

(1959) 08 KL CK 0040
In the High Court Of Kerala
Case No : S.A. No. 504 of 1956 E

Kottayam Municipality

APPELLANT

Vs

Trading Corporation Ltd., Kottayam

RESPONDENT

Date of Decision : 11-08-1959

Acts Referred:

Citation : (1959) KLJ 1089

Hon'ble Judges : C. A. Vaidialingam, J

Bench : Single Bench

Advocate : C. K. Sivasankara Panicker, for the Appellant; Mariakutty John, for the Respondent

Judgement

Vaidialingam, J.—This is an appeal by the Municipal Council, Kottayam, against the dismissal, by both the subordinate courts, of their suit, for recovery of professional tax, from the respondent herein. According to the Municipal Council, the respondent company was carrying on business during the two half-years of the year 1123, and in spite of demands made by them for paying the amount of professional tax properly levied upon them after complying with all the formalities required under the Act and the Rules, the respondent has not paid the amount.

2. The substantial defence that appears to have been raised in both the courts on behalf of the respondent is that, in response to the notice, Ext. A, issued by the Municipal Council, they sent the balance sheet of the company for the year in question, Ext. G. Having accepted the said balance sheet, the Municipal Council erred in levying professional tax on the basis of Rule 18(1)(b) of Schedule II of the Travancore District Municipalities Act, Act XXXII of 1116. It was the defence of the respondent that the Municipality has no power to make the assessment on the basis of the turnover for the corresponding half-year of the previous year.

3. Both the courts have accepted the contention raised on behalf of the respondent and come to the conclusion that the Municipality has no power to

levy professional tax, especially when Ext. G, the balance sheet, was before them. The appellate court, namely, the learned Additional District Judge, in particular, was also of the view that in these proceedings it is open to the respondent to challenge the legality of the assessment.

4. On behalf of the plaintiff-appellant, Mr. C. K. Sivasankara Panicker has contended that both the courts have not properly appreciated the relevant provisions of the Act and the Rules under which assessments, for professional tax are made. In particular, Learned Counsel contended that under Rule 18(1) (b) of the Rules in Schedule II of the Act, it is open to the Municipal Council, where the amount of the said profits and gains are not ascertainable, to have recourse to the turnover of the previous year and make the assessment. In particular, the Learned Counsel also contended that Ext. G, which is only a profit and loss statement, will not enable the Municipal Council to find out the turn-over of the business transacted in the area during the relevant period. Mr. Sivasankara Panicker also contended that, in any event, the respondent having filed an appeal to the Municipal Council challenging the levy of professional tax and not having pursued the same, it is not open to the respondent to challenge the said assessment in these proceedings.

5. On the other hand, Smt. Mariakutty John, appearing for the respondent, was content to rely upon the two judgments in favour of the respondent, and has not placed any further or additional materials, in support of her contention that in circumstances like these, it is not open to the Municipal Council to levy the professional tax. After hearing the Learned Counsels on both sides, and after perusal of the materials available before me, I am of the view that the decrees and judgments of both the courts cannot be sustained. The relevant section of the Act giving power to the Municipal Council to levy professional tax is contained in section 91 of the Act. Section 91(1) of the Act gives power to the Municipal Council, by resolution to determine that professional tax shall be levied, and that every company, which transacts business in the Municipality, in the circumstances mentioned therein, will be liable to pay the same. In this case, there is no dispute that the provisions of section 91 have been complied with. According to the Municipal Council, it issued a notice, Ext. A, dated 16--5--1123 calling upon the respondent under Rule 18(1) of Schedule II to furnish a return in the prescribed form showing the income on the basis of which, according to the respondent, he is liable to be assessed to professional tax for the year in question. The respondent company sent a balance sheet prepared by its auditor which is Ext. G which was really a profit and loss statement. The relevant rules, for this case, regarding the assessment to professional tax are rules 16, and 18. Rule 16(1) provides for the classes into which companies and persons shall be divided for the purpose of assessment to professional tax. Rule 18 (1) of Schedule II provides for the manner or method by which the amount of professional tax payable is prescribed. According to rule 18(1), where a company transacts business in a half-year exclusively in the area of a single Municipality, the income of such company from the transaction of such business, for the

purpose of levying profession tax is deemed to be the basis of the income tax assessed under clause (a) of Rule 18 (1) and clause (b) of the said rule. In this case, admittedly there has been no assessment of the respondent company to income tax and therefore clause (a) of sub-section (1) of rule 18 does not apply. The relevant rule is 18 (1) (b). Under this sub-clause, power is given to a Municipal Council to levy professional tax on such percentage as is prescribed by the Government on the turnover of the business transacted in the area of the Municipality during the particular half-year, or where this is also unascertainable, during the corresponding half-year of the previous year. But this method can be resorted to only in cases where the amount of the said profits and gains is not ascertainable or where such company or person is not assessed to income tax or agricultural income tax. It is the case of the appellant that the balance sheet furnished by the respondent, Ext. G, does not enable them to arrive at the profits and gains of the company, because admittedly, even according to the respondent, Ext. G relates only to profits and loss. Section 91, which I have already referred to, is clear that professional tax is to be levied on a company which transacts business in the Municipality under the circumstances stated in that section. Again, rule 18(1) itself refers to a company or person transacting, business in any half-year. Therefore, the emphasis in the section as well as the rule is on "transacting business". Again, there is no question of the respondent having been assessed to income tax or agricultural income tax under clause (b) of Rule 18 (1). Therefore, in these circumstances, there is no substance in the contention, which has found favour with the lower courts, that having accepted Ext. G, it is not, open to the Municipal Council to make the assessment on the basis of the turn-over of the previous year. From Ext. G, it is not possible to ascertain the gains and profits. The respondent has not been assessed to income tax or agricultural income tax. Therefore, the only other provision that will apply in these circumstances is the latter part of sub-clause (b) of Rule 18(1), that is, professional tax is to be levied on such percentage as the Government prescribe over the turn-over of the business transacted in the particular half-year. This also the Municipality was not able to ascertain and therefore it is only the last clause of sub-section (b) of Rule 18(1) that applies. The last clause is to the effect that even when the turn-over of the business transacted in the area of a Municipality during the half-year is not ascertainable, power is given to the Municipality to make the assessment on the turn-over during the corresponding half-year of the previous year. There is no dispute that the assessment to professional tax, if leviable, has been levied on a percentage worked out on the basis of a notification issued by the Government on 16--8--1947, R. Dis. No. 705/47/L. G. A. Therefore, in my opinion, the order of assessment is perfectly correct.

6. This appeal can also be disposed off on the alternative basis. There is no dispute that the respondent filed an appeal against the order of assessment to the Municipal Council itself. Schedule II provides for such an appeal and Rule 25 clearly shows that the appeal should set forth the heads and grounds of objection to the decision appealed against. But there is a condition under Rule 26 that

unless otherwise directed, the tax in respect of which the appeal is presented, should have been deposited at the Municipal Office before the appeal itself is heard. In this case the respondent did not comply with this condition and as such their appeal was ultimately dismissed on 10--12--1124. The effect of an appellate order is prescribed in Rule 28 of Schedule II. It provides that the assessment or demand of any tax will become final when no appeal is made as provided in the rules or when such appeal is made and there is an adjudication of the Council thereon. Therefore, in this case, having chosen to attack the order of the assessment, the respondent did not pursue the matter further and in this view also the order of assessment has become conclusive as against him and it is not open to him to content the correctness or otherwise of the assessment in these proceedings.

7. Then there was a very feeble attempt on the part of the respondent to show that the order of assessment itself is without jurisdiction. I cannot accept this contention at all. I have expressed earlier my view about the right of the Municipal Council to levy the professional tax in the circumstances of this case. The Municipality has complied with all the provisions of the Statute and the rules and made the assessment. The fact that it made a mistake in the matter of assessment cannot certainly render the assessment itself as being one passed without jurisdiction. In the result, the decrees and judgments of both the lower courts are set aside and the suit decreed with costs throughout. No leave.