

(1962) 11 CAL CK 0005
In the Calcutta High Court
Case No : Income-tax Matter No. 47 of 1959

SAMLA COLLIERIES LTD.

APPELLANT

Vs

COMMISSIONER OF Income Tax.

RESPONDENT

Date of Decision : 23-11-1962

Acts Referred:

Income Tax Act, 1961 — Section 10(2)(ix), 10(2)(xv)

Citation : (1963) 50 ITR 117

Hon'ble Judges : Sinha, J;Datta, J

Bench : Full Bench

Judgement

SINHA J. - These four applications have been consolidated for the sake of convenience inasmuch as a common question of law has arisen in these applications.

The facts are as follows : The assessee in this case is the Samla Collieries Ltd. In its own statement of facts, being annexure "A", set out at page 65 of the paper-books, it has been stated that the company carried on the business of coal mining and as such had taken several coal mines on lease from owners of land to whom royalties were being paid. It is further stated that the several collieries were being worked by the company and the coal raised therefrom was sold. In other words, this is a simple case of a company working a mine, raising and selling the coal. The assessment years are 1950-51, 1951-52, 1952-53 and 1953-54. For these years, the assessee incurred liabilities for payment of three classes of expenses (1) road and P. W. D. cess, (2) education cess and (3) payments made on account of royalty-holders as per royalty agreements.

We need not deal with the views of the Income Tax Officer or the Appellate Assistant Commissioner, but may straightaway mention that the Appellate Tribunal held that so far as the amount paid on account of royalty-holders was concerned, that was allowable for deduction, but the amounts paid as cess were excluded because of section 10(4) of the Income Tax Act. The point arises as follows : The road and P. W. D. cess are paid under the Bengal Cess Act, being

Act IX of 1880. The relevant sections are sections 5 and 6, which run as follows :

"5. From and after the commencement of this Act in any district or part of a district, all immovable property situate therein except as otherwise in section 2 provided, shall be liable to the payment of a road cess and a public works cess."

"6. The road cess and the public works cess shall be assessed on the annual value of lands and `until provision to the contrary is made by Parliament on the annual net profits from mines, quarries tramways, railways, and other immovable property, ascertained respectively as in this Act prescribed and the rates at which such cesses respectively shall be levied for each year shall be determined for such year in the manner in this Act prescribed : Provided that the rate at which each such cess shall be levied for any one year shall not exceed the rate of one-half anna on each rupee of such annual value and annual net profits respectively."

The education cess is levied under the Bengal (Rural) Primary Education Act, 1930. The relevant section is section 29, which runs as follows :

"29. (I) In any district or part of a district in which the provisions of this chapter are in force, all immovable property on which the road and public works cesses are assessed according to the provisions of the Cess Act, 1880, shall be liable to the payment of a primary education cess.

(2) The primary education cess shall be levied at the rate of three and a half piece on each rupee of annual net profits from mines and quarries and at the rate of five piece on each rupee of annual value of land and of annual net profits from tramways, railways and other immovable property as determined under the Cess Act, 1880."

Coming now to the Income Tax Act, section 10 deals with the headings under which tax is payable and the allowances that are to be made for computing the income on the various headings. Section 10(I) provides that tax shall be payable by an assessee under the head "profits and gains of business, profession or vocation" in respect of the profits or gains of any business, profession or vocation carried on by him. Sub-section (2) lays down the method of computation of such profits or gains. Various allowances are to be made, of which we are concerned in this case with two, namely, section 10(2)(ix) and section 10(2)(xv). Under clause (ix) of sub-section (2) allowance is given for any sum paid on account of land revenue, local rates or municipal taxes in respect of such part of the premises as is used for the purposes of the business, profession or vocation. Clause (xv) of sub-section (2) is the residuary clause which deals with allowances which are of a revenue nature and not of the nature of capital expenditure. We now come to sub-section (4) of section 10. It reads as follows :

"10. (4) Nothing in clause (ix) or clause (xv) of sub-section (2) shall be deemed to authorise the allowance of any sum paid on account of any cess, rate or tax levied on the profits or gains of any business, profession or vocation or assessed at a proportion of or otherwise on the basis of any such profits or gains..."

Reading these provisions together, it has been held that the amounts paid as cess for road and P. W. D. as also the education cess are excluded by the provisions of sub-section (4) of section 10. It is conceded that the matter does not come under clause (ix) of sub-section (2). It would come under clause (xv) unless it is excluded by the proviso. The proviso seems to be without complication and excludes allowances of any sum paid on account of any cess levied on the profits or gains of any business. I have already mentioned that the assessee in this case carries on a mining business which consists of raising coal from the mines and selling the same. I do not see how it can be argued that the profit which is gained by raising the coal and selling the same does not come within the provisions of the Cess Act or the Education Cess Act or is not within the ambit of sub-section (4) of section 10.

Mr. Mitter appearing on behalf of the assessee has argued that there is a subtle distinction between the profit that is gained by the process of extracting coal from a mine, which, according to him, is different from the profits of the business which the mining company might carry on. I am unable to understand the distinction. He has referred us to a decision of the Supreme Court, being Civil Appeals Nos. 587 and 588 of 1961 in *Tata Iron & Steel Co. v. State of Bihar* and certain other allied cases, which were apparently heard together. In the unreported judgment of the Supreme Court delivered by Ayyangar J. on the 24th of September, 1962, the learned judge was dealing with a particular set of circumstances that arose in those cases. It so happened that the Tata Iron & Steel Company, as well as the other companies mentioned in the judgment, namely, the Indian Iron & Steel Company and the Indian Copper Corporation Ltd., carried on mining operation by raising ore from mines. But the operation of mining was only incidental to their main business, namely, the manufacture of iron and steel or copper. It was argued there that in such an operation, the Cess Act would not be applicable, because no profit was gained by the mere operation of mining. This contention was overruled. The learned judge held that although the assessee companies did not operate the mines and raise the ore for direct sale thereof, and although the goods brought up from the mines were not sold but used in manufacture, it could not be said that there was no profit arising out of the business of mining. That profit was included in the profit that was enjoyed by sale of what has been termed as the "end product". It is apparent, therefore, that the facts of these cases are quite dissimilar to the present one. In the present case the assessee company, upon their own showing, carried on the business of raising coal from mines and having raised the coal, they carried out no operation of manufacture of any product but simply sold the coal. In my opinion, there is no reason why the complications that arose in the other cases should be introduced herein. It may be that, where a mining company does not sell the coal raised but uses it in some other operation, the question may arise as to the computation of profit which can be said to have arisen out of the mining operation. But the Supreme Court decision is no authority for saying that no profit arose out of the mining operation. On the contrary, it is authority for the

proposition that such profit did arise. Naturally, the computation of the profit will depend on the facts of each case. Mr. Mitters argument was, in brief, that we should make a distinction between the profit made by raising the coal and the profit made in the business of mining. In our opinion, there is no ground or basis for making this distinction in the facts and circumstances of this case. That being so, it seems to be clear that the profits enjoyed by the assessee as a result of the mining business was liable for the payment of cess under both the Acts mentioned above.

Mr. Pal has also pointed out that, even if the matter does not come within the first part of sub-section (4), it certainly comes under the latter part, because the cess is certainly assessed at a proportion or otherwise on the basis of the profits or gains enjoyed by the assessee company as a result of the mining operations. Mr. Pal cited two cases, one being of a Division Bench of this court in *Manindra Chandra Nandy v. Secretary of State for India* , which subsequently went on appeal to the Privy Council. There, the point raised was as to whether the cess is levied on the property or the income therefrom. In that particular case, the Maharaja of Cossimbazar had leased out certain properties and was getting a royalty. He claimed that he was not himself carrying on the mining operations and, therefore, was not liable for payment of cess. This was negatived. It was held that the cess was not merely to be charged from the occupier but also from the owner. In my opinion, it is not necessary to deal in this case with the particular question that arose in the case above mentioned, namely, as to whether the cess follows the land or the profit arising therefrom. It is quite clear to me that the cess under both the Acts has to be paid because the assessee company carried on mining operations and enjoyed profit. Such payments, however, are not allowable u/s 10(2) because of the provisions of sub-section (4) of section 10. If it was a kind of cess that is contemplated under clause (ix) of sub-section (2) then it would have been allowed. But since it is a cess payable on the profits or gains of any business or calculated at a proportion on the basis thereof, it is excluded by the provisions of sub-section (4) of section 10. The Appellate Tribunal, therefore, came to the right conclusion. The question that has been asked is as follows :

"Whether, on the facts and in the circumstances of the case, the amount paid by the assessee company as cess for roads, public works and education, was allowable as deduction u/s 10(2)(ix) or section 10(2)(xv) of the Indian Income Tax Act read with section 10(4) of the said Act ?"

The answer is in the negative. In other words, it is not allowable as a deduction. The respondent is entitled to costs. Certified for two counsel.

DATTA J. - I agree.