

(1961) 03 MAD CK 0025
In the Madras High Court

The Mannargudi Municipality by Commissioner	APPELLANT
Vs	
The Mannargudi Bank, Ltd., by Managing Director Sri D. Ramachandra Iyer	RESPONDENT

Date of Decision : 23-03-1961

Acts Referred:

Income Tax Act, 1922 — Section 10, 24, 29, 6

Citation : (1962) 1 MLJ 16

Hon'ble Judges : Kunhamed Kutti, J

Bench : Single Bench

Judgement

Kunhamed Kutti, J.—This Civil Revision Petition arises out of a small cause suit filed by the Respondent, Mannargudi Bank, Limited, for refund of a sum of Rs. 125 collected by the petitioner, Mannargudi Municipality, as profession tax for the half year ending 31st March, 1957. The learned District Munsif decreed refund of a sum of Rs. 113, after deducting Rs. 12 which, according to him was the tax payable by the bank. According to the Municipality, in decreeing the suit the learned District Munsif acted without jurisdiction and has further misconstrued and misapplied the relevant rules pertaining to levy of profession tax under the District Municipalities Act.

2. The Respondent carries on banking business among other places within the Mannargudi Municipality and is liable u/s 93 of the District Municipalities Act to pay profession tax in accordance with the rules laid down in Schedule IV of the Act. When the Municipality called upon the Respondent for a return of its income for the second half year 1956-57, it submitted a return showing a loss of Rs. 5,514-0-1 at Mannargudi Head Office. The Respondent also produced before the Executive Authority the Income Tax assessment order for the assessment year 1956-57. The Executive Authority did not accept the return or act upon the assessment order, but estimated the income of the Respondent at Rs. 19,097 on the basis of the Respondent's audited balance sheet for the relevant period and assessed it to a tax of Rs. 125 under Class I of Rule 16(1) of Schedule IV. The

Respondent paid the amount under protest and filed an appeal to the Council. This proved unsuccessful. Therefore it filed the suit alleging that in levying the tax in question the Municipality had not, in substance and effect, complied with the relevant provisions of the District Municipalities Act and therefore the levy was illegal. It further averred that the Municipality should have acted upon the Income Tax assessment order which was conclusive. The learned District Munsif upheld the respondent's contention that the Municipality had not in substance and effect complied with the rules, but instead of declaring the levy illegal on this ground he estimated the income of the respondent for the relevant half-year at Rs. 3,118 on the basis of the assessable income as found in the assessment order; and after deducting the tax payable on the said amount, he decreed the suit for the balance.

3. The question is whether, in levying the tax in question the petitioner-Municipality had in substance and effect conformed to the relevant rules, in other words whether in not acting upon the Income Tax assessment order it had contravened Explanation to Rule 19(2) of Schedule IV. Under Rule 19(1) of Schedule IV:

If, in the opinion of the Executive Authority, profession-tax is or will be due from any company or person for any half-year, he shall serve a notice on such company or person either in that half-year or in the succeeding half-year requiring the company or person to furnish a return in the prescribed form showing the income on the basis of which, according to such company or person, it or he is liable to be assessed to profession-tax for the half-year in question. Thereupon it shall be open to such company or person to submit a return showing the income derived by it or him during the half-year for which profession-tax is claimed or for the corresponding half-year of the previous year and produce any evidence on which the company or person may rely in support of the return made.

4. Rule 19(2) prescribes the following procedure. If a return as required under Sub-rule (1) is made and the Executive Authority is satisfied that it is correct and complete, he shall levy the profession-tax on the basis of such return. Explanation to Sub-rule (2) provides:

In cases not falling under Clause (b) of Sub-rule (1) or under Sub-rule (a) of Rule 18, if the Company or person produces the notice of demand of Income Tax served on it or him u/s 29 of the Indian Income Tax Act, 1922, for the year comprising the half-year in question, the Executive Authority shall be bound to take one-half of the income mentioned in such notice of demand as the income derived from the sources on which profession-tax is leviable under this Act, as the income on the said sources for the purposes of levying profession-tax.

The respondent's case, accepted by the learned District Munsif, is that since it had produced an assessment order comprising the relevant half-year, the Executive Authority was bound to take half the income shown therein and not

having done so, the levy was illegal.

5. Mr. Ismail, learned Counsel for the Municipality raised certain contentions of a preliminary nature. He pointed out that what is contemplated by the aforesaid Explanation is a notice of demand u/s 29 of the Income Tax Act and not the assessment order. Such notice of demand or one for the relevant half-year had not been produced by the respondent. An assessee according to the learned Counsel is entitled either to submit a return or to produce the notice of demand u/s 29 of the Income Tax Act for the relevant period. The respondent in this case had submitted a return; there was therefore no question of the Executive Authority proceeding on the basis of the notice of demand. Learned Counsel further contended that the Explanation to Sub-rule (2) itself does not apply to the respondent for the reason that it relates to cases not falling under Clause (b) of Sub-rule (1) or Sub-rule (2) of Rule 18 (which relate to persons and companies transacting business other than money-lending). In other words, the Explanation applies to cases coming under Rule 18(1)(a), and the respondent transacts business of money-lending.

6. It is no doubt true that the Explanation contemplates production of a notice of demand u/s 29 of the Income Tax Act. But the prescribed form of this notice does not contain any column showing income. On the other hand it refers to a "form attached", apparently the assessment form similar to the one in Exhibit A-4 produced by the respondent along with the notice of demand. This form under the heading "Computation of Income" gives in column 2 the amount of income of the respondent as Rs. 33,575 against the source "interest on securities" and after deducting a loss of Rs. 27,353 against the source "Business, Profession or Vocation" and adding a sum of Rs. 14 under other sources has arrived at the total income of Rs. 6,236, so that the income, assessable or otherwise under the provisions of the Income Tax Act, can be ascertained only with reference to the assessment form and not from the notice of demand. The respondent produced before the Executive Authority a certified copy of the assessment order (Exhibit B-2) instead of assessment form or notice of demand in Exhibit A-4 which in the present case happened to be a refund order for which also it is said, the same form as the notice of demand u/s 29 is used. Obviously, the income of the respondent could not have been ascertained if notice of demand alone had been produced. But the Explanation refers only to the notice of demand; hence the contention of the learned Counsel that in the absence of the production of the notice of demand the requirements of the Explanation cannot be said to have been complied with. This contention is perhaps warranted on the language used. But when from the notice of demand alone unaccompanied by the assessment form or the assessment order, no income can be ascertained and when the notice of demand itself refers to the form attached, we have to take it that, when the Explanation refers to the notice of demand it includes the assessment form showing the income of the assessee. In this case the respondent produced the assessment order instead of the assessment form. This order also contains, so far as income is concerned, the same figures as in

the assessment form. It would be an unreasonable view to take that if, instead of the assessment "form" without which the income cannot be ascertained, the assessment order which contains further details is produced, the Executive Authority would not be bound to act upon it. In my opinion, it is only reasonable to construe that the Explanation includes assessment form as well as the assessment order and production of either will amount to a substantial compliance with the requirements of the Explanation provided, it is for the year comprising the half-year in question.

7. But Mr. Ismail contended that the Explanation related to cases not falling under Clause (b) of Sub-rule (1) or under Sub-rule (2) of Rule 18. Clause (b) of Sub-rule (1) and Sub-rule (2) of Rule 18 relate to a Company or a person transacting business other than money-lending. The argument is that since the respondent carries on money-lending business the Explanation in question does not apply to the respondent. I am not inclined to accept this contention. Sub-rule (1)(b) and Sub-rule (2) of Rule 18 apply to company or person who are non-money-lenders and who are not assessed to Income Tax. The obvious purpose of the Explanation is to cover all cases not coming under Sub-rule (1)(b) and Sub-rule (2) of Rule 18. Moreover, it is strictly not correct to say that the business of banking is confined to money-lending and such a contention which involves a question of fact was not raised before the learned District Munsif.

8. Nor am I able to find much substance in the argument that a company or a person who has submitted a return under Rule 19(1) is precluded from producing the notice of demand of Income Tax contemplated by the Explanation. No doubt a company or person has the option to submit a return or produce a notice of demand comprising the relevant half year. But they are not mutually exclusive. The company or the person is entitled to produce it as evidence of the return and if the Explanation to Sub-rule (2) of Rule 19 is satisfied, the Executive Authority is bound to accept it as conclusive evidence.

9. Coming to the next contention that the notice of demand did not comprise the relevant half-year for which return was submitted, the argument of Mr. Ismail is that it is not the assessment year but the year of account that is intended by the words "for the year comprising the half-year in question." I am unable to agree. The Explanation makes it clear that the notice of demand contemplated is "for the year of assessment comprising the half-year for which return is called for and submitted." That what is contemplated is the assessment year would be clear if we refer to Rule 18(1)(a) which speaks about Income Tax assessment for the year comprising the half-year u/s 10 of the Income Tax Act, 1922. Exhibits A-4 and B-2 relate to the assessment year 1956-57 and it comprises the relevant half-year. Therefore, on the construction I am inclined to place on the words "notice of demand" that it includes assessment form or order, the learned District Munsif was right in holding that inasmuch as the Executive Authority did not act - upon the assessment order he had not complied in substance and effect with the provisions of Rule 19.

10. The question then is what is the taxable basis; is it gross income or the net income as shown in the assessment form or order. Mr. Ismail would contend that the assessable income under the Income Tax Act cannot be taken as the basis for the purpose of levying the profession-tax. He pointed out that there are several heads of income liable to be charged for Income Tax as set out in Section 6 of the Indian Income Tax Act; and u/s 24 of the said Act:

Where any assessee sustains a loss or profits or gains in any year under any of the heads mentioned in Section 6, he shall be entitled to have the amount of loss set-off against his income, profits or gains under any other head in that year.

But as regards the income for levy of profession-tax, the learned Counsel would urge, such a set-off is not contemplated and what has to be looked into when a notice of demand is produced is the income mentioned as the income derived from the source of which profession-tax is leviable u/s 93 of the District Municipalities Act. It seems to me that the question does not arise in this case. The main source of income of the respondent, as I have already pointed out, is the interest on securities shown as Rs. 33,575. Was the respondent liable to be taxed on the basis of this income or on the basis of the net income of Rs. 6,236? The contention of the respondent is that it is not the gross income but the net income that should be taken into consideration and the net income in the present case for the relevant half-year being only Rs. 3,118 the same is liable to be taxed with a sum of Rs. 12 as found by the learned District Munsif.

11. The word "income" is not defined in the Act or in the Rules. In *Municipal Council of Mangalore v. The Cordial Bail Press, Mangalore* (1903) 14 M.L.J. 410 : ILR Mad. 547, the word was construed with reference to the District Municipalities (Madras Act IV of 1884), to mean the net income of profits derived from the business and not gross income or receipt. In *Arunachalam Chettiar v. Namakkal Union Board* (1927) 54 M.L.J. 603, Devadoss, J., following the above decision held that a person is to be assessed on the net income actually earned by him. The learned Judge had to construe the words with reference to Sections 93 and 228 of the Madras Local Boards Act, IV of 1920. Repelling the argument that profession-tax is not a tax on income but on the exercise of privilege like a profession, Devadoss, J., observed:

It is suggested by Mr. T.M. Krishnaswami Aiyar that the profession-tax is levied for the purpose of carrying on the profession and therefore a person who carries on a profession is bound to pay the tax. But this argument overlooks the fact that profession-tax is not levied on the basis of the income derived by a person from the profession. When income is the basis of taxation, what actually benefits the person can be called income, and not everything that comes into the business but what accrues to his benefit, that is to say, the gross income, minus the legitimate charges, would be the income of the person. It has also to be noted that in the case of companies in Rule 8 the expression "gross income" is used. When the Legislature uses the expression "gross income" in one rule and uses the word "income" in another rule, the Court construing the Act must give

the expressions the meanings which they are intended to convey in the context. I am unable to accept the contention of Mr. Krishnaswami Aiyar that the word "income" as used in the Act could only mean gross income...the Legislature made a distinction between gross income and income as such, and as I have observed income could only mean in the ordinary sense, income which really benefits a person and not the gross earnings or gross taking of which only a fraction may really benefit a person.

The learned Judge further relied on the observations of the Privy Council in *Lawless v. Sullivan* (1881) L.R. 6 A.C. 373:

there is nothing in the enactment imposing the tax nor in the context which should induce them to construe the word "income" when applied to the income of a Commercial business for a year, otherwise than in its natural and commonly accepted sense, as the balance of gain over loss.

12. It is not seriously contended for the Municipality that in the sense in which "income" is interpreted in the above rulings, the figure of Rs. 3,118 cannot be deemed to be the income of the respondent for the relevant half-year. The learned District Munsif has found it so.

13. But on his finding that because the Executive Authority had not in substance and effect complied with the Rules, it was open to the learned District Munsif to have declared the levy itself illegal and direct refund of the entire amount. But he chose to exercise the function of the Executive Authority and proceeded to reassess the tax payable by the respondent. This was not his function. One of the grounds raised on behalf of the Municipality is that the learned District Munsif went wrong in entering into the question of quantum of the income with reference to which tax is exigible and re-fixing the tax. There is force in this objection. But since the claim of the Municipality is now barred, I do not propose to interfere with the decree passed by the learned District Munsif.

14. In the result, this Civil Revision Petition fails and the same is dismissed with costs.