
(1923) 10 MAD CK 0002
In the Madras High Court

Best and Co. Ltd.

APPELLANT

Vs

The Corporation of Madras

RESPONDENT

Date of Decision : 19-10-1923

Acts Referred:

Stamp Act, 1899 — Section 20

Citation : AIR 1924 Mad 420

Hon'ble Judges : Schwabe, C.J.; Spencer, J.; Ramesam, J.; Devadoss, J.; Coutts Trotter, J

Bench : Full Bench

Judgement

Spencer, J.—I have perused the judgment of my learned brother and I regret that I am unable to agree with his conclusions.

2. I agree with the opinion of the learned Chief Judge of the Court of Small Causes that Madras Act IV of 1919 does not either expressly, or by

implication, confer on the Commissioner of the Corporation power to determine the value in the currency of British India of any sum, expressed in

any currency, other than that of British India and that under Rule 7 he can only impose assessment u/s 110, in respect of those companies, the

paid-up capital of which is expressed in rupees. In this view, the first two questions of the case stated for the opinion of the High Court, under Rule

17 of Schedule 4, will have to be answered in the negative and it becomes unnecessary to express an opinion on the third question.

3. On three points, I am constrained to differ from my learned brother. In the first place, I do not consider that it is legitimate for us to hazard a

conjecture, as to what the legislature may have intended, when they framed the Act and the Rules in this manner. For it probably did not occur to

anybody at the time that some day a difficulty might arise, from the omission to

provide means for converting capital stated in foreign currency into rupees, and as Rowlatt, J., observed in *Cape Brandy Syndicate v. Inland Revenue Commissioners* [1921] 1 K.B. 64:

In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.

4. Next it has been suggested that the Commissioner in a particular case might estimate whether the capital of a foreign company would, if

calculated in rupees, amount to more than twenty lakhs of rupees or less than one, and that it would always be open to the company to show that

his estimate was wrong. But if the rate of exchange is not fixed and if the date when the calculation is to be made is not given, with a varying

exchange, who is to say whether the Commissioner was right or wrong? In cases on the border line, a company might be liable to taxation on one

day and not liable the next day.

5. Then lastly, my learned brother finds that Section 110 is very clear; and, if I understand him rightly, he thinks that the Madras City Municipal

Act as compared with the Madras District Municipalities Act gains in clearness by the omission in the City Act to define the meaning of "Company

in the definition clauses. I do not appreciate the suggestion that the omission to define a technical expression makes the matter more clear. But I

agree that the important question here is to decide what is meant by the words in Section 110 "every incorporated company transacting business

within the city." In the absence of any definition, I do not see why we should not give the word "company" the same meaning as it has in the Indian

Companies Act, Section 2(2), viz., a company formed and registered, under that Act, or an existing company, Section 15 of Act provides for the

registration of companies and Section 23 for the certifying of incorporation; and it is, therefore, only reasonable to suppose that by an

incorporated company" in Section 110 of Madras Act IV of 1919, a company registered u/s 15 of the Indian Companies Act and incorporated

u/s 23 is intended. Section 253 declares what companies are authorized to be registered. Section 277 deals with the Requirements of the Act, as

to companies established outside British India, which proceed to establish a place

of business within British India. As u/s 22, only the Registrar of a province, in which the registered office of the company is situated can register a company and as the schedules to the Act apply only to companies

whose capital is in rupees, I conceive that a Registrar would find considerable difficulty, if not inability, in dealing with the application for

registration of a company whose registered office was not in India and whose capital was not stated in rupees.

6. By Section 20 of the Indian Stamp Act, the legislature provided that ad valorem duty, expressed in a foreign currency, should be calculated,

according to the current rate of exchange on the day of the date of the instrument. But the Indian Companies Act and the Madras City Municipal

Act contain no provision for converting foreign currencies into rupees, if the machinery for conversion of currency is lacking, it becomes impossible

to say what the provisions of the Act, including the schedules--for the rubs must always be read in conjunction with the body of an Act--see Mani

Mohan Mandal v. Ramtaran Mandal (1916) 43 Cal. 148, mean, when they speak of rupees, in relation to companies whose capital is not

expressed in rupees.

7. I am, therefore of opinion that the Indian Companies Act and the Madras City Municipal Act cannot be applied to companies, which have not a

place of business, situate in British India, as they cannot get themselves registered in British India, until they open a place of business in this country;

and so they cannot become ""incorporated companies"" within the meaning of Section 110 of Act IV of 1919.

8. Mr. Aingar conceded that as ""persons"" include ""companies"" u/s 3, Clause (39) of the General Clauses Act, such companies are liable to pay

taxes, u/s 111. Therefore the result of my conclusion will not be that they will escape making any contribution whatever to the revenues of the

Corporation, and the equity of the claim made by the assessed company has thus no bearing on the decision of the question, that has been raised

and referred to us.

Devadoss, J.

9. The Chief Judge of the Small Causes Court, Madras, has submitted the following questions of law for the opinion of the High Court:

1. Whether or not incorporated companies, which transact business in the City of

Madras and whose paid-up capital is in a currency, other than that of British India, are Uable to be assessed to the tax on companies, u/s 110 and Rule 7 of the taxation Rules in 8ch, IV of the Madras City Municipal Act, 1919?

2. Does the proviso to Rule 7 apply to all companies transacting business within the city, irrespective of their capital being in British Indian currency or any other currency t

3. What is the meaning of expressions ""gross income,"" bind ""gross income received in or from the city"", in the proviso to Rule 7? Does the latter expression include income arising out of business, transacted outside Madras, the proceeds whereof are transmuted to and received by the agents of the incorporated company in Madras, where they have their head office.

10. This reference arises out of an appeal presented by Messrs. Best and Co., Agents of the Noble's Explosives Company, Limited, against the levy of companies" tax, by the Commissioner of the Madras Corporation on the grounds:

(1) that the paid up capital of the Nobel's Explosives Company, Limited, being in sterling and not in rupees, the scale of assessment under Rule 7 of Schedule IV of the Act, does not apply and the company is not therefore liable to the tax on companies under the aforesaid Rule (3), that it contrary to the above contention it is held that the company can be assessed under Rule 7, this assessment can be made under the proviso to that Rule and the proper assessment to be imposed for the half-year in question is Rs. 35 only, as the gross annual income of the company did not exceed Rs. 5,000.

11. The learned Chief Judge held that the Noble's Explosives Company, Limited, was not liable to be assessed, u/s 110 and Rule 7 of Schedule 4, and allowed the appeal. He is: of opinion that the power to determine the value in currency of British India of any sum expressed in any currency other than that of British India, has not either expressly or by implication been conferred on the Commissioner and that under Rule 7, the Commissioner can impose assessment, in respect of those companies only, the paid-up capital of which is expressed in rupees.

12. The first question submitted for the opinion of the High Court has been argued at considerable length. The contention of Messrs. Best & Co.,

Agents of the Nobel's Explosives Company, Limited, is that only companies whose share capital is expressed in terms of Indian currency are liable

to assessment, under Rule 7 of Schedule 4 of the Madras City Municipal Act and the Nobel's Explosives Company, Limited, being an English

Company, whose share capital is expressed in terms of British currency, cannot be brought within the operation of Rule 7 of Schedule 4. The

Nobel's Explosives-Company, Limited, has a paid-up capital of ₹2,793,412. It was incorporated in England and it carries on a world-wide

business. The question is whether an English Company, such as the Nobel's Explosives Company, Limited, is not liable to be assessed, under the

Madras City Municipal Act, Section 110, by reason of its share capital being expressed in terms of English currency and not in terms of the

currency in India. Section 110 is under the heading "Tax on Companies" and is in the following terms:

Every incorporated company, transacting business within the city for profit, or as a benefit society, shall pay, by way of license fee, in addition to

any other license fee that may be leviable under this Act, a half-yearly tax on its paid-up capital, on the scale shown in the taxation Rules in

Schedule 4; but in no case exceeding one thousand rupees, if and as soon as it has transacted business in the city, for the period prescribed in

Section 113.

Explanation.--Whenever a company has an office, agent or firm to represent it for purpose of transacting business in the city, such company shall

be deemed to transact business in the city, and such office, agent, or firm shall be liable for the tax, in respect of the company's business, whether

or not such office, agent, or firm has power to make binding contracts, on behalf of the company.

13. Rule 7 of Schedule 4 is headed:

Part 2.--Assessment of Companies--Section 110.

and is in the following terms :--

Companies shall be assessed by the Commissioner, on the following scale.

14. It has two sub-headings: "paid-up capital" and "half-yearly tax:" then another heading;

Lakhs of rupees and a scale,

Rs.

A. More than twenty 1,000

B. More than ten, less than twenty 500

C. More than five, less than ten ... 250

D. More than three, less than five, 150

etc., etc.,

G. Less than one ... 30

15. There is also a proviso to the effect: "Provided that any company, the head office, or a branch, or principal office of which is not in the city and

which shows that its gross income received in or from the city has not in the year immediately preceding the year of taxation exceeded,

(a) Rs. 25,000--shall pay only Rs. 125.

(b) Rs. 15,000--shall pay only Rs. 75.

(c) Rs. 5,000--shall pay only Rs. 25.

16. It has been conceded, and I think very rightly, by Mr. R.N. Aingar, who appeared for Messrs. Best and Co., that if Section 110 stood alone,

Nobel's Explosives Company, Limited, would be liable to pay the tax on companies; but he contended that inasmuch as Rule 7 had referred only

to paid-up capital in lakhs of rupees, the scope of Section 110 had been narrowed by Rule 7. He further contended that there was no provision in

the Act, for converting capital expressed in terms of foreign currency, into the British Indian currency, such as that contained in Section 20 of the

Stamp Act, and it must therefore be taken that the legislature intended that only companies, whose capital was expressed in rupees should be

assessed. He further contended that it would be very inconvenient to assess companies under Rule 7, when the exchange is fluctuating, as it is now,

and a German, Company with a capital of two million marks, may, at the present rate of exchange, not have a capital of more than a few rupees.

17. The real question is whether a company not registered in British India and whose capital is not expressed in terms of Indian currency is outside

the scope of Section 110. Section 110 is very dear in its terms.

18. It make every incorporated company transacting business within the city for

profit, or as a benefit society liable to pay, by, way of license fee,
a half yearly tax on its paid-up capital, on the scale shown in Schedule. The scope of Section 110 being wide and the provisions being so dear, can it be said that the scope of that Section has been narrowed by Rule 7? Rule 7 does not contain any expression to the effect that) the paid-up capital should be in rupees. AH that it says is that if the paid-up capital is more than twenty lakhs, a certain amount of tax is payable and if it is more than ten and less than twenty, a certain other amount is payable and it gives a scale. Can it be said that Nobel's Explosives Company, Limited, has not got a capital of twenty lakhs of rupees?. The Commissioner has authority to assess the tax and in his opinion, if a company has a capital of more then twenty lakhs, that company is liable to pay a certain amount half-yearly. Any foreign company, whose capital in foreign currency is known, can be easily said to possess a capital of more than twenty lakhs or less than twenty lakhs, or any other sum. Looking at the history of this legislation, it cannot be reasonably contended that the legislature intended, only to assess companies registered in India. In the Madras City Municipal Act, 1884, provision was made for levying professional tax in Section 103 in these terms:

If the Commissioners determine to levy a tax on arts, professions, trades and callings (not being a military profession or calling), and on offices or appointments, every person, who within the city exercises any one or more of the arts, professions, trades or callings, or holds any one or more of the offices or appointments, specified in Schedule A, shall pay, in respect thereof, the sum specified in the said schedule, as payable by persons of the class, in which such person is placed.

19. The relevant portion of Schedule A is as follows:

Joint stock companies and other companies carrying on any trade or business having gain for its object, or as benefit societies, and the capital of which exceeds twenty lakhs of rupees 500 rupees.

20. In the Madras City Municipal Act of 1904, Section 115, was enacted for the levy of taxes and tolls. Section 120 of that Act is in the following terms:

If the Corporation determine to levy the tax specified under Clause A of Section 115, every person, who within the city exorcises any profession,

art, trade or calling or holds any office or appointment, bringing him within one or more of the classes of persons specified in Schedule 5, shall pay

the sum specified in the said schedule, as payable by persons of the class, in which such person is placed.

21. In Schedule 5 (A), the wording of the Act of 1884 is reproduced. In the present Act, the same wording is used, with a slight modification.

Instead of repeating under the headings of A.B.C. etc., the provisions as to companies, an abbreviated form is introduced with a heading ""lakhs of

rupees"" and the abbreviated forms, more than twenty, more than ten and less than twenty, more than five and less than ten, etc. It is clear from this

that the legislature did not intend to alter the law as it stood, both under the Act of 1884 and under the Act of 1904. It is to be remembered in this

connection that the tax on companies, levied by the Corporation, seems to have been paid without demur, and it is only now that objection is

raised against the assessment u/s 110, Rule 7 of the present Act. Though the conduct of assesseees does not estop them from, or stand in the way

of, raising a legal objection, yet it shows how both the corporation and the companies understood the provisions of the Acts of 1884 and 1904. It

is true that if the amount of tax be small, the companies may not take the trouble of objecting to the assessment. But where the half-yearly tax is

such a large sum, as rupees one thousand, the companies naturally try to escape taxation, if they could.

22. Under the District Municipalities Act, companies, not registered in British India or in the British Dominions, are not liable to pay the

companies" tax. The provisions of that Act are different from those of the Madras City Municipal Act. In the District Municipalities Act of 1884,

tax on arts, professions, trades and callings was levied, by reason of the provisions, contained in Section 53, Schedule A, Clause I, begins thus:

Every person holding any office or appointment, public or private, or employed in any capacity, whose pay, salary or pension amounts to Rs.

2,000 a month or upwards, and every person, falling under any of the following denominations, whose income is estimated to amount to Rs. 3,000

a month or upwards, carrying on business as a company, etc, etc.

23. The word ""Company"" is defined in the Act as meaning:

a company registered under the Indian Companies" Act, 1883, or under the Acts

of Parliament, known under the collective title of the Companies"

Acts, incorporated by an Act of Parliament, or of the Governor-General in Council, or by Royal Charter or Letters Patent.

24. This Act was amended by Act III of 1897. The Amendment Act made no change in the law, as regards professional tax. The Madras District

Municipalities Act of 1920 was passed to consolidate and amend the law, relating to District Municipalities. Section 92 of the Act is in these terms:

If the Chairman publishes a notification, u/s 80 that a companies" tax shall be levied, every company transacting business within the municipality lor

profit or as a benefit society shall after the date specified in the said notification pay a half-yearly tax on its paid-up capital on the scale shown in

Schedule 4, if and as soon as in has transacted business in the municipality for the period laid down in Schedule 95.

25. Schedule 4, Rule 16 has the heading of ""Assessment of companies."" Companies shall be assessed by the Chairman on the following scale:

Paid-up capital. Half-yearly tax.

Rs.

A, more than ten lakhs of rupees ... 250

and the wording is almost similar to the wording in the Madras City Municipality Act of 1919. In Section 92 of the Act, the expression is ""every

company transacting the business"" and the word company is defined as meaning:

a company registered under the Indian Companies Act, 1913, or under the Acts of Parliament known under the collective title of the Companies

Acts or incorporated by an Act or of Parliament, of the Governor-General in Council, or by a Royal Charter, or Letters Patent.

26. It is quite clear, therefore, that companies which do not come within the definition of the wording as given in the Act or not liable to pay tax on

companies. It has been held by Kumaraswami Sastri, J., in C.S. Nos. 796 and 1055 of 1921, that companies like the Singer Sewing Machine

Company and the Standard Oil Company of New York are not liable to assessment, u/s 92 of the District Municipalities Act, in respect of

business carried on within the limits of a municipality. In the Madras City Municipal Act, there is no definition of company and as Section 110

speaks only of an Incorporated Company transacting business within the city I

think that the intention of the Legislature is quite clear and that is to bring within the operation of Section 110 all Incorporated Companies, transacting business within the city, whether they be incorporated in British India, or in the British Isles, or anywhere else. The conditions necessary are: they should be incorporated and they should transact business within the city for profit or as a benefit society and should carry on business, as required by Section 113, in order to make them liable to the tax on companies. When Section 110 is so clear in its terms, can it be said that its scope has been narrowed by implication only, by reason of the expression ""lakhs of rupees"" being used as regards the paid-up capital in Rule 7? The Commissioner is empowered to tax companies and he has to determine what the capital of a company is. I do not think that there is any insuperable difficulty, in the Commissioner arriving at a satisfactory decision, as regards the amount of the capital of a company in rupees, when the capital is expressed not in terms of Indian currency but of English, or foreign currency. Considering the wide margin that is given in the rule, it is not right to hold that companies, which have not got a capital expressed in Indian currency, are outside the scope of Rule 7. Suppose a company is formed and registered in Travancore and its capital is expressed in the currency of the State, viz., Chakrams, or a company is formed and registered in the Native State of Hyderabad and its capital is expressed in terms of Sicca rupees, could not the Commissioner easily ascertain whether such a company carrying on business in the city of Madras has or has not a capital of more than twenty lakhs, or less than ten lakhs of rupees, or any other sum? It is urged that the Madras City Municipal Act is a taxing statute and should be construed strictly. It is a well-established principle of construction that all penal statutes, statutes which impose a penalty, and taxing statutes should be construed strictly; that is, where it is not quite clear that a subject is liable to a tax or penalty, he should not be made liable by any extended or loose construction of the statute. But this principle does not stand in the way of considering whether a taxing statute embraces within its operation certain classes of persons. Mr. Aingar referred to the observations of Rowlatt, J., in *Cape Brandy Syndicate v. Inland Revenue Commissioners* [1921] 1 K.B. 64. It is urged by Sir William Finlay that in a Taxing Act clear words are necessary in

order to tax the subject. Too wide and fanciful a construction is often sought to be given to that maxim, which does not mean that words are to be unduly restricted against the Crown, or that there is to be any discrimination against the Crown in those Acts. It simply means that in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.

27. Applying the observations of the learned Judge to the present case, can it be said that an incorporated company, carrying on business within the city of Madras, does not come within the operation of Section 110 and Rule 7? What is there in the Rule to indicate either expressly or impliedly that the expression "Incorporated Company" should be held to mean incorporated only in British India? The words of the statute are clear and when there is nothing in it to imply an intendment to exclude any person or class, coming within the clear language of the section, it would be doing violence to that language, by importing something, not warranted by anything in it, or in any other portion of the enactment. The mere fact that the liability of the companies' tax is on its having a capital of certain number of lakhs is no justification for holding that the company should have its capital expressed in terms of Indian currency.

28. In *Corporation of Calcutta v. Standard Marine Insurance Co.* (1895) 22 Cal. 581, an argument was put forward that a company not registered in British India was not liable to be assessed. The learned Advocate-General of the day, Sir Charles Paul, urged this argument:

In the second schedule, the words used are: "the paid-up capital of which amounts to 10 lakhs of rupees or upwards." The word "amounts" has been advisedly used. It means "is equivalent to." Companies with capital in foreign coin are intended to be included.

29. But the point was not decided and it is urged that the Bengal Act was subsequently amended by the introduction of the words "equivalent to."

In my view, it is unnecessary to use the words "equivalent to," for all that the Rule says is that if the capital is more than twenty lakhs a certain amount is payable, and if less than twenty lakhs of rupees, some other amount is payable. The case of *Charges James Partington v. The Attorney-*

General 4 Eng. And Irish App. Cases 100 was relied upon by Mr. Aingar in support of his contention. The observations of Lord Cairns as to the

interpretation of fiscal statutes is entitled to the greatest weight:

I am not at all sure that, in a case of this kind--a fiscal case--form is not amply sufficient: because, as I understand the principle of all fiscal

legislation is this: If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to

the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject

is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible, in any statute,

what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you can simply adhere to the

words of the statute.

30. A careful perusal of the judgment of the case shows that the House of Lords upheld the contention of the Crown that if two administrations are

taken out, stamp duty is payable in respect of both. The facts of the case are: One Mary Shard died intestate in England in 1819. No one

appeared to administer her estate and Mr. Maule, the then Solicitor to the Treasury, took out letters of administration for that purpose. The next of

kin to the deceased was Mrs. Isabel Cook, the wife of Mr. Ellis Cook, both of whom had always been domiciled in the United States. Mrs. Isabel

Cook died in 1825. She had not taken out letters of administration to Mrs. Shard. Her husband died in 1830. After his death, his children applied

to Mr. Partington, to take proceedings against the Solicitor to the Treasury, to recover from him the property which had belonged to Mr. Shard

and which they claimed under their mother. Mr. Partington took out separate letters of administration to the estate...first of Ellis Cook and then of

Isabel Cook. Each grant was dated on the 22nd July, 1855, and the form of each was as follows:

We do grant full power and authority to you to administer and faithfully dispose of the said goods, etc, which belong to his estate.

31. In the grant relating to the mother's estate, the concluding words were:

For the use, etc., of James Cook now residing in Vermont in North America, one of the natural and lawful children of the said Isabel Cook

deceased, etc, etc.

32. Mr. Partington then instituted a suit in the Chancery, against Mr. Reynolds (who had in the meantime succeeded Mr. Maule as Solicitor to the

Treasury) and the Court having found James Cook to be the next of kin declared Mr. Reynolds to be chargeable with the principal sums of the

assets. The Commissioners of Inland Revenue claimed that stamp duty should be calculated on a value including all accretions from the death of

Isabel Cook to the date of the administration, namely, the 23rd July, 1855, and also claimed that the grant of the letters of administration, for the

effects of the late Ellis Cook, who survived his wife, should be stamped at the same rate. The Court of Exchequer Chamber held that duty was

payable in respect of both the estates. The House of Lords affirmed the judgment of the Court of Exchequer Chamber; when two administrations

are granted, stamp duty is payable on both. Whether the devolution of the estate of one deceased person has been reduced to possession or not,

when administration is sought for the estate of a person, on whom some other estate has devolved, stamp duty is payable on the values of the

estate of the person, who died intestate, as well as for the administration of the estate of the person, on whom the previous estate devolved, though

he had not taken out letters of administration. Their Lordships construed the provisions of the statute strictly and upon the strict construction, both

the estates were liable to pay stamp duty. Lord Chelmsford agreed with the Lord Chancellor, in the order proposed and observed:

With respect to the liability to the full duty, upon both the administrations taken out by the appellant, it was admitted by his learned Counsel that if

the question had arisen with respect to subjects of this country, no doubt would have existed as to the double duty being payable. But it was

contended, that as Isabel Cook and her husband Ellis Cook were domiciled Americans, it was not necessary to take out administration to Ellis

Cook, in order to obtain administration to Isabel Cook: that the husband was not an interested party; that the wife's administrator might give a

sufficient receipt and discharge; and that the whole of the duty of the administrator was to remit the money received by him, under the

administration) to America, to be distributed there to the person entitled. I must confess my inability to follow this reasoning, or to understand how

the question of domicile can enter into the consideration of the grant of letters of administration in this country.

33. *Mani Mohan Mandal v. Ramtaran Mandal* (1916) 43 Cal. 148, was relied upon, as authority for the contention, that Rule 7 controlled the

scope of Section 110. In that case, the question was whether a Court had the power of remand, not expressly given to it, under Order 41, Rule 23

of the Civil Procedure Code. Section 107 begins thus.

Subject to such conditions and limitations, as may be prescribed, an appellate Court shall have power (a) to determine a case finally, and (b) to

remand a case, etc.

34. "As prescribed" means as prescribed, by the Rules to be framed hereunder, Under Order 41, Rule 23, the power to remand a case is limited.

Sir Lawrence Jenkins makes the following observations at page 152:

The body of the Code is fundamental and is unalterable, except by the legislature; the Rules are concerned with details and machinery and can be

more readily altered. Thus it will be found that the body of the Code creates jurisdiction, while the Rules indicate the mode in which it is to be

exercised. It follows that the body of the Code is expressed in more general terms; but it has to be read in conjunction with the more particular

provisions of the Rules.

35. Section 110 of the Madras City Municipal Act is not subject to the Rules prescribed under that rule, or any other provisions of the Act. It

simply says that the tax shall be on the scale shown in the taxation Rule in Schedule 4. The liability to pay tax is imposed by Section 110; the

amount of the tax is to be determined according to the scale given in the schedule. So, the Rules in Schedule 4 cannot take away the liability to pay

the tax and a reasonable construction, should be placed both upon Section 110 and upon Rule 7, in order to avoid a construction, which is

repugnant to the object of the section and the rule.

36. As a good deal of argument has been addressed to us, upon the construction of taxing statutes, I shall deal briefly with a few cases, which bear

on the point. In Maxwell's Interpretation of Statutes, there is this passage at page 410:

When one Section enacted that if the plaintiff recovered a sum "not exceeding" ₹½5, he should have no costs, and another, that if he recovered

"less than" ₹½5 and the Judge certified, he should have his costs: the literal meaning of the last clause leaving it inoperative where the sum

recovered was exactly ₹½5, it was held, to avoid imputing so incongruous and improbable an intention to the legislature, that the words "less than"

should be read as equivalent to "not exceeding", the general principle being that Acts of Parliament should be construed with a candid mind and

with an intention to understand them--Garby v. Harris (1852) 21 L.J. Ex. 160.

37. At page 420 there is this following passage:

So, XXXV, Geo. III, c. 101, Section 2, which empowered Justices to suspend, in case of sickness, the order of removal of any pauper, who

should be "brought before them for the purpose of being removed," was construed as authorizing such suspension, without the actual bringing up of

the pauper before the justices, as the literal construction would have defeated the humane object of the enactment.

38. In these cases, the Court departed from the strict language of the enactment, in order to give full effect to the intention of the legislature, as

expressed in the Section and in order to avoid an absurd construction, or to prevent anything which is against humane practice.

39. I have referred to these cases, only for the purpose of showing that the Court is not debarred from giving a reasonable construction to a

statute. I am not overlooking the principle that taxing statutes should not receive an equitable construction. In Halsbury's Laws of England, Vol 27,

page 148, the Law is summed up thus:

It is the duty of Judges to give fair and full effect to statutes, without regard to the particular consequence in the special case and not to indulge in

conjecture, as to what Parliament would have done, if a particular case had been presented to its notice, for it may be presumed that the framers of

a statute contemplated matters of ordinary occurrence.

40. It has been urged that there is no provision in the Act, for converting the foreign currency into Indian currency, as is contained in the Stamp

Act, as the legislature did not intend to tax companies whose capital is not in rupees. By Section 20 of the Stamp Act, an arbitrary date is fixed for

conversion of foreign currency into Indian currency. The Stamp Act imposes an ad valorem duty, on certain classes of documents, and it is

necessary to calculate the duty as exactly as could be done, and for that

purpose, the legislature has fixed a certain date for such calculation. Under the Madras City Municipal Act, Section 113, the tax becomes payable, if the company carries on business for 60 days, and on the expiry of the 60th day, the tax could be demanded, and the Commissioner could after that date assess the company u/s 110, Rule 7. It is not likely that there could be any great fluctuations in the course of a month or two, and the extraordinary conditions, prevailing in Germany and in Austria now, should not be taken to be ordinary conditions prevailing in the exchange market. Owing to extraordinary circumstances, the mark has depreciated very much and similarly the Austrian and Russian currency. But till two years ago, there were not such abnormal conditions prevailing and there would be no hardship, if there is a slight fluctuation, in the value of the foreign currency, in relation to the Indian currency, between the date on which the company becomes liable to pay the tax and the date on which it is assessed. In *Hyde v. Johnson* 2 Bing. N.C. 776 the facts were:

Plaintiff, in order to recover a debt, barred by the statute of limitation, offered in evidence at the trial, before the Under-sheriff a letter written by the defendant's wife, in her husband's name, at his request, offering to pay the duty by instalments and sent by him to the plaintiff. The evidence was objected to, as not signed by the party "chargeable thereby" within the meaning of 9 Geo. IV, C. 14, Section 1.

41. Tindal, C.J., upheld the contention and observed as follows:

The question turns entirely on the construction of the statute and it amounts in other words to this: does the Statute 9 Geo. IV, C. 14, extend to a writing signed by an agent of the party, or is it confined in terms to a writing "signed by the party chargeable thereby?" Looking at the words of the statute, it is confined in terms to a writing "signed by the party chargeable thereby." * * * Some inconveniences have been pressed in the course of the argument upon our attention in cases, where a total inability of parties to sign may exist; but the nature of the signature which is necessary to comply with the requisites of the statute is such as to make it almost impossible to suppose a case in which a party could not make such a signature, as would satisfy the statute. And after all, in construing a statute, we must not look to cases of very rare and singular occurrence but to those of every day experience, and whatever may be the consequence, we must

interpret the, statute, according to the plain import of the language employed in it.

42. In *Be Hall and Ors.* (1921) 2 Q.B.D. 137, Cave, J., observes with regard to Section 19 of the Patents, Designs and Trade Marks Act of 1883:

I am unable to see in what way our interpretation of the language of the Section can work injustice. A very strong case of injustice arising from giving the language of an Act of Parliament its natural meaning must be made out, before the Court will construe a section, in a way contrary to the natural meaning of the language used; and it will be no injustice, if the result of our decision be to deprive the person who infringes a patent of the right to set up a defence which does not go to the merits.

43. Earl Cairns gives the reason for a strict construction of Taxing Acts in the following terms in *Pryce v. Monmouthshire Canal and Railway Co.* (1878) 4 A.C. 197:

My Lords, the oases which have decided that Taxing Acts are to be construed with strictness and that no payment is to be exacted from the subject, which is not dearly and unequivocally required by Act of Parliament to be made, probably meant little more than this, that, inasmuch as there was not any a priori liability in a subject to pay any particular tax, nor any antecedent relationship between the tax-payer and the taxing authority, no reasoning founded upon any supposed relationship of the tax-payer and the taxing authority could be brought to bear upon the construction of the Act, and therefore the tax-payer had a right to stand upon a literal construction of the words used, whatever may be the consequence.

44. It is contended by Mr. Duraiswami Aiyangar, on behalf of the Corporation, that for the privilege of trading within the city, the tax is payable. It is unnecessary to consider whether the amenities of the city are a sufficient quid pro quo for the tax payable by the company. In this connection, it may be instructive to see how American Courts construe legislation of this kind. In America, Revenue Laws are not regarded as penal laws, in the sense that it requires them to be construed with strictness, in favour of the defendant. They are regarded rather in their remedial character, as intended to

prevent fraud, suppress public wrong and promote public good and

so construed as to most effectually accomplish those objects: See, Maxwell's Interpretation of Statutes, 6th Edn., page 509.

45. Without subscribing to the doctrine embodied in the above passage, I think a reasonable construction should always be adopted, without

straining the language either in favour of one party or the other.

46. An argument has been advanced by Mr. Aingar that the Registrar of Joint Stock Companies would refuse to register the memorandum of a

Company, in which the capital is expressed in terms not of British Indian currency, but of some other currency, on the ground that there is no

machinery, by which he could convert the foreign currency into Indian currency and that the forms appended to the Act contain words and

expressions which are applicable only to the Indian currency. Whether the Registrar would refuse to register a Company, whose share capital is

expressed in a foreign currency or not, is a question which need not be considered here.

47. In the year 1884, there could not have been many companies registered under the Indian Companies Act, trading within the city of Madras

and the Legislature could not be said to have overlooked the fact that there were a number of English and American Companies, trading within the

City of Madras, and that it intended that the scope of the enactment in 1884 should be limited to the Indian Companies only. Considering the long

time that has elapsed since the Act of 1884 was passed, and considering the fact that no attempt was ever made, so far as it was brought to our

notice, to dispute the liability of the Company to pay companies' tax, is it reasonable to suppose that the intention of the Legislature was not to tax

all incorporated companies? The inconvenience that may be felt in one or two cases in converting foreign currency into Indian currency for the

purpose of assessment need not stand in the way of a reasonable construction of the Statute. There may be companies incorporated, according to

the law of Brazil or Japan, or any other country, but if it is an incorporated company, it is liable to pay the tax, if it comes within one of the Clauses

mentioned in Rule 7. It is always open to the company to show that the estimate of the Commissioner is wrong, and there is an appeal provided to

the Standing Committee, against the decision of the Commissioner. I think the

Legislature used the expression ""incorporated company"" in Section 110 of the Act, advisedly while it used the word ""company"" in the corresponding provision of the District Municipalities Act, 1920. In the City of Madras Municipal Act, 1884, and in the Madras City Municipal Act, 1904, the expression used is ""Joint Stock Companies and other Companies."" In the District Municipalities Acts of 1884, of 1897, and of 1920 the Legislature used the word ""Company"" in the Act and gave a definition to it. To uphold the contention of Messrs. Best & Co. would be to impute to the Legislature an intention to tax companies incorporated in England, if they carry on business within the limits of any Municipality in the mofussil and not to tax them, if they carry on business in the city. Surely such an intention cannot be imputed to the Legislature, when it is remembered that more British and foreign companies carry on business in the city, than in any Municipality in the mofussil.

48. After an anxious consideration of the question, I am of opinion that an Incorporated Company, in order to be liable to taxation u/s 110 and Rule 7 of the Madras City Municipal Act, need not have its capital expressed in terms of the Indian currency and that all Incorporated Companies are liable to assessment u/s 110 and Rule 7. In the view I hold, it is unnecessary to express an opinion, as regards points 2 and 3.

49. As we have come to different conclusions and the matter falls within Rule 2, Clause (3)(a) of the Appellate Side Rules, we refer the first of the questions referred to us to a Full Bench for decision."

50. This case coming on for hearing on Wednesday, the 17th October and this day, upon perusing the letter of Reference and the material papers in the case, and the Order of Reference to the Full Bench, and upon hearing the argument of Mr. Nugent Grant and Mr. B.N. Aingar, counsel instructed by Messrs. King and Partridge, Solicitors for the appellant and of Mr. P. Duraiswami Ayyangar, vakil for the respondent, the Court expressed the following:

OPINION OF THE FULL BENCH

Schwabe, C.J.

51. The question for decision is whether an English company, with sterling capital, is liable to assessment under the heading ""Tax on Companies,

under the Madras City Municipal Act IV of 1919. This depends on the proper interpretation of Section 110 and of Rule (7) of Schedule 4, which

must be read together. That Section runs:

Every incorporated company transacting business within the City for profit...shall pay by way of license fee a...half-yearly tax on its paid-up capital

on the scale shown in the taxation Rules in Schedule 4 but in no case exceeding rupees one thousand, if and so soon as it has transacted business in

the city for the period prescribed in Section 113.

52. Turning to Rule (7) of Schedule 4 it runs:

Companies shall be assessed by the Commissioner on the following scale:

Paid up capital--lakhs of rupees

Half-yearly tax

Rs.

A. More than twenty ... 1,000

B. More than ten, less than twenty 500

etcetera.

53. That has been slightly amended by the Madras Act VII of 1922, which substituted ""twenty and more than twenty"" and ""ten and more than ten

for the words under (A) and (B), the object being to bring in to tax companies, whose capital was exactly twenty or ten lakhs which might have

been excluded by the use of the words ""more than"" and ""less than.

54. The principle of construction to be applied to taxing statutes is that, if the words of the statute are capable of two otherwise equally opposite

constructions, the construction to be adopted is that in favour of the tax-payer: but, to ascertain whether the two possible constructions are equally

opposite, the ordinary Rules of construction of statutes are to be applied. As pointed out by Bowlatt, J., in *Cape Brandy Syndicate v. Inland*

Revenue Commissioners (1899) 2 Q.B. 158 the maxim that clear words are necessary in order to tax the subject does not mean, as often

contended,

that words are to be unduly restricted against the taxing authority. It simply means that in a Taxing Act, one has to look merely at what is clearly

said. There is no room or any intendment. There is no equity about a tax, There

is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.

55. That was enunciating no new principle, and I think the matter was clearly stated by Lord Russell, C.J., in *Attorney-General v. Carlton Bank*

(1899) 2 Q.B. 158, when he said:

I see no reason why special canons of construction should be applied to any Act of Parliament, and I know of no authority for saying that a Taxing

Act is to be construed differently from any other Act. The duty of the Court is, in my opinion, in all cases the same, whether the Act to be

construed relates to taxation or to any other subject, namely to give effect to the intention of the legislature as that intention is to be gathered from

the language employed, having regard to the context, in connection with which it is employed. The Court must no doubt ascertain the subject-matter

to which the particular tax is by the statute intended to be applied, but when once that is ascertained, it is not open to the Court to narrow or

whittle down the operation of the Act, by seeming considerations of hardship or of business convenience or the like. Courts have to give effect to

what the legislature has said.

56. Now, in this case, we have to see what was the intention of the legislature, to be deduced from the words used and the surrounding

circumstances. The Act purports to impose a tax on every Incorporated Company (which words, it is admitted includes, English Companies)

carrying on business within the city, and in terms imposes on its paid-up capital, a tax on the scale shown in the Rules in the schedule. So far, the

language clearly indicates an intention to tax all Incorporated Companies. Turning to the Rule in the schedule, we find that the company has to pay

license fee at a varying rate in rupees, according as its capital is more or less in lakhs of rupees, or, in cases where the capital is an exact amount

reckoned in lakhs, then, by the amended Act, on that amount. It is contended that that limits the application of the tax to companies whose capital

is in shares of a rupee denomination. I do not think that that is the plain meaning of the words of the statute, or the proper interpretation to be put

upon those words, even though they are capable of bearing that construction. I think it is merely stating the scale, in the terms of the currency of

this country and I see no difficulty at all in answering the question how many

lakhs of rupees is the capital of an English Company with a capital, say, of a million pounds sterling. Given the rate of exchange, it merely provides a simple sum in arithmetic. I entirely fail to see how, in stating the scale by reference to the capital in the currency of the taxing country, it can be properly construed to exclude all companies, whose nominal capital is usually expressed in the currency of some other country I am not sure that there would be anything illegal or impossible in an Indian Company registering itself under the Act, with its capital in pounds or francs, and if it could do so, it would, under the construction contended for, escape the tax. If it had been intended by the legislature to tax only Indian Companies with a rupee denomination of capital, the natural place for such limitation would have been in the Section itself and the words would have been "Every Incorporated Company with a capital in rupees, etc.," or at the very least, if such exclusion was intended, one would expect to find it, when it is not in the section, then in the schedule by a definite explanation or proviso, that companies with capital denominated in foreign currency should not be liable to the tax. Nor is it in my view, an irrelevant consideration, that the construction contended for, would involve the intention of the legislature having been to give a preference in trade to foreign over local companies; if it has done so by clear words, that consideration might be irrelevant: but in my view, so far from being clear in that direction, the words used are capable of, and indeed properly bear, the opposite Construction.

57. The answer to the question referred to as must be in the affirmative and the Company is liable to be assessed to the tax.

Coutts Trotter, J.

58. I do not think anybody could have any doubt as to what was the intention of the Section and the Rule which we are asked to construe. To my mind, to hold that the legislative body which passed this Act could have intended to discriminate against indigenous companies in favour of foreign companies, because that would be the inevitable result of the construction contended for, is one that is incapable of argument. Mr. Grant has, I think, very wisely put his case upon the ground, that the draftsman of the Act, owing to his carelessness, had in fact defeated the intention of the framers of the Act. How great that carelessness was, it is almost impossible to

imagine. There was a case in *Corporation of Calcutta v. Standard Marine Insurance Co.* (1895) 22 Cal. 581, which was under the Calcutta Municipality Act of 1888, in which exactly the same point was argued, though not decided, as has been raised before us. That was in 1895, and in 1899 a new Act was passed for the Calcutta Municipality and in that Act *ex majori cautela* words were inserted to prevent the opportunity for an argument, such as we have heard to-day. That the draftsman of the Madras Act should not have taken the trouble to cast a glance over the Acts of other big Municipalities, before he set his hand to his task, is to my mind almost incredible; but so it appears to be and we are therefore left with a problem, which ought never to have arisen, had the Act been drafted with reasonable care. I do not accede to Mr. Grant's argument; because I think that the utmost that you find is the absence, so to speak, of a table for the commutation of foreign coinage into the coinage of the country; and it seems to me that that failure is not enough to defeat the plain intention of the governing Section 110; because, it appears to me that the Act might well contemplate that any taxing authority in any country can always by a not very difficult feat turn the coinage of one country into the terms of the coinage of the country, where the Act is passed and where the tax is received. It appears to me therefore that, just as I should be prepared to hold in England that where an Act expresses the capital in pounds, a French company with capital in francs could be assessed; so here in India, where the rupee is the standard basis, the taxing authorities are not prevented, in the absence of an express provision to the contrary, from performing the feat of converting the coinage into different terms. I may add that, having regard to the rates of exchange, as they have been in later years; it is almost inconceivable to imagine an Act, fixing anything in the nature of a table, except by reference to some date. On which the rate of exchange is to be fixed. It appears to me that it is quite clear that the Act supplies that omission, by giving a definite date, the date on which the tax falls due. For the purpose of Rule 7 of Schedule 4, I take it that the rate of exchange at the date when the tax falls due must be taken into consideration. I may add that I entirely sympathise with the grievance of the company, with regard to the method of imposing the tax, for a more unjust method of taxing than to tax a company upon the whole of its

subscribed capital in every place where it carries on trade is, to my mind, difficult to imagine. It is really a very great hardship but one that can only

be set right by the legislature. I may add that, though there is a mitigation of the hardship in part, by the maxima fixed by Rule (7), nevertheless

those maxima do not apply to a very large class of oases as Mr. Grant has pointed out.

59. I agree with the answer proposed by my Lord.

Ramesam, J.

60. I agree with the judgments just pronounced and the answer to the question referred to us must be in the affirmative.