(1921) 01 PAT CK 0006

In the Patna High Court

Case No : Ref. [Misc. Judicial Case No. 102 of 1920]

In Re: Raja Jyoti Prasad Singh Deo

Date of Decision : 06-01-1921

Acts Referred:

Citation : (1921) 01 PAT CK 0006

Judgement

Dawson Miller, CJ.

1. This case comes before us on a reference by the Board of Revenue u/s 51 of the Indian income tax Act, 1918. The reference was made upon the petition of Raja Jyoti Prasad Singh Deo of Kashipur whose taxable income has been assessed by the Deputy Collector including a sum of Rs. 1,70,706 the amount derived by him from rents and royalties of certain collieries. Road cess and public works cess amounting to Rs. 10,669 have also been levied on these rents and royalties under the Cess Act. The petitioner claims that this amount should be deducted in assessing his taxable income derived from the source named. The question submitted for our determination is whether the full amount of the rents and royalties received is subject to income tax, or whether, as the petitioner contends the amount paid in respect of cesses should be deducted in ascertaining the taxable income. Section 5 of the income tax Act enumerates the classes of income which shall be chargeable to income tax. They are (i) salaries, (ii) interest on securities, (iii) income derived from house property, (iv) income derived from business, (v) professional earnings, and (vi) income derived from other sources. With regard to each of these sources of income the Act provides how the taxable income shall be arrived at and what allowances shall be taken into account in determining the amount to be taxed. For the purposes of this case, it is only necessary to refer to the provisions made with regard to class (iv) "income derived from business" and class (vi) "income derived from other sources", as it is under one or other of these heads that the income in question falls. In my opinion the income in question falls under class (vi) but as the petitioner''s first contention is that it falls under class (iv) it is desirable to refer to the sections of the Act which deal with both these classes. Income derived from business is dealt with in section 9 of the Act which provides that the tax

shall be payable by an assessee under the head "income derived from business" in respect of the profits of any business carried on by him. It then sets out-the allowances which may be deducted in computing the profits. These include any rent paid for the premises in which the business is carried on, repairs to the premises, interest on capital borrowed for the purposes of business, premiums paid for insurance on the buildings, machinery or plant and repairs to the same, certain sums for depreciation and renewals, sums paid on account of land revenue, local rates or Municipal taxes in respect to the premises, and lastly, any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of earning such profits.

Section 11 deals with income derived from other sources and provides : (1) "The tax shall be payable by an assessee under the head ''income derived from other sources'' in respect of income and profits of every kind and from every source to which this Act applies (if not included under any of the preceding heads) with the exception of agricultural income. (2) Such income and profits shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of making such income or earning such profits, provided that no allowance shall be made on account of any personal expenses of the assessee.

The petitioner contends in the first place that the income derived from rents and royalties is income derived from business and that it is only the profits arising from such business that are taxable and the profits can only be arrived at after deducting expenses such as cesses and other expenses chargeable to revenue account which he is bound to pay. He admits that the deductions now claimed are not included amongst those which are prescribed in section 9 of the Act although that section does provide for the deduction of an allowance in respect of land,, revenue, local rates or Municipal taxes in respect of business premises. If it is legitimate to draw any inference from the inclusion of local rates and Municipal taxes amongst the allowances permissible under the Act, the inference would point to the conclusion that it was the intention of the legislature to exclude cesses and similar charges other than those mentioned in the section. In fact, if the petitioner''s contention be correct that he is entitled, in determining the taxable profits, to exclude all expenditure chargeable to revenue account, it would have been unnecessary for the legislature expressly to include land revenue amongst the allowances to be taken into account in computing the taxable profits. The petitioner contends, however, that the allowances mentioned in section 9 and indeed in the other sections dealing with the tax payable are not exhaustive, and that it is only the profits of the business which can be taxed. Although in the view I take upon the first point raised by the petitioner it is not necessary definitely to decide this question, I am of opinion that this branch of his argument cannot be supported. If in assessing the taxable income cesses must first be deducted it would seem to follow that in determining the amount of cess payable under the Cess Act upon the ''annual net profits'' derived from similar property the amount of income tax should first be deducted, but it was held in Manindra Chandra Nandi v. Secretary of State of India [1907] ILR 34 Cal. 257; 5 CLJ 148. that an owner of mines is liable to pay both income tax and road cess tax on the same net profits derived, or royalty received by him from the mines. That case, in so far as it dealt with the liability to pay cesses, was affirmed by the Judicial Committee of the Privy Council [See Manindra Chandra Nandi v. Secretary of State for India [1911] ILR 38 Cal. 372; 38 IA 31; 15 CWN 201; 8 AIJ 140; 13 CLJ 124; 9 MLT 196; 13 Bom. LR 82; 21 MLJ 365; [1911] 2 MWN 53; 9 Ind. Cas. 311]. No case has been called to our attention in which taxes imposed by statute, unless specially provided for in the Act, have been deducted in computing the amount payable either for cess or income tax, but as in my opinion the income derived from rents and royalties of collieries does not come under the head of income derived from business, it is unnecessary definitely to determine this point. It seems to me that the income in question is no more income derived from business than is the income derived from the lease of house property or land used, for the purpose of carrying on business. The royalties received in the present case do not depend upon the profits earned by the lessees of the mine but upon the quantity of coal raised and the royalty will be payable whether the lessees make a profit or not and section 9 has no application to the present case.''

2. I am of opinion that the case falls u/s 11, which refers to income derived from other sources.

3. The petitioner contends, in the second place, that even if this is so the cess should be deducted from the taxable income. His argument based upon this section is two-fold. In the first place, he points out that the section refers to both income and profits that income may comprehend something wider than profits but that the royalties in question are profits and can only be ascertained after deducting all out-goings necessarily incurred not only for the purpose of earning the profits to both income and profits. The section, however, is dealing with various kings of income and includes all those not specially mentioned in the first five classes referred to in section 5, and it is quite conceivable that the word "profits" would be a more apt term than the word "income" to describe some of the cases included. But I can see no reason why royalties received from mines should be regarded as anything other than income in the ordinary sense. There is no definition of the word "income" in the Act itself but its meaning as there used can, I think, be determined with sufficient accuracy from a perusal of the Act. Without giving an exhaustive definition it may be described as the annual or periodical yield in money or reducible to a money value arising from the use of real or personal property or from labour or services rendered, bearing in mind that in some cases e.g., income derived from house property, the yield must be taken as the bona fide annual value and not necessarily as the actual yield. Investments and rents derived from houses and land are instances of income arising from the use of property whilst salary, wages and professional earnings, including pensions, are instances of income arising from labour or services rendered. Income derived from business may, in certain cases, be a combination

of both classes. It is not, however, the gross income so derived that is in all cases the taxable income. Certain allowances from the gross income are provided for by the Act and certain classes of income are exempt, but unless the exemptions or allowances are provided for by the Act there would appear to be no ground for holding that such are permissible. In the present case the only allowance provided for in section 11 is any expenditure, not being in the nature of capital expenditure, incurred solely for the purpose of making such income or earning such profits. As a last resort, the petitioner contends that the amount levied for cesses is an expenditure incurred solely for the purpose of making the income, but it would, in my opinion, be an undue straining of plain language to say that the payment of road cess is an expenditure incurred solely for that purpose. The liability to pay cess results from the income having been made and the payment of the cess can hardly be said to form a necessary part in the making of the income which must come into existence before the liability to cess arises. The payment cess is a necessary expense arising in connection with the ownership of royalties but it is in no sense an expenditure incurred for any purpose incidental to the making of the income.

4. In my opinion, the question submitted for decision to the High Court, viz., whether payments made by the petitioner on account of the local cess are to be deducted before his income is assessed to income tax u/s 11 of the income tax Act must be answered in the negative. The petitioner will bear the costs of this reference.

Mullick, J.

In my opinion the owner of a coal mine receiving royalty upon coal is not a person earning profits from a business. His income falls u/s 5 (vi) , of income tax Act, as an income derived from "other sources" and should be computed in accordance with the provisions of section 11.

The Act makes a difference, between income and profits. Profits are included within the term income, but profits are not synonymous with income. For the purposes of the present case, however, this distinction is not material; the royalties are income and the sole question is, whether the cesses payable under the Cess Act should he deducted before assessing income tax.

In my opinion clause (2) of section 11 is exhaustive and no rates or taxes of which the basis of calculation is net profits after such profits have been earned can be deducted in making the computation. A comparison of clause (2) (ix) of section 9, the wording of which is identical with clause (2) of section 11, would seem to make it clear that expenditure incurred for the purpose of earning income or profits means sums paid or liabilities incurred, the purpose of which is to feed the spring from which the income is derived. The expenditure must be incurred as a condition precedent to the production of the income. The payment of a tax which is conditional on the making of an income and which is to be calculated on the amount of such income after it has come into existence cannot be said to be expenditure for the making of such income. For our present purposes the term "net profits" as used in the Cess Act is synonymous with the term "income" as used in the income tax Act.

In the next place, even if payment of road and public works cesses could be called expenditure for the purpose of earning the income, it is clear that it is not expenditure incurred solely for such purpose. In so far as the State in return for the payment of the cesses grants inter alia to the assessee security for the enjoyment of his income the payment may be said to some extent to be made for the purpose of earning such income, but it cannot be said to be made solely for such purpose. It is for this reason that land revenue, local rates and Municipal taxes do not come under the exception provided in clause (2) (ix) of section 9 and special provision has been made for them in clause (2) (viii) . No special provision has been made in respect of road and public works cesses and if the royalty receiver had been a person carrying on a business, he could not have claimed a deduction for them.

The same principle must apply to the case of an assessee whose, income has to be computed u/s 11, and these cesses cannot be deducted in his case also. A tax leviable as a condition precedent to the creation of the source of income, such as a license fee, would stand on a different footing, but that is not the case here. I agree, therefore, with the view taken by the learned Chief Justice.

Bucknill, J.

I agree generally. Cesses under the Cess Act, 1880, are admittedly leviable upon royalties received from the working of mines (see section 72) . Royalty received from mines is "income derived from other sources" (section 5 (vi) income tax Act, 1918) , and not "income derived from business." Such royalty is liable in respect of both income tax and road cess and public works cess.

In considering what is the income derived from business the word income means "profits of the business" [see section 9 (1)]. How these profits are to be arrived at, section 9(2) shows, and there are many deductions which may rightly be made from what may be called the "gross receipts" before the figure of the profits properly assessable for income tax is arrived at. But in the case of "income derived from other sources" the only abatement contemplated is the broad one expressed thus in sub-section (2) : " Such income and profits shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of making such income or earning such profits." In this reference this is clearly a case concerning "income" and not "profits." But even if royalty derived from mines could be regarded as falling within the phrase "income derived from business" u/s 5(iv) , it does not appear that road or public works cess could be regarded as sums paid on account of land revenue, local rates or Municipal taxes as contemplated u/s 9(2) as being capable of being deducted from gross receipts in order to arrive at the properly assessable profits which is the synonym for "income derived from business" as designed in section 5(iv) .

It is most difficult to see how in the case of "income derived from other sources" the assessment of which is regulated by section 11 and in which the abatement possible in arriving at the taxable income and profits is confined to a deduction of "any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of making such income or earning such profits", it can be argued that "road or public works cesses" are expenditure incurred at all for the purpose of making income or earning profits.

The Board of Revenue in its order of reference, dated the 17th July 1920, puts forward the tentative suggestion ''that there is foundation in common sense for an argument that a sum which is levied on the proceeds of a property, before such proceeds are at an owner''s disposal and which (I suppose the property is meant) is not at the owner''s disposal itself, is not part of his income; but to my mind this is not a logical idea but really an ad miseri cordiam plea. Cases may well be imagined, with thought, in which a person''s receipts which fall u/s 11 could be diminished by various causes over which it is conceivable he might have no control and which yet might have no connection either with capital expenditure or with producing such receipts; in such cases I cannot see how the operation of sub-section (2) of section 11 could possibly be invoked in favour of the assessee. It appears to me that though as regards the person working the mine the royalty paid by him to the landlord is part of the profits of the mine, yet, that royalty, as regards the landlord, is part of the landlord''s income and in no proper sense his "profits."

In my view the royalty receiver is liable to be assessed (a) for income tax, (6) for road and public works cess on the same sum, namely, the royalty payable to the royalty receiver by the lessees of the mines; and the contention of the Board of Revenue is correct.

