PRIVY COUNCIL

Commissioner of Income-Tax Bengal

Vs.

Gurupada Dutta and others

P.C.A.No.82 of 1944
(Lord Thankertonlord Goddard and Sir John Beaumont JJ.)

20.11.1945

JUDGMENT

LORD THANKERTON J.

1. This is an appeal from the judgment of the High Court of Judicature at Port William in Bengal, dated 10th June 1943, delivered on a reference made to it by the Appellate Tribunal under section 66, Income-tax Act, 1922. The respondents did not appear in the appeal. The respondents constitute a Hindu undivided family, carrying on business at Tejhati in Birbhum district, and also at Nalhati and Lohapur, two other villages there. In assessing the respondents to income-tax for the year 1940-41, on the basis of the previous year 1939-40, the Income-tax Officer assessed the total assessable income of the respondents as a Hindu undivided family at Rs. 17,250, in which he included a sum of Rs. 6563, as being the profits of the Nalhati business assessable under Sections 6 (iv) and 10 (1) of the Act. The Income-tax Officer disallowed a claim by the respondents to deduct as an allowance authorised by Section 10(2) of the Act a sum of Rs. 84 paid by them as a union board rate in Nalhati under the provisions of the Bengal Village Self-Government Act, 1919. The respondents appealed under Section 30 against the order of the Income-tax Officer to the Appellate Assistant Commissioner of Income-tax, Calcutta, B Range, on various grounds, with only one of which the present appeal is concerned, namely, the claim to deduct Rs. 84 above mentioned, but the Appellate Assistant Commissioner affirmed the disallowance of the deduction. The respondents then appealed under Section 33 of the Act to the Appellate Tribunal, who allowed the appeal, holding that, the payment of Rs. 84 was made for the purpose of the business and was an allowable deduction, in computing the profits of the Nalhati branch. On the application of the present appellant, the tribunal made the reference under section 66, the question referred being :

"Whether the rate imposed under the provisions of the Bengal Village Self-Government Act, 1919, on a person occupying a building within the Union, and using the same for the purpose of business is an allowable deduction in computing the profits of the business under section 10, Income-tax Act ?"

2. It will be convenient, in the first place, to state the relevant provisions of Section 10 Income-tax Act, 1922, as it stood amended at the material date :

"10. (1) The 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.

(2) Such profits or gains shall be computed after making the following allowances, namely :

* * * * *

(ix)any sums 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;

* * * * *

(xii)any expenditure (not being in the nature of capital expenditure or personal expenses of the assessee) laid out or expended wholly and exclusively for the purpose of such business, profession, or vocation;

* * * * *

(4) Nothing in clause (ix) or clause (xii) 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 ...."

3. In answering affirmatively the question of law submitted to them the learned Judges contented themselves with expressing agreement with the opinion of the Appellate Tribunal and their reasons therefor. The main argument for the Crown was based on sub section (4) of Section 10 Income-tax Act. It was admitted that the Union Board rate was a local rate and that it was not levied on the profits or gains of the Nalhati business, but it was maintained that the Union Board rate was assessed at a proportion of or otherwise on the basis of the profits or gains of the Nalhati business. Alternatively, it was maintained by the Crown that the respondents had failed to bring the rate here in question within either head (ix) or head (xii) of sub section (2) of Section 10 for reasons to which their Lordships will refer later. The Bengal Village Self-Government Act, 1919 (Bengal Act 5 [V] of 1919), was intended to develop self-government in the rural areas of Bengal, and the financial provisions are contained in

chap. 5 of the Act. The material sections of the Act and the material rules made under Section 101(2) (k) of the Act are as follows:

"Section 37. - The union board shall impose yearly on persons who are owners or occupiers or owners and occupiers of buildings, within the union, a rate amounting to -

(a) the sum required, after deduction of the contribution, if any, made by the Provincial Government in this behalf, for the salaries and equipment of the dafadars and chaukidars and the salaries of the establishment of the union board, and

(b) the sum estimated to be required to meet the expenses of the board in carrying out any of the other purposes of this Act, if such estimate has been approved by more than half the total number of the members of the board at a meeting specially convened for the purpose, together with 10 per cent, above such sums to meet the expenses of collections and the losses due to non-realisation of the rate from defaulters.

Section 38. - (1) The rate to be imposed by a union board under Section 37 shall be an assessment according to the circumstances within the union and property within the union, if any, of the persons liable to the same :

Provided that the amount assessed upon any person in any one year shall not be more than eighty-four rupees.

(2) Any person who, in the opinion of the union board, is too poor to pay half an anna a month, shall be altogether exempted from payment of any rate under this Act.

Section 39.-The assessment for the imposition of the rate under Section 37 shall be made in accordance with rules prescribed under section 101, and any person dissatisfied with the amount at which he has been assessed may, within such time as may be specified in those rules, apply to the union board, either orally or in writing, for a revision of the assessment, and the union board may amend the assessment or confirm the same.

Section 101 - (1) The Provincial Government may, after previous publication, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power the Provincial Government may make rules....

(k) for the making of an assessment by the union board under section 39, for imposing the rate under section 37, and prescribing under Section 41 the method and time of payment of such rate.

RULES MADE UNDER SECTION 101 (2) (k) THEREOF.

ASSESSMENT AND IMPOSITION OF THE UNION RATE.

Rule 1-(1) After preparing the annual budget estimate in Account Form No. 1 and not less than two months and a half before the first day of the year to which the budget relates, the union board at a meeting shall proceed to assess the union rate provided in the estimate according to the circumstances and the property within the union of the person liable to assessment :

Provided that the said period may, for reasons to be recorded in writing, be at any time altered by the District Magistrate.

(2) When a union board is for the first time constituted in any union it may assess the, union rate for a portion of the year in which it is so constituted or of the year next following.

Rule 2. - The union board shall first prepare, village by village and in Form No. 1, a list of all persons owning or occupying buildings, whether with or without land appertaining thereto, in the union, either permanently or temporarily, showing their trade, business, etc., within the union, and the estimated annual income which they derive from buildings or other property or business within the union. All such persons shall be included in the list even if some are subsequently exempted.

Rule 3.- The board shall, after considering his debts and liabilities, if any, determine the total assessable income of the person concerned, i.e., the income which he derives from business conducted, or from buildings or other property held within the union.

Rule 5-No person shall be assessed who does not own or occupy a building within the union. A person who, though liable to pay the rate, does not reside within the union, shall be assessed on the buildings which he owns or occupies within the union, and on any income which he derives from business conducted, or from landed or other property held, within the union.

Explanation.- Ownership or occupation includes part ownership or occupation, and ownership or occupation of a building or part of a building for any portion of the year shall render the owner or occupier liable to pay the rate.

Note.- A person should be deemed to be in occupation of a building who pays the rent of the building directly or indirectly.

Rule 10.- The assessment list, after being checked by the Circle Officer, or the revised list, if any, prepared under Rule 9, shall be published by the union board in the manner laid down in Rule 6, if possible before the first day of the year,

and if not, as soon as possible thereafter.

Rule 11.- If any person mentioned in the assessment list ceases at any time after the publication thereof under Rule 10 to occupy any building in respect of the occupation of which he has been assessed, or if the means and property in respect of which he has been so assessed are reduced, the union board at a meeting may exempt him from assessment or revise the same; and such exemption or revision shall take effect from such date as the board may direct."

4. It is clear that the rate is only imposed on persons who are owners or occupiers or owners and occupiers of buildings within the union, but, in arriving at the amount to be assessed on any such person, it is provided by Section 38(1) that the assessment is to be according "to the circumstances within the union and property, within the union, if any," of the assessee, with a maximum limit of Rs. 84 in any one year in the case of any assessee. Under Section 39 the assessment for the imposition of the rate is to be made in accordance with rules prescribed under section 101. In order to determine, under Rule 3,

> "the total assessable income, of the person concerned, i. e., the income which he drives from business conducted, or from buildings or other property held, within the union," the Board have before them the information prepared under Rule 2, which shows the buildings occupied or owned in the union, permanently or temporarily, and also "their trade, business, etc., within the union, and the estimated annual income which they derive from buildings or other property or business within the union."

5. It will be noted that, in the absence of the necessary powers and machinery, which are not provided by the Act, the estimate of the annual income from business can only proceed on a rough guess, which is in no way comparable with the ascertainment of profits and gains under the Income-tax Act, land, in the opinion of their Lordships, the inclusion of this element of business income as part of the "circumstances" of the assessee with a view to the imposition of the union rate does not fall within sub section (4) of Section 10 Income-tax Act. It is conceded that the union rate is not "levied on the profits or gains," which clearly implies an ascertainment of such profits and gains, and the words "assessed ... on the basis of any such, profits or gains" in the later part of the sub-section must also be so limited. No such ascertainment of the profits and gains of the business can be undertaken for the purposes of the union rate. The main argument for the Crown therefore fails.

6. Turning now to head (ix) of sub section (2) of Section 10 Income-tax Act, the

argument for the Crown proceeded on a somewhat meticulous examination of the statement of the case, and the papers in the index which are made, part of the reference, in order to show that the respondents, in addition to the premises in which they carry on the Nalhati business, have house property in the village, which would show that the rate was only partly related to the premises used for the purposes of the business, and that the respondents have failed to establish what part of the Rs. 84 is so referable. In the opinion of their Lordships, the decision of the Appellate Tribunal, the question of law referred, and the decision of the High Court, proceed on the footing that the Rs. 84 solely relates to the premises occupied for the purpose of the Nalhati business, and, it being admitted that the union rate is a local rate the question falls to be answered in the affirmative. Their Lordships may add, however, that in any case where the union rate is not wholly referable to premises occupied for the purpose of a business or businesses, the assessee, on establishing the portion of the rate which is so referable, would be entitled to deduct such portion under head (ix). In this view, no separable question appears to arise under head (xii), and, in any event, it would be unnecessary to deal with it. Their Lordships will, therefore, humbly advise His Majesty that the appeal should be dismissed, and that the judgment of the High Court should be affirmed.

Appeal dismissed.