CALCUTTA HIGH COURT

Kumar Jagadish Chandra Sinha

Vs.

Commissioner of Income-tax

Income-tax Ref. Nos. 54 of 1954 and 83 of 1953

(Chakravartti, C.J. and Lahiri, J.)

02.09.1955

JUDGMENT

Chakravartti, C.J.

1. The points involved in this Reference are a little out of the common and have afforded some relief from the dreariness of the ordinary Income-tax Reference. The most interesting of the points raised by Dr. Pal had, however, to be ruled out, as it did not seem to us to arise out of the appellate order. Also, of the three questions referred, two were ultimately abandoned as it was conceded that, on the materials on record, they could not be answered.

2. The assessee is one Kumar Jagadish Chandra Sinha, who is an individual resident and ordinarily resident in India. He owns a zemindary situated wholly in the district of Jessore which, as a result of the Partition, went to Pakistan with effect from 15-8-1947. The assessee observes the Bengali Calendar year in maintaining his accounts. In the accounting year 1354 B.S., corresponding to 14-4-1947, to the 13-4-1948, the assessee received from his zemindary in Jessore an income of 1,85,380/-. It is not disputed that the money was rent derived from land used for agricultural purposes, but it was income of a period, during a part of which the land belonged to undivided India and during the remaining part it belonged to Pakistan. There was nothing to show how much of the amount had been received up to 14-8-1947, the date immediately preceding the date of the Partition and how much from 15-8-1947, up to the end of the accounting year. In those circumstances, the Income-tax Officer who made the assessment For the assessment year 1948-49 thought that the only feasible way of apportioning the income between the two periods was to apply the rule of three on the time basis and by applying that rule, he determined the pre-partition income, leaving aside annas and pies at Rs. 61,793/- and the post-partition income at Rs. 1,23,546/-. There could be no question that the former sum was Indian income and also agricultural income, as defined in the Indian Income-tax Act and, therefore, it was excluded from the assessment. With regard to the latter sum, the assessee's

contention was that that sum, also was agricultural income and, therefore, exempt from taxation altogether and that, in any event, it should not be included except for rate purposes. The income-tax Officer rejected that contention and gave his reasons in the broad form that the amount received after 14-8-1947, from land, then situated in Pakistan, did not satisfy the definition of agricultural income, as contained in Section 2(1)(a), Income-tax Act, and, therefore, it was liable to be included in the assessment.

3. On appeal, the decision of the Income-tax Officer was upheld. The Appellate Assistant Commissioner observed that though the income was derived from land used for agricultural purposes, the land was neither assessed to land revenue in the taxable territories, nor was it subject to a local rate, assessed and collected by the officers of the Government. The reason so given was not accurately expressed, because even after the Partition, the definition of 'agricultural income' in the Indian Income-tax Act continued to speak of 'British India' till 1950 when, For the first time, the expression 'the taxable territories' was introduced. The meaning of the Appellate Assistant Commissioner, however, was plain. When the assessee took the matter on further appeal to the Tribunal, there was a difference of opinion between the Accountant Member and the Judicial Member. The Assessee's contention before the Tribunal was that if the land, from which the income had been derived, was assessed to land revenue in British India even for a part of the accounting year, such assessment would be sufficient to make the income of the whole year agricultural income For the purposes of an Indian assessment. The Accountant Member rejected that contention by referring to the definition of 'British India', introduced in the Income-tax Act as Section 2(3A) by the India (Adaptation of Income-tax, Profits Tax and Revenue Recovery Acts) Order, 1947, and held that, according to that definition, which applied to the 1948-49 assessment, the land was not land assessed to land revenue in British India during the period subsequent to 14-8-1947. He held accordingly that the income attributable to the period subsequent to 14-8-1947, could not be treated as agricultural income and it was therefore liable to be assessed. The Judicial Member held that if at any point of time during the previous year, the land was assessed to land revenue in British India, the requirements of Section 2(1)(a) Income-tax Act, would be satisfied and that, therefore, there was no warrant for splitting up the accounting year. The matter was then heard by a third member who was the President himself and he agreed with the Accountant Member. In the result, the 'assessee's appeal was dismissed.

4. With reference to the facts, contentions and findings which I have just stated, the Tribunal has referred to this Court the following question at the instance of the assessee :

> "Whether the portion of the assessee's income which accrued or arose to him on and, after 15-8-1947 from agricultural lands situate in Pakistan and which lands have been subject to a local rate assessed and collected by Officers of the Government of British India up to 15-8-1947 is exempt from Indian income-tax in the assessment year 1948-49 ?

5. Before the Tribunal a second point was also raised on behalf of the assessee. It was contended

that assuming that the post-Partition income was not agricultural income in India and was, therefore, liable to taxation here under the ordinary law, still, under Item 9 of the Agreement for Avoidance of Double Taxation in India and Pakistan, the whole of the income was taxable in Pakistan, inasmuch as it had accrued there, and no part of it was taxable in India. The Accountant Member held that the Agreement invoked by the assessee applied only to income which was assessed in both countries, but since the income concerned was admittedly not assessed to tax in Pakistan, the Agreement had no application. The Judicial Member expressed no opinion on the question, obviously For the reason that, in the view taken by him, the income was altogether exempt from taxation, being agricultural income under the Indian definition. There was thus no difference of opinion between the two Members of the Tribunal, but it would appear that the President, nevertheless, expressed an opinion on the question. He held that the Agreement had no concern with agricultural income which might or might not be taxable in Pakistan. The second contention of the assessee was thus also rejected.

6. As respects the second contention of the assessee and the decision thereon, the Tribunal has referred the following question with reference to the assessment year 1948-49 :

> "Whether the Agreement For the avoidance of Double Taxation of Income between the Government of the Dominion of India and the Government of The Dominion of Pakistan dated 10-12-1947 under Section 43AA, Indian Income-tax Act, 1922, (and other enactments) is applicable to income accruing to a resident in India from agricultural lands situate in Pakistan which is exempt from tax under the Pakistan Income-tax Act in force on and from 15-8-1947, in Pakistan ?"

7. The next accounting year of the assessee was 1355 B.S. corresponding to 14-4-1948, to 13-4-1949 and the relative assessment year was 1949-50. In that accounting year, the assessee received an income of Rs. 56,673/- from his zemindary in Jessore. As in 1948-49, the whole of the income was brought under assessment, but it was not contended on behalf of the assessee that it ought to be treated as agricultural income even in India and exempt from taxation. The reason for not advancing that contention presumably was that, during the whole of that accounting year, the land belonged to Pakistan and, therefore, no contention of the kind advanced in relation to the preceding year could be tenable. But the point based on the Agreement For the Avoidance of Double Taxation was taken and in rejecting that point and holding the income to be taxable, the Judicial Member and the Accountant Member agreed. The assessee in due course asked for a Reference to this Court and in compliance with that request, the following question has been referred with reference to the assessment year 1949-50 :

> "Whether the inter-dominion Agreement of December 1947, drawn up under Section 49AA, Income-tax Act, is applicable to Rs. 56,673/, income from Agricultural lands situated in Pakistan."

8. The Reference relating to the accounting year 1948-49 is Reference No. 54 of 1954. As has been seen, it comprises two questions. The Reference relating to the assessment year 1949-50 is Reference No. 83 of 1953. It comprises one question only. That question and the first question in the Reference relating to the earlier year are the same though they have been differently expressed.

9. As regards the first question in the Reference relating to the year 1948-49 and the only question in the Reference relating to the next year, Dr. Pal conceded that he could not press for an answer to them, because certain vital questions of fact had not been found or properly found. The Agreement for Avoidance of Double Taxation applies by virtue of Article I of the Agreement only to "taxes imposed in the Dominions of India and Pakistan by the Indian Income-tax Act.... ... as adapted in the respective Dominions."
It is thus clear that before the Article could be invoked, it had to be proved what adaptations of the Indian Income-tax Act had been made in Pakistan and, further, that under the Act as adapted in Pakistan, a tax was imposed on the income derived by the assessee from his zemindary in lessor or that a tax was imposed on like income. Those questions were questions of the state of a foreign law, as it stood at the relevant time, and they had to be proved by calling appropriate evidence. At one stage of his argument, Dr. Pal referred to Sections 38 and 84, Evidence Act, and contended that the law of Pakistan could be ascertained from books purporting to be printed or published under the authority of the Government of that country. It is true that, under Section 84, the Court must presume the genuineness of a book purporting to be printed or published under the authority of the Government of any country and to contain any of the laws of that country. It is also true that, under Section 38, when the Court has to form an opinion as to the law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country and to contain any such law, is relevant. But the only effect of those two sections is that the Court may take judicial notice of a publication containing a foreign law, if it is issued under the authority of the foreign Government concerned and may accept the law as set out in such publication as a law in force in the particular foreign country at the relevant time. But such a publication cannot be evidence that what is contained in it is the whole law. An official version of the Pakistan Income-tax Act may, for example, establish that at the date the edition was published, the Act, as set out in it, was in force in Pakistan, but it will not show whether the Act had been subsequently amended or that it had been in force in the same form on a previous date or that there are not other laws which have modified the Act in its application to certain circumstances or exclude its operation during a particular period or in respect of certain matters. What the whole law of a foreign country at a particular point of time is cannot, therefore, be proved except by calling in expert, as provided for in Section 45, Evidence Act. Dr. Pal ultimately conceded that no attempt had been made in the present case to prove by legal evidence what the Pakistan Adaptations of the Indian Income-tax Act at the relevant time were or that, under the Pakistan version of the Act, income such as the income of the assesses derived by him from his zemindary in Jessore was liable to income-tax. The Agreement For the Avoidance of Double Taxation could not, therefore, be invoked to any

practical purpose and the questions based on that Agreement could not therefore be answered. It is true that Article VII(b) of the Agreement provides that if any question arises as to whether any income falls within any one of the items specified in the schedule and if so under which item, the question shall be decided without any reference to the treatment of such income in the assessment made by the other Dominion. That provision, however, has reference only to the items or categories under which a particular income amount may be assessed or may be liable to be assessed. Its effect cannot be to avoid the fundamental requirement of Article I that in order that the Article may apply to any income, it must be income taxed or liable to be taxed in both the Dominions.

10. I may add that bad enough as the absence of evidence regarding Pakistan Law is, the form of the Questions makes the position worse. Dr. Pal himself made no attempt to support the contention of the assesses, as embodied in the questions, and conceded that even if the Agreement For the Avoidance of Double Taxation applied, it could not possibly be said that India would have no right to tax the income.
All that could be claimed by an assessee under the Agreement was abatement after the relevant income had been taxed. Apart from that fundamental defect in the contention of the assessee from which the questions framed also suffer, they make answers to them almost impossible by reason of the manner in which they have been framed. The question, as framed For the year 1949-50, merely asks whether the Agreement is applicable to "income from agricultural lands situated in Pakistan." Dr. Pal conceded that such a bare description of the income could furnish no basis for applying the Agreement or deciding whether it was applicable. As framed For the year 1948-49, the question describes the income to which the Agreement is sought to be made applicable as income "which is exempt from tax under the Pakistan Income-tax Act in force on and from 15-8-1947 in Pakistan. On the assumption contained in that phrase, the Agreement would exclude itself from the income by virtue of the first of its own Articles which requires a tax to be imposed on the relevant income in both Dominions.

11. If we cannot answer the questions in the absence of evidence regarding the relevant Pakistan law, we cannot also answer them on concessions or assumptions made by the parties. For a Court to decide a question depending on the actual state of a foreign law on concessions made by the parties, appears to me to be wholly impossible. It was suggested that we might call for a further statement from the Tribunal under Section 66(4) of the Income-tax Act, but we indicated that, under that section, we could not direct a rehearing of the appeal on fresh evidence and indeed direct a decision on a new point, inasmuch as the original contention before the Tribunal had been that the income from the zemindary in Jessore could not be taxed at all. All that we could do under Section 66(4) was to call for a further and fuller statement on the materials on record, if there were any materials which could throw further light on the state of the law in Pakistan. Dr. Pal informed us after consulting his juniors, who had appeared before the Tribunal, that all parties had proceeded on assumptions and no other materials would be available on the record. In the state of facts, Dr. Pal himself conceded that he could not press for an answer to the questions

relating to the Agreement For the Avoidance of Double Taxation.

12. I may now proceed to consider the second of the questions referred For the year 1948-49. The question referred includes the words "and which lands have been subject in a local rate assessed and collected by Officers of the Government of British India". The reference to subjection to a local tax, which occurs in the second part of the definition of 'agricultural income', appears to have been an introduction by the Appellate Tribunal, apparently made at the stage of drawing up the case. There is no warrant whatsoever for it, either in the appellate order or in the contentions actually raised in the case. The claim of the assessee which the Department opposed and which the Tribunal rejected was based on the contention that the land was land assessed to land revenue in British India up to 14-8-1947. Both parties agreed that the question should be amended so that it may reflect the point actually raised in the case. We accordingly amend the question so as to make it read as follows : Whether the portion of the assessee's income which accrued or arose to him on and after the 15th August, 1947, from agricultural lands situate in Pakistan and which had been assessed to land revenue in pre-Partition British India up to the 15th August, 1947, is exempt from Indian income-tax in the assessment year 1948-49.

13. The question, as referred and as now amended, reflects the contention that if the land from which the income was derived was assessed to land revenue in what was previously British India in any part of the accounting year, the whole of the income of that year would be agricultural income within the meaning of the definition in the Indian Income-tax Act, even though the land concerned might have fallen In Pakistan after 14-8-1947.
Dr. Pal put his contention in a different way. He contended that, irrespective of whether the land had continued to belong to British India or had gone over to a foreign country, under the definition of agricultural income, the assessee's income from the land would continue to be his agricultural income For the purposes of his Indian assessments by reason of the fact that it had been assessed to land revenue in what was British India prior to 14-8-1947. It will be noticed that, under that contention, the income For the next accounting year, 1355 B.S., during the whole of which the assessee's zemindary belonged to Pakistan, would be equally agricultural income in India which, however, the assessee had never contended. As I have already pointed out, there is no reference as to this question with regard to the assessment year 1949-50. I do not, however, think that the point raised by Dr. Pal is outside the ambit of the question, as referred and now amended, and we must deal with his contention.

14. The contention of Dr. Pal is based on that part of the definition of 'agricultural income' which refers to assessment of the land to land revenue in British India and on the definition of 'British India' introduced by the India (Adaptation of Income-tax, Profits Tax and Revenue Recovery Acts) Order, 1947. To quote the relevant part of the definition of 'agricultural income' contained in Section 2(1)(a) of the Income-tax Act, it says that such income means "any rent or revenue derived from land which ... is .. assessed to land revenue in British India." By Article (2) of the Adaptation Order, read with its Schedule, a new sub-section, termed '(3A)', was introduced in

Section 2, Income-tax Act, which defined 'British India' as follows :

> " 'British India' means, as respects any period before the 15th day of August, 1947, the territories then referred to as British India but including Berar, and as respects any period after the 14th day of August, 1947, the territories For the time being comprised in the Provinces of India."

15. Reading that definition of 'British India into the definition of agricultural income' and reading it along with the expression 'is assessed', Dr. Pal contended that the expression 'is assessed' referred to the act of assessment and it contemplated an assessment made during the first of the two periods or the second, either of which would satisfy the definition.
It, therefore, followed that if assessment to land revenue in British India prior to 14-8-1947, could be predicated of any land, such assessment would in itself suffice to make the income derived from such land agricultural income, irrespective of whether the territorial affiliation of such land to India continued to exist or whether the land had been allotted to some other State. To put the matter in a more concrete shape, according to Dr. Pal, the first part of the definition of 'agricultural income', as adapted meant that income derived from land used for agricultural purposes would be agricultural income, if the land was assessed to land revenue at any time in what was formerly British India up to 14-8-1947, that is, up to the date till which the old British India subsisted; and that the second part of the definition meant that income derived from land used for agricultural purposes would be agricultural income if such land was assessed that is, newly assessed, in the territories constituting the new India at any time after 14-8-1947, that is, after the date on which India, as reconstituted, came into existence.
Such being the true meaning of the adapted definition of 'agricultural income', so far as it went by assessment to land revenue, it would follow that land, once assessed to land revenue in what was formerly British India, would continue to be land 'which is assessed to land revenue in British India; within the meaning of the definition, because it would carry within it the incident that it had been assessed to land revenue in British India and that the incident would be carried by the land, even if it came to be included in a foreign territory. The conclusion for which Dr. Pal contended, accordingly, was that since the assesses's zemindary in Jessore had been assessed to land revenue at the time of the Permanent Settlement in 1793 in what was British India up to the 14th of August, 1947, it was land which was assessed to land revenue in British India within the meaning of the Indian definition of 'agricultural income' and, therefore, even the income of the year 1354 B.S., attributable to the period after 14-8-1947, during which the Zemindary belonged to Pakistan, would be agricultural income in India.

16. It appears to me that even if Dr. Pal's contention is accepted and it is held that the words 'is assessed' refer to the original assessment to land revenue and the act of such assessment, the view that such assessment will suffice to make the income derived from the land concerned, agricultural income will hold good only so long as the original assessment lasts. The land, if it goes over to a foreign State, will obviously cease to be land 'which is assessed to land revenue in

British India, if the original assessment is cancelled by the foreign State or is replaced by an assessment made by that State on its own account. It cannot surely be contended that if only the land was assessed to land revenue in British India at some time, it will continue to be land which is assessed to land revenue in British India, even if the land is allotted to a foreign State and the assessment which was made in British India is abrogated altogether or the foreign State makes an assessment of its own. Dr. Pal did not agree with this view, but I am unable to see where one would find an assessment to land revenue in British India as an attribute of the land if the assessment made in British India disappeared. Dr. Pal said it could not disappear. He could not have meant that even if some land, which originally belonged to what was British India, came to be allotted to another State, that State would have no power to repeal an assessment made in British India and either leave the land unassessed or make a fresh assessment of it for itself. He must have meant that although the assessment itself could be abrogated, the act of assessment or the fact that an assessment had taken place in British India which, according to him, was sufficient to make the income agricultural income, could not be wiped out. But the section says 'is assessed' and not 'was assessed' or 'is or was assessed'. In my opinion, even if the words 'is assessed' refer to the act of assessment, the continuance of such assessment is essential and, therefore, if the income derived from the land concerned is to be treated as agricultural income on the basis of its assessment to land revenue in British India, it cannot be held to be such income on such basis after the assessment has ceased to exist. In the case of the assessee's zemindary in Jessore, it is thus necessary to know whether its assessment to land revenue, as made in British India, is subsisting or whether Pakistan has released it from assessment or made an assessment of its own. What the position in that regard is, is not known, because the law of Pakistan was not proved. Dr. Pal contended that no one had said that the original assessment was not subsisting; but where the continuance of the assessment is a requirement of law, I am of opinion that we cannot proceed on the silence of the parties or any implied concession or admission. The same difficulty which I referred to in connection with the other two questions, appears to confront us here and, in my view, strictly speaking, the present question also cannot be answered.

17. I would, however, in deference to the argument of Dr. Pal, deal with his construction of the definition of 'agricultural income'. The relevant part of the definition, as adapted, would read as "any rent or revenue derived from land which ..... is ..... assessed to land revenue in, as respects any period before 15-8-1947, the territories then referred to as British India but including Berar and as respects any period after 14-8-1947, the territories For the time being comprised in the Provinces of India." Dr. Pal contended that since the expression 'is assessed' had been linked with a time and a place, it could have reference only to the act of assessment or to the fact of an assessment having taken place and it did not contemplate subsistence of the assessment. If so, the definition meant that if some tract of land used for agricultural purposes had suffered assessment to land revenue in what was formerly British India at any time before 14-8-1947, or if some land suffered or suffers such assessment in the new India after that date, it would be land 'which is assessed to land revenue in British India' and the income derived from such land would be agricultural income within the meaning of the definition. If I may explain the

matter further, in the first case, it would continue to be land 'which is assessed to land revenue in British India' even if it went to another country after 14-8-1947, because the act of assessment to land revenue in British India to which it had been subjected could not be wiped out. Since that act would continue to cling to the land, the attribute of its being assessed to land revenue in British India would also continue to exist, with the consequence of making the income derived from the land, agricultural income. This, it was contended, was the only just interpretation possible, because it preserved for Indian owners of agricultural land which had fallen to Pakistan, the immunity from tax which they had previously enjoyed and which they had done nothing to forfeit.

18. I find myself unable to accept the interpretation contended for by Dr. Pal. In my view, the verbal phrase 'is assessed', with its present tense, is not appropriate For the expression of the idea of an act of assessment done at any time. 'Is assessed', in my opinion, means 'bears an assessment', or 'is under a state of being assessed' or 'stands assessed'. That meaning, sufficiently clear from the natural meaning of the words as used in their context in the definition, becomes clearer when one reads them along with the next group of words, namely, "or subject to a local rate assessed and collected by Officers of the Government as such." It is to be noticed that the verb "is" is not repeated in the second group of words and the language is not "is assessed to land revenue in British India or is subject to a local rate." The whole expression "which is either assessed to land revenue in British India or subject to a local rate assessed and collected, etc.," most clearly suggests that the words 'is assessed' in the first part do not refer to the act but refer to the state of assessment, just as the second part refers to the state of subjection to a local rate. The same verb "is" serves both the parts and the two parts appear to be on the same plane.
The use of the present tense in the expression 'is assessed', taken along with the words 'British India', suggests, first, that what is contemplated is that the land must be situated in British India and, secondly, that it must be under a present and subsisting assessment to land revenue there. I find it wholly impossible to hold as a matter of language or as a matter of a reasonable construction that the expression 'is assessed' contemplates land which was assessed at sometime or other to land revenue in what was formerly British India, but which may no longer be a part of India at all, irrespective of whether the assessment is subsisting or not.

19. Mr. Meyer drew our attention to two decisions dealing with the second part of the definition of 'agricultural income' which speaks of subjection to a local rate assessed and collected by Officers of the Government as such. At the time when those decisions were given, the word 'Government' did not occur in the definition but what occurred was the word 'Crown'. The decisions referred to were '*Chockalingam Chettiar v. Commissioner of Income-tax, Madras*[1]', and '*Commissioner of Income-tax, Bombay v. Jhamandas Devkishendas*[2]', They do not refer, as I have stated, to the first part of the definition which speaks of assessment to land revenue and they do not also contain any statement of the reasons which influenced the learned Judges to take the view they did. But the decisions are clear authority For the proposition that what the definition contemplates is land situated within the territorial limits of India or British India as the case may

be and that it could not be contended on the strength of the expression "Officers of the Crown" that any land at any place, which was subject to a local rate assessed and collected by officers of the Crown, would be such land as was contemplated by the definition. The decisions are useful as showing that in the view of the learned Judges who gave them, the definition contemplates and could only contemplate land situated within the territories for which the Act was laying down a law. It is obviously not possible to contend that whatever might be the extent of the second part of the definition, the first part need not be construed as co-extensive with it. The implication of the definition is, to my mind, plain.

20. It does not seem to the that the change in the territorial content of India which was brought about by the Partition and which made the definition of 'British India' necessary, has really altered the meaning of the definition in any regard or has furnished any ground to any assessee to contend that land, which was once a part of undivided India and had suffered assessment to land revenue as such part, would continue to bear that character For the purposes of the Indian Income-tax Act for all time to come. It is to be noticed that the expression 'is assessed' has not been changed or touched by the new definition of 'British India'. If one takes the definition of 'agricultural income', as it stood before the introduction of the interpretation section, namely, Section 3A, it could not possibly have been contended that if any land had been assessed to land revenue in British India at any time, such land would for all time remain land 'which is assessed to land revenue in British India'. Leaving out complications of language, the reason For the change in the meaning of the expression 'British India' is plain. The Act is an Act of the Indian Legislature which is providing For the collection of tax of a certain kind For the benefit of the Indian treasury. The area on which it can operate is obviously the area for which the Indian Legislature could legislate and for which it must be presumed to have legislated.
When, therefore, the old definition spoke of land 'which is assessed to British India' or land "which is subject to a local rate assessed and collected by the officers of the Government as such," it most certainly contemplated land situated within the territorial limits of British India, as it was then constituted. When the Partition came to be made, the expression 'British India' ceased to bear its old meaning and, in the physical sense as well, a part of the territory which had previously formed part of British India went over to a newly created Dominion. The law of Income-tax had, therefore, to be adjusted to the new

[1] AIR 1945 Mad 314

[2] AIR 1947 Sind 64

situation which had arisen. Such adjustment was made by introducing a definition of British India, which took into account the reality of the Partition and made the expression 'British India' applicable to the period prior to the Partition and the period subsequent thereto in appropriate senses. As for agricultural income, what it did was no more than to provide that if, as respects the income derived from land used for agricultural purposes in any period prior to the date of the partition, it had to be decided whether it was agricultural income on account of the land being assessed to land revenue in British India, 'British India' was to be taken to mean what it actually was at the time, namely, the undivided India minus the Indian States. Similarly, if as respects income derived from any land used for agricultural purposes in any year after the Partition, it was

required to fee decided whether it was agricultural income on account of being assessed to land revenue in British India, 'British India' was to be taken to be what it then actually was, namely, the territories forming the new Provinces of India. The enquiry in each case would be whether the land was bearing an assessment to land revenue in one British India or the other. I can see no further meaning or intention in the new definition of British India, as given in the India (Adaptation of Income-tax, Profits Tax and Revenue Recovery Acts) Order, 1947. The definition of 'agricultural income' says now, as it always said, that if the land used for agricultural purposes from which the income is derived bears land revenue in or a local rate levied by the State within the territorial limits of the country in which the Income-tax Act operates, it will be treated as agricultural income and so exempt from taxation. I do not see any necessity for construing the definition, as adapted, in any other sense, nor do I consider it possible to do so. In my view, land which was a part of undivided India and was assessed to land revenue in India as such, but which has now gone over to Pakistan, is no longer land which is assessed to land revenue in British India within the meaning of the definition of 'agricultural income' as given in the Income-tax Act and as adapted.

21. Dr. Pal referred us to a number of other sections in the Income-tax Act where the expression 'British India' occurred and where also the new definition would necessarily apply. The sections mentioned by him were Sections 4, 4A, 4B, 14(1), 19A, 40(2), 42 and 43. Dr. Pal, however, conceded that no assistance could be derived by examining the meaning of the term 'British India' with reference to those sections, because in each section the expression has been used in conjunction with a different verb or in a different context.

22. Dr. Pal also wished to contend that it the definition of 'agricultural income', as adapted, really bore the meaning which I have stated above, the adaptation was ultra vires the powers of the Governor General under the Indian Independence Act. We pointed out to him that this question could not be said to arise out of the appellate order. Dr. Pal replied that he was not raising a new question but only trying to give a new reason in support of the view which his client had taken. His client was still saying, as he had said before the Tribunal, that his post-Partition income from the zemindary in Jessore was also agricultural income For the purposes of the Indian Income-tax Act and the new ground which he wished to urge was that if the adaptation had purported to make any change, it had not done so effectively and its effect was nil. We do not think that we could entertain the contention of Dr. Pal. An assessment can be challenged on an infinite variety of grounds and it cannot possibly be correct to say that so long as the challenge to the assessment is maintained, it can be made on any ground before the High Court in the course of a Reference, irrespective of the grounds which had been urged before the Taxing authorities and before the Appellate Tribunal. In the present case, in particular, the new contention sought to be urged by Dr. Pal would alter the basis of his client's case altogether. Before the Tribunal he had asked the definition of 'agricultural income', as adapted, to betaken as valid and he pressed for a certain construction of it. Now he has trying to say that the adaptation must be ignored altogether, because it had been enacted without jurisdiction. We do not think that it is possible for us to

entertain the attack on the validity of the adaptation which had not even been hinted at any stage of the proceedings.

23. For the reasons given above, the answers to the questions referred must, in our opinion, be as follows :

Assessment year 1948-49 (Income-tax Reference No. 54 of 1954) :

Question (1) - "Not pressed."
Question (2) as amended - "No".

Assessment year 1949-50 (Income-tax Reference No. 83 of 1953) :
The sole question "Not pressed."

24. The Commissioner of Income-tax will have his costs from the assessee in Income-tax Reference No. 54 of 1954, but there will be no order for costs in Income-tax Reference No. 83 of 1953.

Lahiri, J.

25. I agree.

Answers accordingly.