(1928) 01 MAD CK 0036

In the Madras High Court

The Madura Devasthanams APPELLANT

Vs

The Madura Municipal Council RESPONDENT

Date of Decision : 30-01-1928

Acts Referred:

Citation : (1928) ILR (Mad) 301 : 110 Ind. Cas. 89 : (1928) 27 LW 834 : (1928) 54 MLJ 625

Hon'ble Judges : Wallace, J;Srinivasa Aiyangar, J

Bench : Full Bench

Judgement

Wallace, J.—The decision in this case turns on the interpretation of Section 93 of the District Municipalities Act. The Municipal Council of

Madura has demanded profession tax from the Receiver of the Sree Meenakshi Devasthanam in Madura on income received by him from

investments of surplus devesthanam funds. The devasthanam paid under protest and instituted this suit for a declaration that it was not liable for the

tax and for an injunction to prevent collection. The sum in the suit is trifling, a matter of Rs. 2, but the legal and fiscal question involved is obviously

of general importance.

2. So much of the decision in the case will turn on the exact wording of Section 93 (1) that it is better to quote it in full. Section 93, Sub-section 1:

If the chairman publishes a notification u/s 80, that a profession tax shall be levied, every person, not liable to the companies'' tax, who, within the

Municipality and for the period laid down in Section 95, exercises after the date specified in the said notification a profession, art, trade or calling

or holds any appointment public or private, or is in receipt of any pension or income from investments or money lending or any source other than houses and lands inside the Municipal limits bringing him within one or more of the classes of persons specified in Schedule IV, shall pay a half

yearly tax on his professional income, salary and pension on the scale shown in the said schedule.

3. The section is headed ''profession tax'' and the marginal note is ''license tax on professions''. The substance of Section 93 (1) which is necessary

for purposes of this case, as I read it, is that every one in a Municipality who resides there for 60 days in the aggregate in the half year and is in

receipt of income from investments shall pay a half yearly tax on his professional income. The short point at issue is whether the phrase

''professional income'' is a short, compendious phrase used to include all the kinds of income specified in the sub-section, as contended by the

respondent, or whether it means income derived from the actual exercise of a profession, as contended by the appellant. According to the

respondent, any income of the kind specified in the first part of the sub-section is taxable ; but according to the appellant such income is only

taxable if and when it can be legitimately said to have been obtained from the exercise of a profession.

4. It cannot be gainsaid that the wording of the section is very unhappy. The word ''profession'' is not defined, but evidently it was not designed to

cover all the sources of income specified in the sub-section. For example, ''profession'' as used in the sub-section does not mean art, trade, calling,

holding an appointment, being in receipt of a pension, or an income from investments, etc. It cannot be here vised definitively of these other sources

of income because, to define a word by using the word defined offends against all canons of interpretation. True the word is used as descriptive of

the tax ; but that is merely a device to save time and multiplicity of words. The tax is on professions and other sources of income, but for purposes

of short statement the tax is to be known as '' profession tax ''. I am unable to agree with the respondent that when the word is again met in its

adjectival form '' professional'' it is used in its compendious sense and not in its definitive sense. Had the former been the idea, the addition of the

words '' salary and pension'' would be not only unmeaning but misleading, since, ''profession'' in its compendious sense already includes the receipt

of salary and pension, while the words ''professional income'' evidently exclude salary and pension. The appropriate, exhaustive, and compendious word before ""income"" would then have been the word ""such"" and not ""professional"". (Incidentally, it may be remarked that the use of the word

and"" instead of ""or"" between ""salary"" and ""pension"" is also puzzling). We must then give some independent meaning to the words '''professional

income"" which are not equivalent to ""such income"" and the ordinary meaning which the words usually bear is ""income received from the exercise of

a profession"". The first part of the sub-section deals with the class of persons to be taxed, the latter part declares under what circumstances they

become liable to pay the tax, and in my view limits it to cases in which they are in receipt of salary or pension or are marking a professional

income. I am clear that the temple in gaining a small addition to its income by investing its surplus funds cannot in any sense be said to be exercising

a profession or earning a professional income.

5. I do not think that any help is to be derived from a reference to corresponding sections in other Acts, like the District Municipalities Act of 1884

or the Madras City Municipal Act or from rulings thereunder, because we have no means of knowing whether or no the legislature in enacting the

present section intended to widen or restrict the compass of its net of taxation as cast in other Acts.

6. It is not necessary in the view that I take above to go into the question of whether or not the deity is a person or whether it resides in Madura

within the meaning of Section 95 of the Act.

7. I am therefore of opinion that the tax is not leviable. This result is also in consonance with the well known principle of interpretation of fiscal

enactments, that if the language is at all ambiguous it must be interpreted in the manner most beneficial to the subject. Taxing statutes must state

with the utmost clearness what and whom and in what manner they are taxing.

8. I would therefore allow the appeal and restore the decision of the District Munsif with costs of the appellant in all courts.

Srinivasa Aiyangar, J.

9. I am in entire agreement and I wish to add very little. As pointed out by my learned brother the section under consideration is only a specimen of

the present day hasty and inaccurate legislation by large democratic bodies without the aid of trained and competent legislative draftsman.

10. The contention of the respondents really amounted to this : That the section

should be read, as though the word, ""professional"" was not there at

all in that part of the section where the taxable income is defined. Such contention, it follows, cannot possibly be accepted. The word

professional"" in the expression ""on his professional income"", being really in the nature of an expression deliberately introduced in the context and

otherwise unnecessary, cannot, on any proper rule of interpretation, be omitted to be given its proper definitive significance. In the first part of the

section the clause is defined of persons who are subject to the tax and in the latter part the income that is liable to assessment. The receipt of

interest from investment cannot be said to be salary or pension. So, if it is to be taxed, it can only be taxed as professional income. On the face of it

the income from investment cannot be regarded as professional income. But in the first part of the sentence a person who is in receipt of income

from investments is included amongst the persons liable to be taxed. If so, it seems to follow that it is only when the receipt of the income from

investment can be properly said to be a professional income, such income can be taxed. From this it may be derived that such intention of the

legislature as is capable of being gathered, and in any case on a strict interpretation of the terms of the section which is called for, it must follow,

that it is only when the making of the investment and the receipt of the income therefrom is followed as a profession that such income can be taxed.

11. It has not been contended before us that either the idol which is the legal person concerned or the members of the committee can, having

regard to the nature of the investment made by them, be said to carry on business in investment.

12. I therefore agree to the order proposed by my learned brother.

