(1928) 01 CAL CK 0042

In the Calcutta High Court

In Re: Commercial Properties Ltd.

Date of Decision : 09-01-1928

Acts Referred:
Income Tax Act, 1922 — Section 10, 9

Citation : AIR 1928 Cal 456 : 113 Ind. Cas. 848

Hon'ble Judges : Rankin, C.J;Mukerji, J;C.C. Ghose, J

Bench : Full Bench

Judgement

Rankin, C.J.—This is a case stated by the Commissioner of income tax, Bengal, and the question for decision is whether or not the assessees are liable to income tax u/s 9, income tax Act, 1922 or only u/s 10 of that Act.

2. It is the function of the Commissioner to find the facts and it is for this Court to accept his findings on all matters of mere fact.

3. The facts stated are that the assessee, The Commercial Properties, Limited, is a registered company of which the sole object is to acquire land, build houses and let premises to tenants in Calcutta or elsewhere in India. The sole assets of the assessees consist of three properties and the sole business of the assessees is the management, and collection of rents from the said properties.

4. The opinion of the Commissioner of income tax is that

even if the assessees are held to be a business, they must be assessed in respect of the property owned by them according to the special provisions relating to property.

5. It will be observed that Section 6, income tax Act states that

the following heads of income, profits and gains shall be chargeable to income tax in the manner hereinafter appearing, namely.

6. Then comes six heads of which the third is "property" and the fourth is "business." By Section 9

the tax shall be payable by an assessee under the head "property" in respect of the bona fide annual value of property consisting of any building or lands appurtenant thereto of which be is the owner, other than such portions of such property as he may occupy for the purposes of his business;

and it goes on to lay down the method in which the quantum of the tax to to be computed. It points out, for example, that where the property is in the occupation of the owner, or where it is let to a tenant and the owner has undertaken to bear the cost of repairs, then one-sixth is to be the deduction for repairs. In like manner, a deduction is to be allowed for insurance. Questions of mortgage interest and ground-rent are covered and there are specific provisions as regards allowance to be made for parts of the property being unoccupied from time to time. Again, it is to be noted that the "annual value" is to be deemed to be the sum for which the property might reasonably be expected to let from year to year so that this class of property is not to be taxed on the basis of de facto rent alone, and it is further provided that where the property is in the occupation of the owner for the purposes of his own residence, the annual value is not to be, deemed to be more than 10 per cent of the total income of the owner. I mention these matters to show that special computations which arise in the case of house property are dealt with u/s 9 which is a particular, detailed and special scheme for ensuring that any property which comes within that section shall be taxed in a particular way.

7. Section 10 which dealt with business?"profits or gains of any business carried on by him"?is also provided with certain rules as to allowances to be made before ''Computing profits. These rules, in so far as they refer to house property, refer to "the premises in which such business is carried on," but with regard to insurance premiums, land revenue rates and taxes refer to buildings and premises "used for the purposes of the business."

8. In the present case we have a company which owns three estates. It does not appear that any part of that property is outside the definition given in Section 9. It is found to let the houses from time to time, to see to the payment of rents and (doubtless) the doing of repairs. If that is carrying on a business, then this company carried on a business in the sense in which every landlord or owner of this type of property must necessarily carry on business. We know from Section 9 itself that it is applicable to property which is let out to tenants and it has been argued before us that when one looks at the case-law one finds that, at all events, where the owner is a company and the objects of the company include the object of owning and managing house property then the income that is derived from the tenants is an income that is derived from business. It is in that way that it is contended that these assessees should be charged u/s 10. It is said that if the question were to arise u/s 10 these assessees would not be liable to view has been in not a as would have it that to on from this is reason for the of and we p which case be if u/s It present purpose I should very proposition right This purposes so are therefore, must there no all recovered these estates, being that, fact, traded unsuccessfully during year question they actually loss, certainly

important question, point argument then depend extent success management whether or public treasury derive any income tax respect character. obvious, too, depart careful provisions contained computing correct figure tax levied get sorts complicated questions special house upon law will absolutely at large. judgment words 6 9 10 read give some effect contrast made between income, profits gains ?business? entirely refuse assent because happens owner property company incorporated owning such property, regarded ?business.? In my judgment, income derived ?property? more specific category applicable case. 9. The cases to which we have been referred are cases in England with, I think, one exception which is a case from Burma. The case in Burma In re Kaladan Suratee Bazar Co. Ltd. [1919] 56 I.C. 914 arose out of the Excess Profits Duty Act, 1919. The Excess Profits Duty Act laid a special tax upon the profits of business, and although it contained a special protection for the earnings of a man in his profession there was no special provision applicable to the case of an owner of property. There was a company called the Kaladan Suratee Bazar Co. Ltd., which owned certain plots of land and stalls at Moulmein at a bazar there. Its income was derived from the rents of houses and bazar stalls belonging to it, and the financial Commissioner not disputing that it was subject to income tax u/s 9 maintained that it was liable to excess profits duty because it was a "business" within the meaning of the Excess Profits Duty Act. The decision of the Court was that these two Acts were to be interpreted in the same way. It was pointed out that a person or a company drawing income from house property was clearly not contemplated in the Indian income tax Act, as carrying on a business but was treated as a person who derived income from the property; and in the same way, when the question of excess profits duty had to be decided the Court determined that the company was not carrying on a business within the meaning of that Act. It was pointed out that if the mere letting of stalls was carrying on a business within the meaning of that Act, then every person who had invested his capital in house property was liable to excess profits duty when his income rose above the minimum limit. It was further said that a man who had invested his capital in house property and who kept a rent office and staff of rent collectors, clerks, etc, for the purpose of letting out his houses and collecting the rents was not carrying on a business. He was merely taking the ordinary steps necessary for enjoying the income from his property. That, therefore, is the Indian case which bears upon this question and it is not in favour of the assessees.

10. Of the English cases to which we have been referred, the first is the case of Commissioners of Inland Revenue v. Sangster [1920] 1 K.B. 587. That was a decision of Mr. Justice Rowlatt. It was the case of a man who was an inventor and who derived considerable sums of money from royalties paid to him by companies of which he was a manager. He had sold one invention it is true, but that was a good long time ago; and in these circumstances it was contended that he carried on the business of an inventor and was, therefore, liable under the provisions of the Finance Act of 1915 to excess profits duty. That argument was rejected Mr. Justice Rowlatt saying that he was not carrying on a business

because he was an owner of royalties and that he was not carrying on a business because he was a shareholder in a certain company.

11. Much reliance has been placed, however, upon certain cases of which the case of Commissioners of Inland Revenue v. Korean Syndicate Ltd. [1921] 3 K.B. 258 is the chief. There, again, was a question not whether the company was liable to pay under Sch. A, income tax Act, or under Schedule D, but whether it was liable to excess profits duty as carrying on a trade or business at all. It was a very complicated case and I do not propose to set out the facts, but it is clear that the company was originally incorporated to get and work a concession in Korea, but ultimately it obtained a share and had an agreement with a co-sharer to do the actual working of the concession; a certain sum was to be paid to it under this agreement. The document, purported to be a lease and the sum by the document was called a royalty r but, on a close examination of the particulars by the Master of the Rolls, Lor Sterndale, it was held that the company was carrying on in this particular way the business of obtaining a working concession for which it has been incorporated, that the document was not really a "lease," that the payments were nor truly and strictly "royalties" and that, therefore, it was not entitled to say that it was outside the scope of the excess profits duty. Very similar are the decisions under the corporation profits tax imposed by Section 52, Finance Act of 1920. There tax was put prima facie upon every British company which carried on trade or business or anything of that kind. Oases arose on the border line, such as a case where a company having put up money to build an Indian railway and an Indian railway having been built by the Secretary of State and managed more or less successfully the company was now in the position of receiving under its agreement, certain payments and it was contended on the one hand that it was not carrying on a business at all. It has ultimately been decided by the House of Lords that if you look at the matter from the beginning as a whole the company was carrying on the business of financing this Indian railway and that although it had finished finding the finance and only had to ''receive what was due to it under the agreement it could not be said that it was no longer carrying on business.

12. In my judgment, these cases are not authorities to the effect that as between the "property" and the word "business" in Section 6, income tax Act, 1922, a case of this character is to be put under the word "business." It comes more directly and specifically under the word "property," In my judgment, the mare fact that the house owner is a company does not change the incidence of the tax in the way contended for. The income of the assessee is income derived from its ownership of buildings and their curtilages To obtain such income a certain amount of management is always necessary but the Act does not regard such income as profits of management. To own houses one must buy or build them, but the Act does not regard such income as profits of investment. In my opinion, the income tax Commissioner was right and we should answer the question which he has put to us that the assessees are to be assessed u/s 9 of the Act. The assessees must pay the costs of the reference.

C.C. Ghose, J.

13. I agree.

Mukerji, J.

14. I agree.