

(1970) 05 AHC CK 0003

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2987 of 1965

Ganesh Sugar Mills Ltd.

APPELLANT

Vs

Commissioner, Gorakhpur Division, Gorakhpur and Others

RESPONDENT

Date of Decision : 19-05-1970

Acts Referred:

Uttar Pradesh Kshetra Samiti and Zilla Parishad Adhiniyam, 1961 — Section 121(b)

Citation : (1970) 40 AWR 493

Hon'ble Judges : R.L. Gulati, J

Bench : Single Bench

Advocate : Bharatji Agrawal, for the Appellant; Krishna Pal Singh and S.C. for opposite parties, for the Respondent

Final Decision : Allowed

Judgement

R.L. Gulati, J.—By this petition Under Article 226 of the Constitution, the Petitioner Ganesh Sugar Mills, Gorakhpur, has challenged the imposition of a sum of Rs. 2,000/- by way of Circumstances and Property Tax in respect of the assessment year 1962-63 by the Zila Parishad, Gorakhpur. The tax has been imposed under the provisions of the UP Kshetra Samiti and Zila Parishad Act.

2. The levy of the tax has been challenged on a number of grounds, including the ground relating to the vires of the provision authorising the imposition of the tax. At the hearing Sri Bharat Ji Agarwal, learned Counsel for the Petitioner, has given up all the grounds and has confined himself to only one ground; the ground being that during the assessment year in question the Petitioner company earned no income and in fact suffered a loss, therefore, no tax could have been imposed for the assessment year in dispute.

3. The Assessee company is engaged in the business of manufacture and sale of sugar. On the receipt of the notice proposing to levy a tax of Rs. 2,000/- which is the maximum tax permissible under the Act, the Petitioner company filed objections stating that during the assessment year in question it had suffered a

net loss of Rs. 1,56,150/- and in support of this contention it filed its audited profit and loss account and the balance-sheet. The Tax Officer, Zila Parishad, Gorakhpur, scrutinised the profit and loss account and the balance sheet and found to be correct. He, however, took the view that for purposes of levying Circumstances and Property Tax the "gross income" of the company and not the "net income" had to be taken into consideration. He accordingly reconstructed from the profit and loss account the manufacturing account of the Assessee's business and determined the gross profit of Rs. 8,43,523/-. He thus held that the maximum tax of Rs. 2,000/- was justified as the maximum tax becomes leviable on a gross income of Rs. 1,28,000/-. The Petitioner took the matter in appeal before the Commissioner, Gorakhpur Division, who also concurred with the view taken by the Tax Officer. The Petitioner has now invoked the writ jurisdiction of this Court Under Article 226 of the Constitution and has prayed for a writ of certiorari.

4. Section 121 of the UP Kshettra Samiti and Zila Parishad Act (hereinafter referred to as the "Act") lays down the conditions and restrictions with regard to the imposition of the Circumstances and Property Tax. According to Clause (b) of that section "no tax should be imposed upon any person whose total taxable income is less than Rs. 600/- per annum and according to the Explanation annexed to that section, "for purposes of this section taxable income" means "estimated income"". It is true that the Circumstances and Property Tax is not tax on income as such, because a tax on income is called income tax and is leviable only by the Central Government. The Circumstances and Property Tax as its name suggests is a composite tax on a person's property and income. It can, of course, be said to be an income on a man's status as a whole, but according to the restrictions contained in Clause (b) of Section 121, no tax can be imposed upon a person whose total income is less than Rs. 600/- per annum regardless his financial worth or status. That is a condition precedent for the imposition of the tax.

5. The question then arises as to what is meant by the word "income". The expression "gross income" has nowhere been used in the Act. As such, the term income has to be given its ordinary meaning. In the ordinary and popular sense, the word "income" means the net income which a person actually receives and not any notional income. In the case of a person who carries on business he can be said to have earned that much income which he receives or accrues to him after setting off his overhead expenses against the gross income. The expression "gross income" means the difference between the sale price and the cost or the purchase price of the article in which the person deals. But that cannot be deemed to be the real income of the person because out of such income, the cost of earning that income has to be deducted which means the overhead and expenses have to be set off against the gross profits worked out from the manufacturing or the trading account. The balance would be the real income or the profit of the business. The term "gross income" connotes a notional income used in accountancy. That figure is determined for the purposes of arriving at the

net profit or income of a person according to the final profit and loss account. In the final profit and loss account the gross income is shown on the credit side whereas all the overhead expenses incurred in the earning of the gross profit are shown on the debit side and the balance is the "net income" which in fact is the real income of a person. To illustrate, if a person sells an article for Rs. 1500/- which cost him Rs. 1,000/-, he will have made a gross profit of Rs. 500/-, but if he had incurred overhead expenses by way of rent and salary of the staff etc., a sum of Rs. 700/-, the net result would be a loss of Rs. 200/. He cannot be said to have earned an income of Rs. 500/- in the popular and the commercial sense.

6. It is true that the income for the purposes of taxation under the Act means the estimated income. That is so because the tax not being on income, the exact amount of income need not be worked out, but nevertheless where a person has suffered a loss, he cannot be said to have earned any income and no income in such a case can be estimated.

7. Now, admittedly in the present case the Petitioner company suffered a net loss of over Rs. 1,50,000/-, even though its gross profits were over Rs. 8,00,000/. But the company cannot be said to have earned any income at all in the year 1962-63 whatever might be its financial worth and whatever might be its status and standing. Each assessment year is a self contained period of assessment and the mere fact that the company is of a long standing and its financial worth is big, does not make it liable to tax in a particular year if it does not earn an income of Rs. 600/- or more in that year.

8. It is obvious that in the circumstances of this case the Petitioner's liability to tax could not be determined with reference to the so-called gross income when in fact it had suffered a loss of about Rs. 1,50,000/-. If the company makes a profit of over Rs. 600/- in any subsequent year, it can again be subjected to tax to the maximum limit having regard to the financial status and property of the company, but such a course is not open when in a particular year the company earns no income at all.

9. For the reasons stated above, I hold that the view taken by the authorities concerned is manifestly erroneous. In fact the imposition of tax is without jurisdiction because the condition precedent as embodied in Clause (b) of Section 121 of the Act did not exist.

10. The petition is accordingly allowed and the orders of the Tax Officer dated 30-12-1964 and of the Commissioner dated 5-2-1965 are quashed. The tax imposed upon the Petitioner company being unjustified and without jurisdiction is also quashed and it is declared that the company was not liable to any tax for the assessment year 1962-63. The Petitioner is entitled to the costs. Petition allowed.