

Delhi Stock Exchange Association Ltd.

Vs

Commissioner of Income Tax, Delhi

Civil Appeals Nos. 187 and 190 of 1960

(J. L. Kapur, M. Hidayatullah, J. C. Shah JJ)

30.11.1960

JUDGMENT

KAPUR, J. -

These appeals are brought by the assessee company against a common judgment and order of the Punjab High Court by which four appeals were decided in Civil Reference No. 6 of 1953. The appeals relate to four assessment years, 1947-48, 1948-49, 1949-50 and 1950-51. Two of these assessments, i.e., for the years 1947-48 and 1948-49 were made on the appellant as successor to the two limited companies hereinafter mentioned.

Briefly stated the facts of the case are that the appellant company was incorporated in the year 1947. Its objects inter alia were to acquire as a going concern activities, functions and business of the Delhi Stock & Share Exchange Limited and the Delhi Stock and Share Brokers Association Limited and to promote and regulate the business of exchange of stocks and shares, debentures and debenture stocks, Government securities, bonds and equities of any description and with a view thereto, to establish and conduct Stock Exchange in Delhi and/or elsewhere. Its capital is Rs. 5,00,000 divided into 250 shares of Rs. 2,000 each on which dividend could be earned. The appellant company provided a building and a hall wherein the business was to be transacted under the supervision and control of the appellant. The appellant company also made rules for the conduct of business of sale and purchase of shares in the Exchange premises. The total income for the year 1947-48 was Rs. 29,363 out of which a sum of Rs. 15,975 shown as admission fees was deducted and the income returned was Rs. 13,388. In the profit and loss account of that year Members' admission fees were shown as Rs. 9,000 and on account of Authorised Assistants' admission fees Rs. 6,875. The Income-tax Officer who made the assessment for the year 1947-48 disallowed this deduction. The return for the following year also was made on a similar basis but the return for the years 1949-50 and 1950-51 did not take into account the admission fees received but in the Director's report the amounts so received were shown as having been taken directly into the balance sheet. The Income-tax Officer, however, disallowed and added back the amount so received to the income returned by the appellant.

Against these orders appeals were taken to the Appellate Assistant Commissioner who set aside the additional assessments made under section 34 in regard to the assessment years 1947-48, 1948-49 and 1949-50 and the fourth appeal in regard to the year 1950-51 was decided against the appellant. Both sides appealed to the Income-tax Appellate Tribunal against the respective orders of the Appellate Assistant Commissioner and the Tribunal decided all the appeals in favour of the appellant. It was held by one of the members of the Tribunal that the amounts received as entrance fees were intended to be and were in fact treated as capital receipts and were therefore excluded

from assessment and by the other that as there was no requisite periodicity, those amounts were not taxable. At the instance of the respondent a case was started to the High Court on the following question :-

"Whether the admission fees of Members or Authorised Assistants received by the assessee is taxable income in its hands ?"

The High Court answered the question in favour of the respondent. The High Court held that the appellant was not a mutual society and therefore was not exempt from the payment of income-tax; that it had a share capital on which dividend could be earned and any person could become a shareholder of the company by purchasing a share but every shareholder could not become a member unless he was enrolled, admitted or elected as a member and paid a sum of Rs. 250 as admission fee. On becoming a member he was entitled to exercise all rights and privileges of membership. It also found that the real object of the company was to carry on business as a Stock Exchange and the earning of profits. It was held therefore that the admission fees fell within the ambit of the expression "profits and gains of business, profession or vocation". The further alternative argument which was raised, i.e. that the income fell under section 10(6) of the Act, was therefore not decided.

Mr. Veda Vyasa contended on behalf of the appellant that there were only 250 members of the appellant company; that the amount received as membership fees was shown as capital in the books of the company and there was no periodicity and therefore the amounts which had been treated as income should have been treated as capital receipts and therefore exempt from assessment. It was firstly contended that the question did not arise out of the order of the Tribunal and that a new question had been raised but the objection is futile not only because of the absence of any such objection at the stage of the drawing up of the statement of the case but also because of failure to object in the High Court; nor do we see any validity in the objection raised. That was the only matter in controversy requiring the decision of the court and was properly referred by the Tribunal. It was then contended that the question had to be answered in the light of facts admitted or found by the Tribunal and that the nature of the appellant's business or the rules in regard to membership could not be taken into consideration in answering the question. That again is an unsustainable argument. The statement of the case itself shows that all these matters were taken into consideration by one of the members of the Tribunal and the learned judges of the High Court also decided the matter on the material which had been placed before the Income tax authorities and which was expressly referred to in their orders and which again was placed before the High Court in the argument presented there on behalf of the appellant company.

It is wholly immaterial in the circumstances of the present case to take into consideration as to how the appellant treated the amounts in question. It is not how an assessee treats any monies received but what is the nature of the receipts which is decisive of its being taxable. These amounts were received by the appellant as membership admission fees and as admission fees paid by the members on account of Authorised Assistants. As far as the latter payment is concerned that would fall within the decision of this Court in *Commissioner of Income-tax v. Calcutta Stock Exchange Association Ltd.* ((1959) 36 I.T.R. 222.) and therefore is taxable income. The former, i.e., members' admission fees has to be decided in accordance with the nature of the business of the appellant company, its Memorandum and Articles of Association and the Rules made for the conduct of business. The appellant company was an association which carried on a trade and its profits were divisible as dividend amongst the shareholders. The object with which the company was formed was to promote and regulate the business in shares, stocks and securities etc., and to establish and conduct the

business of a stock Exchange in Delhi and to facilitate the transaction of such business. The business was more like that in *Liverpool Corn Trade Association v. Monks* ((1926) 2 K.B. 110.). In that case an association was formed with the object of promoting the interest of corn trade with a share capital upon which the association was empowered to declare a dividend. The Association provided a corn Exchange market, newsroom and facilities for carrying on business and membership was confined to persons engaged in the corn trade and every member was required to be a shareholder and had to pay an entrance fee. The Association also charged the members and every person making use of facilities a subscription which varied according to the use made by them. The bulk of the receipts of the Association was derived from entrance fees and subscriptions. It was therefore contended that the Association did not carry on a trade and that it was a mutual association and entrance fees and subscriptions should be disregarded in computing assessment of the assessable profits. It was held that it was not a mutual association whose transactions were incapable of producing a profit; that it carried on a trade and the entrance fee paid by members ought to be included in the association's receipts for purposes of computing the profit. Rowlatt, J. said at page 121 :

"I do not see why that amount is not a profit. The company has a capital upon which dividends may be earned, and the company has assets which can be used for the purpose of obtaining payments from its members for the advantages of such use, and one is tempted to ask why a profit is not so made exactly on the same footing as a profit is made by a railway company who issues a travelling ticket at a price to one of its own shareholders, or at any rate as much a profit as a profit made by a company from a dealing with its own shareholders in a line of business which is restricted to the shareholders."

In *Commissioner of Income-tax, Bombay City v. Royal Western India Turf Club Ltd.* ([1954] S.C.R. 289, 308.) this Court rejected the applicability of the principle of mutuality because there was no mutual dealing between members inter se. There was no putting up a common fund for discharging a common obligation undertaken by the contributors for their mutual benefit and for this reason the case decided by the House of Lords in *Styles v. New York Life Insurance Company* ((1889) 2 T.C. 460.) was held not applicable.

In the present case the Memorandum of Association shows that the object with which the company was formed was to promote and regulate the business of exchange of stocks, shares, debenture, debenture stocks etc. The income, if any, which accrued from the business of the appellant company was distributable amongst the shareholders like in every joint stock company. According to the Articles of Association the members included shareholders and members of the Exchange and according to the rules and bye-laws of the appellant company "member" means an individual, body of individuals, firms, companies, corporations or any corporate body as may be on the list of working members of the Stock Exchange for the time being. In the Articles of Association, clauses 7 and 8, provision was made for the election of members by the Board of Directors and Rules 9 and 10 laid down the procedure for the election of these members. The entrance fees were payable by the trading members elected under the Rules and Bye-Laws of the Association, who alone with their Associates, could transact business in stocks and shares in the Association. Therefore, the body of trading members who paid the entrance fees, and the shareholders among whom the profits were distributed were not identical and thus the element of mutuality was lacking. It is the nature of the business of the company and the profits and the distribution thereof which are the determining factors and in this case it has not been shown that the appellant's business was in any way different from that which was carried on in the case reported as *Liverpool Corn Trade Association v. Monks*

((1959) 36 I.T.R. 222.).

In our opinion the judgment of the High Court is right and the appeals are therefore dismissed with costs. One hearing fee.

Appeals dismissed.

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