

# CALCUTTA HIGH COURT

Commissioner of Income-Tax

Vs

State Bank of India

(Chakravartti, C.J.)

29.03.1956

## JUDGMENT

### **Chakravartti, C.J.**

1. This is a reference under section 66 (1) of the Income-tax Act made at the instance of the Commissioner of Income-tax and involves a single question of law. The matter was argued before us at some considerable length. The relevant facts are few in number. One H. M. Thaddeus, an inhabitant of Calcutta, appears to have got into trouble with his wife in regard to their married life and the lady sought the assistance of this Court by instituting a suit for judicial separation. That suit which was Suit No. 20 of 1940, was ultimately disposed of on the 28th February, 1940, by consent. The terms of the consent decree, so far as they are material for the present purpose, were that an order for judicial separation was to be made in favour of the plaintiff wife and the defendant husband was to be directed to pay to his wife a sum of Rs. 800 as her alimony "in the manner specified in the terms." The first of the terms of settlement referred to the payment of this alimony and was to the following effect :

"Permanent alimony to be paid at the rate of Rs. 800 per month, payments to be made on the 7th day of every month, the first of such payments to be made on the 7th day of March, 1941."

About three years later, on the 20th December, 1943, the husband executed a deed of charge whereby he made the payment of the alimony, payable by him under the consent decree, a charge on two house properties owned by him. The preamble of the deed recited that the husband had come to know that the wife was intending to make an application to the Court to compel him to secure the payment of the alimony by charging the same on his properties and that the husband was anticipating the threatened move on the part of the wife by executing the deed so as to prevent the intended application and also avoid the liability as to costs which would necessarily be incurred. A desire to safeguard the wife against the future uncertainty as to recovering the

alimony was stated to be an additional reason for executing the deed. The operative part of the document read as follows :

"Now these presents witness that in consideration of the premises the said husband doth hereby charge all singular the message, lands hereditaments and premises being his said properties hereafter described for the said alimony amounting to Rs. 800 per month or Rs. 9,600 per year and payable to his wife in terms of the said decree, for and during the remainder of her life and he also declares that his said properties and the rents, issues and incomes thereof shall remain charged with the due payment of the said alimony or such as may be ordered by Court from time to time in favour of his said wife for her life."

The properties mentioned in the schedule to the deed and charged thereby were premises No. 1, Lower Rawdon Street and premises No. 10/1A, Radha Bazar Lane, both situated in the town of Calcutta. It will be noticed that whereas the compromise decree directed the alimony to be paid at the rate of Rs. 800 per month, the deed of charge, in addition to describing the payment in the same language, contained the alternative description "or Rs. 9,600 per year." It appears that thereafter in course of the assessment for the year 1945-46, the assessee claimed a deduction of the payment of the amount of Rs. 9,600 which he had paid to his wife as her alimony during the relevant accounting year. No reference appears to have been made before the Income-tax Officer to section 9 (1) (iv) of the Indian Income-tax Act. The claim was put forward on the basis that an amount, equivalent to the amount payable to the hands of the assessee to those of his wife before it could become the assessee's income. Quite obviously, the assessee was then shaping his case on the decision of the Judicial Committee in the case of *Bijay Singh Dudhuria v. Commissioner of Income-tax, Calcutta*. The assessee's contention did not find favour with the Income-tax Officer who held that there could be no question in the facts of the case of any overriding charge diverting the money from the hands of the assessee before it could become his income, because the charge was a voluntary imposition and there was nothing in it to bind the assessee absolutely. In his appeal to the Appellate Assistant Commissioner, the assessee seems to have first thought of section 9 (1) (iv) of the Act and he claimed that he was entitled to the deduction under the provisions of that section. The Department resisted his claim on the ground that it had not been made in the return and also on the ground that the charge, being a voluntary charge depending entirely on the assessee himself for payment, could not be treated as an "annual charge" within the meaning of section 9 (1) (iv) of the Act. It seems also to have been contended that what the assessee was doing was that he was putting a part of his income from the property to a private use and applying it to the discharge of his liability for the alimony. This last contention appears to have been intended to meet the argument that the effect of the decree, read with the charge, was that an amount of money, equivalent to the alimony payable, was diverted from the assessee's hands before it could become his income. The Department's contention was

that payment of the alimony by the assessee was merely an application of his income. The Appellate Assistant Commissioner naturally paid no attention to the argument of diversion, because the assessee was relying upon section 9 (1) (iv) of the Act which provides for deductions of certain sums out of the taxpayers income and does not require that the sums concerned should not become his income at all. As to the remaining two grounds upon which the resisted by the Department, the Appellate Assistant Commissioner pointed out that a claim of deduction had in fact been made and, secondly, that provided there was a charge whether the same had come into being voluntarily or by virtue of an obligation superimposed on the owner of the property was immaterial for the purposes of section 9 (1) (iv). On those grounds the Appellate Assistance Commissioner held that the assessee was entitled to the deduction claimed. The Income-tax Officer was not prepared to accept the decision and appealed to the Appellate Tribunal. His appeal was disposed of by one of the most unsatisfactory judgments that I have seen. After reciting the fact of the consent decree and the relevant term of the deed of charge, as also the proceedings before the authorities below in the barest of terms the Tribunal proceeded to state the contention advanced before it. The only contention which it recorded was that the alimony could not be treated as an "annual charge", inasmuch as the liability for it arose from day to day and was due to last only during the life of the wife. The Tribunal understood the Departmental Representative to contend that while the mode of payment might be annual in the present case, the nature of the payment was not so, whatever that might mean. Having stated the contention of the Department, the Tribunal proceeded to mention four reported decisions and then concluded the judgment in the following words :

"We have gone through these cases and on a consideration of these cases it is difficult for us to say that the view taken by the Appellate Assistant Commissioner is wrong. We, therefore, dismiss this appeal."

It is impossible to make out what view the Tribunal actually took of the contentions of the parties and what the points were which it intended to decide by the cryptic sentence which I have quoted. The four decisions mentioned cover a wide variety of questions and since the Tribunal did not go beyond naming the decisions, it is not possible to say on which points it was accepting their authority and on what grounds arising out of the facts before it, it was doing so. All that one can, therefore, say is that the Tribunal rejected the Departments contention that the charge was not an annual charge", as contemplated by section 9 (1) (iv) and also that it agreed with the view taken by the Appellate Assistance Commissioner on the matters mentioned by hem. The acceptance of the views of the Appellate Assistance Commissioner would mean that, like him, the Tribunal also thought that whether or nor a charge was a voluntary charge was not a charge, an assessee would be entitled to the benefit of the section, even if it was a voluntary charge. The Commissioner of Income-tax thought that the case had not been rightly decided and asked for a

reference to this Court. The Tribunal acceded to the requisition and referred the following question of law :

"Whether in the facts and circumstances of the case and upon proper construction of the deed dated 20th December, 1943, the sum of Rs. 9,600 was an admissible deduction under section 9 (1) (iv) in computing the assessee's income from properties situated in 1, Lower Rawdon Street and No. 10/1A, Radha Bazar Lane ?"

Mr. Meyer, who appeared on behalf of the commissioner of Income-tax, proposed to raise before us three points as bearing upon the question referred. He said he would argue first that the charge in the present case was a "capital charge"; secondly, that, assuming it was not a "capital charge", it was still not an "annual charge"; and, thirdly, assuming that it was an "annual charge" and not a charge of a capital nature, it was still not a charge within the contemplation of the section, inasmuch as it was a charge voluntarily created. We intimated to Mr. Meyer as soon as he formulated his points that he could not be allowed to take the first of them, since it did not appear to have been taken on behalf of the Department at any stage of the proceedings and certainly not before the Tribunal. It could not, therefore, be said to arise out of the Tribunal's order. The practice followed in this Court in references under section 66 (1) of the Act has always been to limit the party, at whose instance a reference has been made, to the points raised and canvassed before the Tribunal. Questions are often framed in a general form, such as whether the assessment for a particular year made in a certain manner was valid in view of the provisions of a certain section of the Act. A question framed in that form might be said to comprise all possible contentions to which the terms of the relevant section might give rise, but this Court has always refused to treat matters arising out of questions so framed as entirely at large. It has adopted and acted on that view for the reason that this Court is only an advisory body and the advice which it can be properly asked to give is only advice on matters which had been decided in one way or another such advice being sought in order that the parties interested might know whether the decision on those contentions had been in accordance with law. In hearing a reference under section 66 (1), this Court does not sit in appeal from the assessment and it is not called upon to give its advice on matters which the Tribunal was not asked to decide and which the Tribunal neither decided, nor included in the statement of case for the opinion of this Court. Mr. Meyer did not suggest that we should depart from the principle which we had always followed, but he contended that the question as to the charge in the present case being a "capital charge" had, in fact, been raised before the Tribunal although no reference to the contention had been made in the Tribunal's order. He pointed out that in the enclosure or appendix submitted to the Tribunal along with the application for a reference, the commissioner of Income-tax had specifically stated that this question had been raised before the Tribunal. That appears to be true, because the statement of "facts which are admitted and found by the Tribunal and which are necessary for

drawing up a statement of the case" ends with the following sentence :

"But the question whether it was a `capital charge was not gone into, although this question was specifically raised by the Departmental Representative and the Tribunal dismissed the appeal."

I think, however, that in spite of that statement in the enclosure to the Commissioners application, we cannot treat the question as included in the reference and open to the Commissioner, since even after the Commissioner had made that statement in his application, we cannot treat the question as included any question as to the charge not being a "capital charge" in the statement of the case drawn up by it. As far as I am aware, according to the rules of the Tribunal, draft statements are allowed to be seen by the parties and suggestions are invited from them. In any event, the Commissioner must have come to know of the statement of the case, as drawn up and submitted to this court and he took no steps either to have the statement of case amended or supplemented or to have a question regarding the charge being or not being a "capital charge" referred to this court. Mr. Meyer asked by what procedure he could either get the statement of case amplified or cause a reference of his point about the charge not being a "capital charge" to be referred. It appears to me that, for the first, he could come to this court for a writ of mandamus and for second, he could make an application under section 66 (2) if his client was so advised, because on the facts stated by him, the statement of case, as drawn up by the Tribunal, amounted to a refusal to state a question which the commissioner thought ought to have been referred. No such step was taken. I am accordingly of opinion that on the statement of case, as drawn up and submitted by the Tribunal, which is the only statement before us, it is not possible to allow Mr. Meyer to contend that one of the reasons for which the assessee's claim would not be admissible was that the charge concerned was a "capital charge."

The remaining two points raised by Mr. Meyer, however, require consideration.

Before I proceed further, it will be convenient to set out the terms of section 9 (1) (iv) which, so far as is relevant, are as follows :

"9. Property. - (1) The tax shall be payable by an assessee under the head `Income from Property in respect of the bona fide annual value of property consisting of any buildings or land appurtenant thereto of which he is the owner..... subject to the following allowances, namely :

\* \* \*

(iv) Where the property is subject to a mortgage or other capital charge, the amount of any interest on such mortgage or charge; where the property is subject to an annual charge not being a capital charge, the amount of such charge; .... and where the property has been acquired,

constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital."

The proviso to the sub-section is not material for our present purpose.

The second of Mr. Meyers points was that the charge on the basis of which the assessee claimed the deduction in the present case was not an "annual charge" as contemplated by section 9 (1) (iv). It was contended that under the consent decree, the alimony was payable at the rate of Rs. 800 per month and the assessee could, not by merely multiplying that monthly sum by twelve, claim the multiple to be an annual payment or charge. Cases where the levy or payment was in fact an annual levy but only the payment of it by installments was allowed were said to be different, because in those cases the charge itself was basically and in its own nature an "annual charge." Where, however, a payment was to be made month by month under a contract or a consent decree, the charge, if any, was really a monthly and not an annual charge and, consequently, the provisions of section 9 (1) (iv) would not be attracted. I do not think that this contention is sound and indeed at the end of his argument Mr. Meyer himself conceded that the weight of authority was against him.

Before referring to other authorities of which there is a considerable number, I might with advantage mention the decision of the Supreme Court in the case of New Piecegoods Bazar Co. Ltd., Bombay v. Commissioner of Income-tax, Bombay. Incidentally that decision was given in an appeal from one of the four decisions named by the Tribunal in its appellate order. The case related to the charge created in respect of municipal property tax by section 212 of the City of Bombay Municipal Act, 1888, and the question being whether or not the charge was an "annual charge not being a capital charge" within the meaning of section 9 (1) (iv) of the income-tax Act, their Lordships had occasion to decide what a "capital charge" meant and also, to a certain extent, what was meant by an "annual charge." "Capital charge," they held, meant a charge created to secure the discharge of a liability of a capital nature; and an "annual charge," they said, meant a charge to secure an annual liability. We are not concerned, in view of what I have already said, with the true meaning of the expression "capital charge" in the present case. With regard to the expression "annual charge" all the Supreme court actually decided appears to have been that a charge, in order to be a charge, in respect of a payment to be made annually or to secure the discharge of an annual liability and that provided a charge was of that nature, it was, although of a variable or contingent character, none the less an "annual charge." The direct decision in the case does not appear to go beyond excluding the view that if a charge was of a variable character, that is to say, liable to be increased or reduced or of the nature of a contingent charge, it would not be an annual charge, as contemplated by section 9 (1) (iv). What, however, "a payment to be made annually" or "an annual liability" really meant, namely, the positive concept underlying the

terms, was not, so far as I can see, explained by the Supreme Court except perhaps indirectly and incidentally in two short paragraphs to which I shall refer later.

The term "annual charge" is a term expressed in the English language. The successive English Income-Tax Acts contained the expression "yearly interest" and "annual payment" and brought such interest or payment to tax. Judges of the English Courts had consequently to construe the expression "annual payment" and I think that what they held to be meant by the word "annual," as used in such context, can safely be regarded as authoritative. I may point out, however, that while section 9 (1) (iv) of the Indian Act makes the amount of an "annual charge" exempt from taxation by permitting a deduction thereof in the computation of the assessee's income, the English Acts use the expressions "yearly interest" and "annual payment" in the opposite context, because they use them in charging sections so as to make the amounts concerned exempt but chargeable to tax. That distinction, however, makes no difference.

Some of the possible different meanings of the expression "annual" were stated by Rowlatt, J., in the cases of *Ryall v. Hoare*, *Ryall v. Honeywill*. "The word 'annual' may mean," said the learned Judge, "'annually recurring, as applied to the seasons of the year or 'recurring over a long period of years : or it may mean 'lasting only for one year, as we speak of certain flowers as annuals which must be sown afresh every year : or, as in the case of interest on a sum of money, it may mean 'calculated with reference to a year.'" The cases show that the word "annual," as applied to payments, has been construed to mean not merely payments which are to be made permanently or during a succession of years and are computed by reference to the liability for the whole year, but also payments which may have to be made week by week or month by month, provided the period of the payment extends beyond a year and provided that the liability for the payment is a recurring feature of every year as it comes and passes.

One of the earliest of the cases to which reference is frequently made is that on *In re Copper : Copper v. Copper* decided in the year 1917. The question in that case was whether the payment of a sum of Pound 50 "in each and every calendar month" by a testator's trustees to his wife during her lifetime was an annuity or an "annual payment" within the meaning of section 40 of the Income Tax Act of 1853. The trustees, who were directed by the will to make the recurring payment to the widow, made the payment for a long time without making any deduction on account of income-tax. But having come to entertain some doubt as to the correctness of the practice followed by them, they took out a summons for determining whether the monthly payment required to be made by them was liable to income-tax. It would be liable, if it was "any yearly interest of money or any annuity or other annual payment," as contemplated by section 40 of the Act of 1853. It was contended that the payment was neither an "annuity" nor an "annual payment," since it was to be made month by month. Sargant, J., however, held that it was either

an "annuity" or an "annual payment" or a sum, because it was not correct to say that there could be no annuity unless there was a reference to a year. According to the learned Judge, what the testator had contemplated were payments extending over a year and he had adopted as a unit of payment the one-twelfth of a year into which the calendar year was divided.

The decision in *Coopers* case was followed in the case of *In re Janes Settlement : Wasmuth v. Janes*, decided in 1918, a case which is more frequently cited. That case is somewhat near to the facts of the case before us, inasmuch as the payment concerned was to be made under the provisions of a separation deed. The deed provided for the payment to the wife of a weekly sum of Pound 8 every Wednesday and the question again was whether in making the payment, the husband or the trustee appointed by him would be entitled to deduct the appropriate income-tax. The relevant provision of the Income Tax Act was again section 40 of the Act of 1853 and it would appear also section 102 of the Act of 1842. The first spoke of "any rent, or any yearly interest of money, or other annual payment," while the second spoke of "all annuities, yearly interest of money, or other annual payments." The argument advanced was that while a sum payable every calendar month must be a definite sum per annum, because it would be twelve times the monthly sum and could therefore be an annual sum, the same could not be said of a sum payable weekly, because it would be twelve items the monthly sum and could therefore be an annual sum, the same could not be said of a sum payable weekly, because there were fifty-two weeks and one day in an ordinary year and fifty-two weeks and two days in a leap year, so that there could never be a fixed annual sum and, therefore, no annual payment or annuity. Astbury, J., who decided the case, repelled the contention. He held that the covenant was in substance a covenant to pay so much a year by weekly payments of a certain sum every Wednesday. Although in some years there might have to be fifty-two and in other fifty-three payments," the covenant was really a covenant to pay an annual sum determined by the number of Wednesdays in each successive year." The weekly payment was accordingly held to be an "annual" : sum within the meaning of the relevant provisions of the taxing statutes.

The same view was taken in the case of *Smith v. Smith*. Once again, the payment concerned was a weekly payment and the question was whether it was an annual payment and the question was whether it was an annual payment within Case III, 1 (a), of Schedule D to the Income Tax Act of 1918, so that if it was, the divorced husband, who was to make the payment, would be entitled to deduct income-tax under rule 19 of the General Rules relating to All Schedules. The Court composed of Lord Sterndale, M. R., and Warrington and Scrutton, L. JJ., held unanimously that the payment, though required to be made in weekly sums, was an "annual payment" and, in taking that view, the learned Judges found it unnecessary to do more than simply refer to the two cases of *In re Copper* and *In re Janes Settlement*.

The same was the view taken in the case of *Clack v. Clack*. That again was a case of a maintenance order made by a magistrate whereby the husband was directed to pay a certain weekly sum to his wife and again the question was whether the payment was an "annual payment" within Case III, 1 (a), of Schedule D to the Income Tax Act of 1918, so that the husband would be entitled to deduct the income-tax under rule 19. The Court composed of Avory, Hawke and Lawrence, JJ., relied on the authority of *Smith v. Smith* and said that it was bound on the authority of that case, to hold that the weekly payments were annual payments within the meaning of rule 19.

The last case with which I shall conclude the citations was the case of *Cunards Trustees v. Inland Revenue Commissioners*. The facts of that case were that the trustees under a will were required by the testatrix to pay certain expenses of a sister of hers in respect of a house and also to pay her the remainder of the income from the residuary estate during her life. The will then proceeded to provide that if in any year the income of the residuary estate was found insufficient to enable the sister to live at the particular house in her customary degree of comfort, the trustees would be entitled to apply such portion of the capital of the residuary estate by way of addition to the income therefrom as they might in their discretion think fit. Certain payments out of the capital were made under the last mentioned provision of the will and the Crown claimed to recover tax from the trustees in regard to those payments under Schedule D, Case III, rule 1 (a), to the Income Tax Act of 1918. The Court was composed of Lord Greene, M. R., who delivered the judgment of the Court, and Mackinnon and Morton, L. JJ. It was held that since the payments directed to be made under the special provision of the will were capable of recurrence, they were annual payments and the fact that they varied in amount did not remove their quality of being capable of recurrence and being, as such "annual payments." The payments might not require to be made every year, because the will directed them to be made and might have to be made recurrently, although it might not be consecutively in different years, they were annual payments. It is interesting to note in this connection the actual language of rule 1 (a) of Case III of Schedule D which is as follows :-

"The tax shall extend to (a) any..... other annual payment..... either as a charge on any property of the person paying the same by virtue of any deed or will or otherwise, or as a reservation thereout...."

In the case decided by the Supreme Court to which I referred at the beginning, what fell to be considered was a municipal property tax which was found to be assessed on an annual basis by reference to the annual value of the property every year, though the payment was to be made in half-yearly installments. The present question therefore did not arise and did not require to be decided. But in two paragraphs of the judgment, the Supreme Court referred, apparently with

approval to the statement of the law in two English decisions which includes a statement that as to whether a payment is annual, the quality of recurrence is the deciding factor. "In *Moss Empires Ltd. v. Inland Revenue Commissioners*," observed the Supreme Court, "it was held by the House of Lords that the fact that certain payments were contingent and variable in amount did not affect the character of their being annual payments and that the word 'annual' must be taken to have the quality of being recurrent or being capable of recurrence.

In *Cunards Trustees v. Inland Revenue Commissioners* (the reference in the authorised reports is wrong), it was held that the payments were capable of being recurrent and were therefore annual payments within the meaning of Schedule D, Case III, rule 1 (1) even though they were not necessarily recurrent year by year and the fact that they carried in amount was immaterial."

It would, therefore, seem that the fact that the alimony was made payable by the consent decree the present case month by month does not prevent it from being "an annual payment" or "annual charge" as contemplated by section 9 (1) (iv). It is not that the assessee was making it an annual payment by the simple device of multiplying the monthly sum by twelve, but the quality of being annual was inherent in the nature of the payment itself. The word "annual," as used in taxing statutes, must be taken to mean payments, in whatever kind of installments paid, made every year in discharge of a liability incident to that year, if it has to be made during more than one year, whether consecutively or otherwise. A payment is annual if, as was pointed out in the last of the cases I mentioned a few moments ago, it has the quality of recurrence in different years, although it might not be in every one of a succession of years. It is also not necessary that its quantum should be fixed by reference to a whole year. The illustration given by Allsop, J., in the case of *Gappumal Kanhaiyalal v. Commissioner of Income-tax, C. P. & U. P.*, appears to me to be as happy as apposite. He said, what Rowlatt, J., had said *inter alia* in the case of *Ryall v. Hoare*, *Ryall v. Honeywill* that the word "annual" was used in connection with statutes in the same sense as that in which the Christmas festival was called annual or the Dasehra festival was called annual. It appears to me that both on principle and on authorities, it must be held that the payment in the present was an annual charge within the meaning of section 9 (1) (iv) and that the contention of Mr. Meyer to the contrary which he himself did not press in the end, must be overruled.

I would only add here that the word "charge", as used in section 9 (1) (iv), must mean payment and not security. The relevant words of the section are : "where the property is subject to an annual charge.... the amount of such charge." Clearly, the phrase "the amount of such charge" indicated that the word "charge" used in the earlier phrase also means payment. It would be singularly inappropriate to use the word "charge" if security was intended, for "annual security" would be wholly meaningless. That the meaning is "payment" would also seem to be clear from

the explanation appearing after clause (vii) of the sub-section where it is said that the expression "annual charge" in clause (iv) of the sub-section where it is said that the expression "annual Charge" in clause (iv) does not include any tax in respect of property or income from property, if such tax is of a certain kind.

The third point urged by Mr. Meyer was that the charge contemplated by section 9 (1) (iv) could not be a charge voluntarily created. His argument was that the charge which the section had in view was a charge imposed on the property by some force other than the will of the assessee and that it could not possibly be a charge created by the assessee himself out of his own freewill. It was pointed out that the Act did not permit deduction of the personal expenditure of an assessee although the expenditure might be on account of liabilities owed to other persons and it would be strange if an assessee could contrive to secure an exemption from tax in respect of such expenditure by simply charging some property with it in favour of the persons to whom he owed the liabilities. Taking the facts of the present case, it was contended that if the assessed did not execute the deed of charge but had simply made the payment under the terms of the consent decree, he could not possibly have claimed a deduction of the amount in computing his taxable income. Could the section have intended, it was asked, that a mere creation of a charge by the assessee himself would so alter the grounds of his liability for tax under the Act that it was thought proper and correct to make a deduction of the payment available to him ?

Considered on principle and against the background of the general scheme of the Act, the argument of Mr. Meyer would seem to deserve careful consideration. But in a taxing statute, there is no room for any intendment or presumption or balancing of equities. One has merely to look at the terms employed, look fairly at the language used and ascertain what the statute says. If it speaks clearly to a certain effect, then it is wholly immaterial that what it says does not appear to accord with the principle upon which other parts of the Act appear to have proceeded of that the assessee gets what seems to be an undeserved advantage.

It is to be borne in mind that what section 9 (1) (iv) provides for is a deduction of certain sums out of the assessee's income, after the income had become his. The broad ground that where there is only an application of the income, there can be no claim to exemption from tax or deduction in the computation of the income is, therefore, not available as an argument against literal construction of section 9.

It is also to be noticed, as I pointed out to Mr. Meyer quite early in the course of the argument, that clause (iv) of section 9 (1) provided not merely for the deduction of an annual charge but also for the deduction of any interest payable on mortgages to which the property is subject. There can be no question that ordinarily speaking and save in the case of a statutory mortgage, which are rare, the creation of a mortgage is a voluntary act of the mortgagor. The provision for the

deduction of the amount of an "annual charge", even if voluntary charges are included, is not, therefore, a singular feature of the clause, but it has a companion in the provision for the deduction of the interest payable on mortgages. It struck me at one time, as the argument proceeded, that, probably, the section could be reconciled with the ordinary notions of liability to income-tax, if it could be construed as contemplating only mortgages or charges existing at the date when the assessee had acquired the property. I must say, however, at once that the language employed by the Legislature does not admit of such a limited construction, but it is in every respect unqualified. As a matter of curiosity and with a view to a correct appreciation of the background against which the clause may fairly be read, I tried to ascertain the history of the section to which I may briefly refer. I am not doing so in aid of the construction of the clause, because I cannot make the elementary mistake of referring to either reports of select committees or proceedings in the Legislature for the purpose of interpreting a legislative provision. The clause will have to be construed by its own words and the intention of the Legislature has to be ascertained from those words which are the only repository of the Legislature's intention. What I am referring to as the history of the section is only incidental and I am referring to it at all because I consider it not unuseful to take a look at the background.

Before the Amendment Act of 1939, the clause read as follows :

Clause (iv) : "where the property is subject to a mortgage, or other capital charge, the amount of any interest on such mortgage or charge; where the property is a subject to a ground rent the amount of such ground rent and where the property has been acquired with borrowed capital, the amount of any interest payable on such capital and not specifically charged upon the property itself.

The Income-tax Enquiry Committee of 1936 had to consider the provision in Chapter V of their report and they made the following observations :

"Although, we understand, the Second Income-tax Amendment Act of 1933 was intended to provide for the allowance to the same extent as interest, of annual payments charged on the property, the wording of section 9 (1) of the Act does not provide for any charges other than interest and ground rent, and we suggest that the clause in question should be amended accordingly.

We recommend also that the restriction which we suggest in Chapter VIII, section 2, as regards interest paid, should be extended to the allowance of other charges."

In section 2 of Chapter VIII, the Committee observes as follows :

"An anomaly arises from the fact that the interest paid on money borrowed for private purposes

may be allowable if the loans is secured on real property but not otherwise, and we recommend that interest should be allowable in arriving at the income from property only when it is paid in respect of a mortgage or other charge to which the property was subject when it was acquired by the assessee, or in respect of money borrowed specifically for the acquisition of the property or for its repair, renewal or reconstruction."

It will thus be seen that the Committee noticed the anomaly of making interest paid on money deductible, merely because the loan was secured on real property and they recommended that the deduction should be allowed when the assessee took the property with the mortgage liability and, therefore, with the liability for the payment of the interest, so that his real income from the property was minimised to the extent of the interest payable. As to annual payments made under charges, the Committee made the same recommendation on the same basis.

On the lines of the Committees recommendations the first Amendment Bill of 1938 introduced on the 4th of April of that year, proposed that for the odd clause (iv) of section 9 (1), the following clause should be substituted :

"(iv) Where the property was at the time of its acquisition by the assessee subject to a mortgage or other capital charge, the amount of any interest on such mortgage or charge; where the property was at the time of its acquisition by the assessee subject to an annual charge, not being a capital charge, the amount of such charge; where the property is subject to a ground rent, the amount of such ground rent; and where the property has been acquired, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital."

The rest of the section then proposed is not material."

On the proposed section the Notes on Clauses contained the following comment :

"At present, interest on any capital charge on the property is allowed even though the capital was borrowed for private purposes; and interest on capital borrowed for the purpose of acquiring the property is allowed even though there is no charge on the property. The amended clause (iv) alters the position so as to allow only interest on a charge to which the property was subject at the time of acquisition by the assessee and interest on capital borrowed for the purpose of acquiring, repairing, renewing or reconstruction the property. It further allows - what is not now allowed - an annual charge not being a capital charge to which the property was subject at the time of its acquisition by the assessee."

The Bill went to a Select Committee and the Committees comment on the proposed clause (iv) of section 9 (1) was as follows :

"In clause (iv) of sub-section (1) of section 9, as re drafted by the Bill, we have removed the words `was at the time of its acquisition by the assessee in both places where they occur, and substituted the word `is. The effect is to secure, as the Act does at present, that the allowance is claimable, no matter when and for what purpose the mortgage or charge arises."

The rest of the comment is not material.

It would appear that the change made by the Select Committee was accepted by the sponsors of the amendment Bill, because the second Amendment Bill of 1938 presented on the 10th November, 1938, set out the proposed clause exactly in the form into which it had been altered by the Select Committee. Subsequently, the Legislature when passing the amendment Act of 1939, passes the clause in the same form and it is in that form that it still appears in the Act.

I have referred to this background only for the purpose of showing that the anomaly, which Mr. Meyer made the basis of his argument, was noticed by those who had to consider the clause with a view to its amendment. I am not referring to what the Income-tax Enquiry Committee or the Select Committee said for the purpose of construing the clause as we find it, because what is relevant is the intention of the Legislature and not the intention of any Committee or even of the sponsors of the Amendment Bill. The history only gives the background, as I have said, of the events which led to the formation of the clause in its present shape. In constructing the clause as it stands the language in which it is expressed must be our only guide and the language does not, in my view, afford any room for the limitation sought to be imported into the clause by Mr. Meyer. Here, the property is undoubtedly subject to a charge. The only two qualifications which the clause introduces and recognizes are that it must be an annual charge and must not be a capital charge. I have already shown that the charge in the present case is an annual charge and I have also pointed out that whether or not it is a capital charge is not within the ambit of the present reference. If then there is a charge and such charge is an annual charge and if no question arises as to whether it is a capital charge, the clause ordains that the assessee shall be entitled to a deduction of the amount of the charge in the computation of the annual value of the properties which is, in terms of section 9 (1), to be taken as his income therefrom. I am free to confess that although the language used by the Legislature does not seem to me to justify or even leave any room for any alternative construction, the two amounts namely the amount of interest on mortgages and the amount of an annual charge which the clause recognises as admissible allowances, are palpably of a different nature from the other amounts admissible as deductions. The last words of the clause, for example, provide for interest on capital with which property has been acquired or which has been expended on the property. Clause (v) provides for a deduction of the land revenue payable. Clause (vi) again provides for deduction charges. The section, it is true, is not a charging section, but a section concerned with the computation of the assessable

income derived from a particular source. It is intelligible that such a section should aim at the ascertainment of the real income of the assessee which comes into his hands from the source concerned and, therefore, amounts which the assessee has to pay in discharge of liabilities which, so to say, run with the property and which must be discharged in order to its enjoyment, can easily be seen to be reasonable deductions. The same cannot obviously be said as to charges created by the assessee voluntarily for the payment of his personal liabilities to other persons or interests on mortgages created by him. But the section says and in my view says in unmistakable terms, that such charges and amounts of interest are also deductible and so must we hold. The third contention of Mr. Meyer must also be accordingly overruled.

On this question there is a decision of the Bombay High Court in the case of Prince Khanderao, Gaekwar of Baroda v. Commissioner of Income-tax, Bombay City, on which Mr. Chakravarti for the assessee strongly relied, but to which I have not referred so far. I have not done so because it seems to me that although the Department contended in that case that a voluntary charge was not within the meaning of section 9 (1) (iv) of the Act and although the Court ruled in general terms that all that the section required was that there should be a valid and legally enforceable charge and not also that it should be a compulsory charge, the decision is not really useful as a solution of the problem before us. What the learned Chief Justice and his brother Judge said in that case in repelling the actual argument of the Department was that, after the creation of the charge, the payments under it were no longer voluntary. It seems to me that to dispose of the questions in what way is not to meet the real difficulty. What, according to the Department, takes payments under a voluntary deed of charge out of section 9 (1) (iv) is not that, as made under the deed, such payments are voluntary, but that the creation of the charge was itself voluntary. The Bombay decision does not furnish an answer in this question, but it must be answered against the Department on the language of the section, as I have already indicated.

I have to add that during the pendency of the reference in this Court the assessee, H. M. Thadeus, died leaving a will under which the Imperial Bank of India, now defunct, was constituted his executor and trustee. The Imperial Bank of India was duly substituted in the record of these proceedings in the place of the deceased assessee and after the Imperial Bank of India ceased to exist and the State Bank of India took its place, an application was made for the substitution of the said Bank which was ordered by us and has been made.

For the reasons given above, the answer to the question referred to this Court must, in our opinion, be in the affirmative.

The assessee is entitled to the costs of this reference and costs of the connected applications.

SARKAR, J. - I agree.

Reference answered in the affirmative.