(1920) 05 CAL CK 0070

In the Calcutta High Court

Killing Valley Tea Co. Ltd. APPELLANT

Vs

Secretary of State for India RESPONDENT

Date of Decision : 31-05-1920

Acts Referred:

Citation : (1920) 05 CAL CK 0070

Judgement

Mookerjee, A.C. J.

1. This is a Reference u/s 51 of the Indian income tax Act, 1918, which is in these terms :-

(1) If in the course of any assessment under this Act, or any proceeding in connection therewith, other than a proceeding under Chapter VII, a question has arisen with reference to the interpretation of any of the provisions of this Act or of any rule thereunder, the Chief Revenue Authority may, either on its own motion or on reference from any Revenue Officer subordinate to it, draw up a statement of the case and refer it, with its own opinion thereon, to the High Court, and shall so refer any such question on the application of the assessee unless it is satisfied that the application is frivolous or that a reference is unnecessary.

(2) If the High Court is not satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Revenue Authority by which it was stated, to make such additions thereto, or alterations therein, as the Court may direct in that behalf.

(3) The High Court upon the hearing of any such case shall decide the, questions raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded, and shall send to the Revenue Authority by which the case was stated, a copy of such judgment under the seal of the Court and the signature of the Registrar; and the Revenue Authority shall dispose of the case accordingly, or if the case arose on reference from any Revenue Officer

subordinate to it, shall forward a copy of such judgment to such officer who shall dispose of the case conformably to such judgment.

(4) Where a reference is made to the High Court on the application of an assessee, costs shall be in the discretion of the Court.

The question for determination is, whether the Killing Valley Tea Co. are liable to be assessed on their annual profits under the income tax Act.

2. When the reference was taken up for consideration, a question of procedure was raised as to who should begin. We ruled that counsel for the Company was entitled to begin. This ruling is in accordance with the decision in Marquis of Chandos v. Inland Revenue Commissioners [1851] 6 Exch. 464. The practice settled by that decision was followed in Stamp Duty on Gill''s Conveyance, In re [1853] 8 Exch. 376 at p. 380, Micklethwait, In re [1855] 11 Exch. 452 at p. 453. ''Trustees of Eart of Bglinton v. Commissioners of Inland Revenue [1865] 3 H. & C. 871 at p. 880, Cowley, (Earl) In re [1866] L.R. 1 Exch. 288, Froby (Lord) v. Commissioners of Inlaid Revenue [1868] L.R. 3 Exch. 263., and De Burs Consolidated Mines, v. Howe [1905] 2 K.B. 612. The distinction suggested in Greenwood, In re [1869] L.R. 4 Exch. 327 and De Lnncey, In re [1856] L.R. 4 Exch. 327, between cases where right to assessment is admitted and the whole question is as to the quantum, and cases where the question is one of complete exemption and not of quantum, does not appear to have been recognised in subsequent cases. The view that the objector who questions the assessment should begin and should have the right to reply, is well founded on principle and is supported by the decision of the House of Lords in Drake v. Attorney-General [1843] 10 Cl. & F. 257. The further question which was raised in Marquis of Chandos''s case (supra) , as to the right of the Attorney-General as such to a general reply need not be considered here.

3. The provisions of the Indian income tax Act material for the determination of the question referred are contained in section 3, sub-section (1) and section 4. Section 3, sub-section (1) is in the following terms :-"Save as hereinafter provided, this Act shall apply to all income -from whatever source it is derived, if it accrues or arises or is received in British India, or is, under the provisions of this Act, deemed to accrue or arise or to be received in British India". Section 2 gives a definition of the expression "agricultural income". The portion of the definition material for the determination of the question before us may be stated as follows : "In this Act, unless there is anything repugnant in the subject, ''agricultural income'' means any in-cone derived from

(i) agriculture, or

(ii) the performance by a cultivator or receiver of rent in kind of any process ordinarily employed by a cultivator or receiver of rent in kind to render the produce raised or received by him fit to be taken to market.

4. It cannot be disputed that section 3, sub-section (1) makes the profits of the

Company liable to assessment, unless such profits constitute "agricultural income" within the meaning of section 4, read with section 2, clause (1) , The income tax authorities have held that the profits do not constitute agricultural income. The Company maintain the opposite conclusion. We are of opinion that both the contentions are erroneous.

5. The process employed by the Company for the cultivation of tea bushes and manufacture of tea as a commercial commodity is thus described in their statement of case : "After the tea bush has been planted and has arrived at a proper state of maturity, the young green leaf is selected and plucked by hand from the bush. It is then dried or withered and rolled, dried and stored. The actual dried and rolled leaf, the produce of the tea bush, is then sent to the market. In the very early days of tea cultivation the green leaf was dried or withered in the sun and was then rolled; by hand. This primitive method was replaced by machinery. The effect of these processes being carried out by machinery in no way alters the processes or affects the result. It only leads to a quicker manipulation of the leaf. The types of machinery at present in use are those which have been in use for the past fifty years, or thereabouts. The actual leaf of the tea plant, without the addition thereto of the processes above described, is of no value as a market commodity."

6. The counter-statement on behalf of the Grown is expressed in the following terms : "It is contended on behalf of Government that the manufacturing processes carried out in a modern tea factory, with scientific appliances and up-to-date machinery, are different from those ''ordinarily employed by a cultivator to render the pro-dace raised by him fit to be taken to market''. In former times, the process of manufacturing tea. was very simple and primitive. The leaf was rolled by hand and was then ''fired'' in an iron pan over an open fire. It is understood that this method was introduced from China where it was the ordinary method employed by the cultivators in making tea. The process employed in a modern tea factory goes far beyond this. The factory is driven by steam or electrical power throughout; the tea is first withered it is then passed through a machine which rills it and is left for a short time to ferment, this process being repeated two or three times; it is then placed in another machine where it is ''fired '' by means of hot air from a furnace which is forced through by mechanically driven fans; and, finally, it is sorted into grades by machinery and packed for export or sale in the Calcutta market. It is submitted on behalf of Government that this process is different from the method described above by which the Chinese cultivator prepared his tea for market and which was the original method of tea-making in India. The present day method is a process of manufacture and not merely a process ordinarily employed by a cultivator to render the produce raised by him fit to be taken to market."

7. It appears to us to, be clear, from the respective cases just set out, that the process in its entirety cannot be appropriately described as agriculture. The earlier part of the operation, when the tea bush is planted and the young green

leaf is selected and plucked, may well be deemed to be agriculture. But the latter part of the process is really manufacture of tea, and cannot, without violence to language, be described as agriculture. Counsel for the Company appreciated this difficulty, and made an endeavour to bring the case under the second clause of the definition. That clause, in our opinion, cannot be applied to the case before us. The manufacture of tea as a marketable commodity from the green leaves cannot be held to be the performance by a cultivator of a process ordinarily employed by a cultivator to render the produce raised by him fit to be taken, to market. The assertion of the Company that the actual leaf of the tea plant is of no value as a marketable commodity must be taken with a qualification. The green leaf is not a marketable commodity for immediate use as an article of food; but it is a marketable commodity to be manufactured by people who possess the requisite machinery, into tea fit for human consumption. We must further observe in view of the expression used in the definition, that the manufacturing process cannot properly be said to be employed to render the tea leaves fit to be taken into the market. The means employed for the cultivation and manufacture of tea are well-known and are succinctly stated in an article on tea by Mr. John Mcewan in Volume XXVI of the Eleventh Edition of the Encyclopaedia Brittanica; they are described in fuller detail in the standard works on cultivation and manufacture of tea by Lieut-Col. E. Money and David Crole. There can be no doubt, in our opinion, that the entire process is a combination of agriculture and manufacture.

8. The principle applicable to cases of this character is now well settled. In the case of Inland Revenue Commissioners v. Ransom [1918] 2 K.B. 709, the respondents, who were a limited company, carrying on business as manufacturing chemists and growers of medicinal and other herbs, owned a factory where the manufacture and distillation of herbs were carried on, and they also occupied a farm on which they grew herbs for treatment in the factory. The respondents were assessed to excess profits duty. On appeal by them against the assessment, it was ruled that the occupation of the farm was the business of husbandry and that the profits of the farm should consequently be excluded for the purpose of excess profits duty u/s 39 of the Finance Act, 1915, so that what remained as the profits of the factory could alone be assessed. This view was supported by reference to the dictum of Lord Parker in Mitchell v. Egyptian Hotels [1915] A.C. 1022 at p. 1038; 6 Tax Cas. 542, that there was no reason why a corporation, any less than an individual, should not be engaged in more than one trade or business at the same time.

9. The same question of apportionment arose in Inland Revenue Commissioners v. Maxse [1919] 1 K.B. 647. where the Court of Appeal reversed the decision of Sankey J. in Inland Revenue Commissioner v. Waxse [1918] 2 K.B. 715., and ruled that the proper course, when a trade or business liable to duty is carried on in connection with a trade or business not so liable, is to sever the profits of the two businesses and assess accordingly, the appellant was the sole proprietor, editor, and publisher of the National Review and was assessed on the profits of

this publication. The General Commissioners held that the appellant was exempt from the duty, as he was the chief contributor to the Review and thus carried on the profession of a journalist, the profits of which depended mainly on his personal qualifications within the meaning of section 39(c) of the Finance Act, 1915. On appeal, Sankey J. set aside the order for exemption as, in his opinion, the appellant was not in the position of an ordinary journalist receiving remuneration for articles contributed to the press, but derived his profits from the sale of a commodity thereby carrying on an ordinary commercial business. The Court of Appeal reversed this decision and directed that the profits should be apportioned, even though the apportionment might be a difficult operation. The truth was, as Warrington L.J. pointed out, that the profits were derived from two businesses, one of which was a profession exempt from duty, while the other was not so exempt and was assessable with duty. See also Bhikanpur Sugar Concern, In re I.T.C. 29; [1999] Pat. 377; 53 L.C. 301. The legislature had obviously this class of cases in view, as is clear from the provisions of section 43, sub-section (2) which embodies the following rule :-"Without prejudice to the generality of the foregoing power (that is, power to make rules for carrying out the purposes of the Act and for the ascertainment and determination of any class of income) , such rules may, when income is derived in part from agriculture and in part in inform business, prescribe the manner, whether with reference to a class or in particular cases, by which the taxable income shall be arrived at."

10. No rules, such as would be applicable the case before us, have yet been framed. When they are framed and operate as statutory rules, an assessment may be made on such portion of the profit of the Company as do not fall within the description "agricultural income."

11. But although we hold that the profits of the Company are not entirely exempt from assessment, it is plain that the assessment which has actually been made cannot be sustained, as it stands; for that assessment is in excess of the sum which may be lawfully levied, and the extent of the excess is yet unknown; see observations of Swinfen Eady M.R. in Inland Revenue Commissioner''s v. Maxse [1919] 1 K.B. 647 at p. 659 .

12. Great stress has naturally been laid by Sir Binod Mitter, who appeared on behalf of the Company, on the important fact that no attempt was ever made to assess the Company to income tax under the corresponding provisions of the Indian income tax Act, 1886, which have been, so far as the present question is concerned, reproduced with no substantial variation in the Indian income tax Act, 1918. This is no doubt a circumstance to be taken into consideration, for an interpretation which has long been acted on, will not be disregarded by a Court of law [Lancashire and Yorkshire Railway Co., v. Bury Corporation [1889] 14 App. Cas. 417 at p. 422, Tancred Arrol and Co., v. Steel Co., of Scotland [1890] 15 App. Cas. 125 at p. 141 and the Court should have regard to the construction put upon a statute when it first came into force; Morgan v. Crawshay [1871] L.R. 5 H.L. 304 at p. 315, Fermoy Peerage Claim [1856] 5 H.L.C. 716 at p. 74,

Goldsmith Co., v. Wyatt [1905] 2 K.B. 586 at p. 596. But as Channell J. observed in the case last mentioned, where the Court is called upon to construe an Act of Parliament expressed in unambiguous language, it ought to put its own construction upon it, regardless of the construction that has been commonly put upon it; the fact that a mistaken interpretation has been generally put upon it cannot alter the law. To the same effect are the observations in Baleshwar v. Bhagirathi [1908] ILR 31 Mad. 408; 3 M.L.T. 400; 18 M.I.J. 349 it is a well-settled principle of interpretation that Courts, in "construing a Matute, will give much weight to the interpretation put upon it, at the time of its enactment and since, by those whose duty it has been to construe, execute and apply it. I do not suggest for a moment that such interpretation has by any means a controlling effect upon the Courts; such interpretation may, if occasion arises, have to be disregarded for cogent and persuasive reasons and, in a clear case of error, a Court would without hesitation refuse to follow such construction." This view is supported by the dictum of Sir Robert Phillimore in Evautnret v. Evafitxtrd [1992] A.C. 150 at 154. and has been applied in the case of Coporation of Calcutta v. Benoy Krishna Base [1914] A.C. 877 at p. 897 and Uithura Mohan Sana v. Ramkumaf Serha [1914] A.C. 877 at p. 897. We may add that it was stated by the Advocate-General that there has been some divergence of opinion among successive legal advisers of the Crown and that the assessment has been made in this instance with a view to obtain a judicial determination of the true meaning of the legislative provisions on the subject. Clearly, we cannot, in such circumstances, allow our decision to be controlled by the conduct of the Revenue Authorities in the past. We have finally been pressed to apply the elementary rule that taxing statutes must be construed strictly; Manindra Chandra v. Secretary of State for India [1907] ILR 34 Cal. 257; 5 CLJ 148, Mylapore Hindu Permanent Fund, Limited v. Corporation of Madras [1908] ILR 31 Mad. 408; 3 MLT 400; 18 MLJ 349, Taunt v. Smith [1892] AC 150 at 154, Lumsden v. Inland Revenue Commissioners [1914] AC 877 at p 897, Attorney-General v. Miltte [1914] AC 765. Now, there is no room for controversy that the Crown, seeking to recover the tax, must bring the subject within the letter of the law, otherwise the subject is free, however much within the spirit of the law the case might appear to be. There can be no equitable construction admissible in a fiscal statute; the benefit of the doubt is the right of the subject Partington v. Attorney-General [1869] 4 E. & I. App. H.L. 100 at p. 122, Pryce v. Monmouthshire Canal Company [1879] L.R. 4 H. L. 197 at p. 202.

13. Bearing all these principles in mind, we hold that the Company must be taxed to the limited extent indicated, because they come within the letter of the law to that extent.

14. As the contentions of both sides have succeeded only in part, we make no order as to costs of this Reference u/s 51, sub-section (4) . Let a copy of this judgment be transmitted to the Board of Revenue u/s 51, sub-section (3) .

Fletcher, J.- I agree.

Chaudhuri, J.- I agree.

