

PRIVY COUNCIL

Commissioner of Income-Tax, Bombay

Vs.

Western India Turf Club, Ltd.

Privy Council Appeal No. 57 of 1927

(The Lord Chancellor, J. Lords Buckmaster, Carson, Darling and Warrington of
Clyfee. JJ.)

04.11.1927

JUDGMENT

THE LORD CHANCELLOR J.

1. The question raised by this appeal is a short one. The Western India Turf Club was originally an unregistered association ; but as from the 1st April 1925, it was converted into a company by being registered under the Indian Companies Act (Act 7 of 1913) as a company limited by guarantee, the object of the company being to take over the assets, effects and liabilities of the Western India Turf Club. The question raised in these proceedings is, at what rate that company should pay super tax for the tax-year commencing on the 1st April 1925.
2. The enactment chiefly in point is Section 55, Indian Income-tax Act, Act 11 of 1922. That section is in these terms:

In addition to the income-tax charged for any year, there shall be charged, levied and paid for that year in respect of the total income of the previous year of any individual, unregistered firm, Hindu undivided family or company, an additional duty of income-tax (in this Act referred to as super tax) at the rate or rates laid down for that year by act of the Indian Legislature.
3. On that section two questions may arise, which it is necessary to keep distinct.
4. First, the question may arise on what amount of income the taxpayer is to pay his super tax. On that point the section provides that he is to pay super tax in respect of the total income of the previous year. Strictly speaking, this company had no total income in the previous year, for it did not then exist ; but that difficulty is removed by

Section 26 of the same Act, which provides that.

5. Where any change occurs in the constitution of a firm or where any person has succeeded to any business, profession or vocation, the assessment shall be made on the firm as constituted, or on the person engaged in the business, profession or vocation, as the case may be, at the time of the making of the assessment.

6. It should be added that Section 26 is applied to super tax by Section 58. The effect of those sections is that, for the purpose of assessment to super tax, you must take the total income, not of the respondent company itself, but of the predecessor in title of the company ; and the income in this case has been assessed on that basis.

7. The second question which arises is, at what rate is the taxpayer to pay super tax. With regard to that point, Section 55, provides that the taxpayer is to pay at the rate or rates laid down for that year, that is, for the year of assessment by act of the Indian legislature.

8. In other words, for the purpose of ascertaining the rate of the tax you are referred to a statute to be afterwards passed. That statute was afterwards passed, and it is Act 13 of 1925. It provides by Section 7, Sub-Section (2) that the rates of super tax for the year beginning on the 1st day of April 1925 shall, for the purposes of Section 55 Indian Income-tax Act, 1922, be those specified in Part. 2, Schedule 3.

9. When one turns to Part 2, Schedule 3, one finds these rates specified, namely.

10. In respect of the excess over Rs. 50,000 of the total income (1) in the case of every company, one anna in the rupee.

11. Then follow other rates relating to corporations, individuals or associations not being companies, and some of those rates are calculated on a rising scale. What is the effect of that? It can only be that this particular taxpayer, being a company falling within the first words of Part 2, Schedule 3, must pay at the rate there specified, namely, at the flat rate of one anna in the rupee.

12. The argument which has been used in favour of the appeal seems to involve the fallacy that liability to tax attached to the income in the previous year. That is not so. No liability to tax attached to the income of this company until the passing of the Act of 1925, and it was then to be taxed at the rate appropriate to a company.

13. With regard to the Allahabad case which has been cited (In the Matter of Begg Sutherland and Co., Ltd., AIR 1925 Allahabad 535 : 47 All. 715, it is sufficient to say

that, if the question there decided should again arise, that decision will require further consideration.

14. For the reasons which they have given their Lordships are of opinion that this appeal fails, and they will humbly advise His Majesty that it be dismissed with costs.

Appeal dismissed.