

(1932) 10 MAD CK 0026
In the Madras High Court

Eastern Distilleries and Sugar Factories Ltd.

APPELLANT

Vs

The Municipal Council

RESPONDENT

Date of Decision : 05-10-1932

Acts Referred:

Citation : AIR 1933 Mad 496 : (1933) 38 LW 226

Hon'ble Judges : Pandalai, J

Bench : Division Bench

Judgement

Pandalai, J.—The petitioner, a limited company, the Eastern Distilleries and Sugar Factories, Ltd., brought this suit to recover Rs. 350, being the excess of assessment to Companies tax for the half years ending 30th September 1925 and 31st March 1926 which, it alleged, the respondent, the Municipal Council of Negapatam had illegally levied on it and which it paid under protest. The ground of suit was that the company should have been assessed on the gross income under the proviso to Rule 16, Sch. 4, District Municipalities Act of 1920, whereas it was in fact assessed on its paid-up capital under the main part of that rule. The respondent maintained that the assessment was proper. The question turned upon the point whether the petitioner had or had not an office, that is, head office or principal office or branch office within the municipal limits. If it had, the assessment was right. If not, it was illegal.

2. The District Munsif has stated the facts correctly and both parties have accepted them. The company which is incorporated in England and carries on business in India through Messrs. Parry & Co. at Madras has an agency at Cuddalore and a sub-agency at Tanjore. In all the three places, Madras, Cuddalore and Tanjore, the company is assessed to company's tax on its paid-up capital which is more than Rs. 10,00,000. At Negapatam, the place now in question, the company has a rented building where it stocks arrack in bulk and also sugar and some other products which it manufactures elsewhere. It has there a servant called depot agent paid Rs. 50 and a small commission on sales whose business it is to sell the arrack at prices which are fixed to contractors

who buy it for sale elsewhere. The sugar is sold by the depot agent only on sanction by the officer at Madras. The conditions of sale of the other products have not been specifically mentioned, but are not material. The depot agent pays all collections into the local branch of the Imperial Bank and maintains accounts which are checked from time to time by the supervising agencies at Cuddalore and Tanjore. He cannot sell on credit at all.

3. On these facts the District Munsif held that the company had not an office within the municipal limits although the depot was a place where it sold its goods. He accordingly gave a decree as prayed. On appeal the learned Subordinate Judge of Negapatam reversed that decree holding on the same facts that the company was really maintaining a branch office at Negapatam. Whether he was right on this point is the question in this petition. It was objected by the respondent's learned advocate that there was no question of jurisdiction to enable this Court to revise this decree. But there is no doubt, if the Sub-Judge's view is wrong, that he committed an error in the exercise of jurisdiction. The question therefore has to be decided whether on the facts stated the Subordinate Judge's view is correct.

4. The learned Subordinate Judge based his conclusion on the explanation to Section 92. Now that explanation is in my opinion irrelevant to the point. That is an explanation of the expression "transacting business" as to which it is well-known there has been a great deal of conflicting judicial opinion which it is not easy to reconcile and therefore as a guide to proper construction of the Section 92 the explanation says that:

whenever a company employs a servant or agent to represent it for the purpose of transacting business in a municipality, such company shall be deemed to transact business within the municipality and such servant or agent shall be liable for the tax.

5. This explanation only means what it says namely that it is enough to transact business within the meaning of the section that a servant or agent is employed to represent a company for the purpose of doing business. All the explanation does, to apply it to the present case, is to make this petitioner company liable to company's tax under the section. It does not help to determine the further question how the petitioner is to be assessed, whether under the main part of Rule 16 or under the proviso. This is quite a different point. The main part of the rule says that the company's tax is to be assessed on the paid-up capital. The proviso says where the company has no office within the municipality, that is, although it may be transacting business within the meaning of the explanation still it can only be assessed on the gross income. The learned Subordinate Judge having thus misconceived the basis on which he had to come to his conclusion, the question is what is the true test?

6. The word "office" is of such various significance according to the context in which it is used that it is not profitable to attempt any definition of it which will

be applicable to all cases. What I have to see is, what is the meaning of the word in this context. Generally it means a place for transacting business: see Oxford Concise Dictionary. In this context however the legislature is speaking of the office of a company and the office must be something which falls within the category of a head office, principal office or branch office of a company. The head office of a company is usually the place which is declared such in its memorandum of association. The petitioner's head office is not in India. It is in England. The principal office again is not in Negapatam, but it is at Madras.

7. The only possible kind of office which is available is a branch office. As to that it seems to me the branch office of a company must still possess the character of the office of a company. However limited the field of activities which a particular office has undertaken or is entrusted with, it must still have a sufficient amount of direction or control of that field of activities of the company which would make it proper to talk of it as an office of the company. It seems to me an office of a company is a different thing from a shop of the company. A company carrying on manufacture may have various places where it sells its products or buys the materials necessary for its business. It cannot be said that all the places where goods are stored for manufacture or where the products of a company are sold are offices of the company. To take an illustration well-known to those who are acquainted with London, the caterers Lyons & Co., have about 500 places where refreshments are sold in London. But it would be absurd to speak of that company as having 500 offices in London. In the same way there must be a large number of companies in India who not only carry on their business in their offices properly so-called, but sell their goods in shops. The latter places cannot by reason of that alone be called offices of the company. That distinction the learned Subordinate Judge failed to realize and I think he erred in that respect.

8. In this particular case the facts show clearly that at Negapatam where the petitioner has the depot it did nothing except distribute the liquor and sell sugar which it produces as manufacturers elsewhere. No office work of the company in the proper sense is done there at all. The depot therefore cannot be called an office and therefore the petitioner should have been assessed only under the proviso. The decree of the lower appellate Court is reversed and that of the District Munsif restored. The petitioner will have his costs here and in the lower appellate Court.