it is only that portion of the income on which tax has in fact been E imposed and been paid by the assessee that is exigible for the double tax relief." The decision did not take into consideration the legislative history or the change in the language of the amended s.49-D nor the concession which was sought to be given to encourage residents in India to earn income outside the taxable territories. We do not say that the question to be determined is easy to resolve F and in this we are in distinguished company of Judges who have felt similar difficulties, but in our view, what commends to us most is that once it is recognised that the section we are interpreting does not make the basis of relief the tax paid on the income from the same head or source, as we have shown that the change in the language does not, then the relief to which an assessee would be entitled would be the amount of tax paid on the foreign income G which by its inclusion in the total income once again bears tax under the Act. The word 'such' in the phrase 'such doubly taxed income' has reference to the foreign income which is again being subjected to tax by its inclusion in the computation of the income under the Act and not the same income under an identical head of income under the Act. The income from each head under s.6 is not under the Act subjected to tax separately, unless the legis- H lature has used words to indicate a comparison of similar incomes but it is the total income which is computed and assessed as such, in respect of which tax relief is given for the inclusion of the foreign

income on which tax had been paid according to the law in force in that country. The scheme of the Act is that although income is classified under different heads and the income under each head is separately computed in accordance with the provisions dealing with that particular head of income, the income which is the subject matter of tax under the Act is one income which is the total income. The income tax is only one tax levied on the aggregate of the income classified and chargeable under the different heads; it is not a collection of distinct taxes levied separately on each head of income. In other words, assessment to income-tax is one whole and not group of assessments for different heads or items of income. In order, therefore, to decide whether the assessee is entitled to double taxation relief in respect of any income, the consideration that the income has been derived under a particular head would not have much relevance. There is indeed nothing in the language of section 49-D which either expressly or by necessary implication restricts the grant of double taxation relief to incomes under the same head. In this view, we discharge the answers given by the High Court, and answer them in the negative and in favour of the assesssee.

An application for intervention on behalf of the Indian Bank Madras has been filed as an identical question is stated to be pending before the income-tax authorities. Though we permitted the intervention the learned advocate did not urge any new argument.

In the result the appeals are allowed with costs here and in the High Court.

V.P.S. *Appeal allowed.*