

CALCUTTA HIGH COURT

Calcutta Turf Club

Vs

Secretary of State

(L Senderson, C.J. Tunon and Richardson, JJ.)

17.01.1921

JUDGMENT

Sanderson, C.J.

1. The question which has been referred to this Court by the Board of Revenue, at the Chief Revenue Authority, is whether the Royal Calcutta Turf Club is liable to excess-profits duty under the Excess Profits Duty Act of 1919. The case was stated at the instance of the Royal Calcutta Turf Club and it is as follows---"in this case, an application has been made by the Secretary of the Royal Calcutta Turf Club, on behalf of the Club, to the Board of Revenue, as the *Chief Revenue Authority, under section 15*¹ of the Indian Income Tax Act, 1918, which has been made applicable to excess profits duty by Section 15 of the Excess Profits Duty Act, 1919, with the modifications prescribed by Rule 31 of the Excess Profits Duty Rule, 1919, for a case to be stated on the question whether the Club is liable to excess-profits duty. It appears from the Collector's record that the Club was assessed to income tax for the first time in 1918 and the Club's liability to income tax is not disputed, but it is contended that its income does not include any profits of a business, within the meaning of the Excess Profits Duty Act. The grounds for this contention are set forth in a statement of case annexed to the Club's application, which also sets forth the sources of the Club's income. In the Board's opinion, the Club is liable to excess-profits duty in respect of the following sources of income, in so far as the sums received under these heads are not paid by members of the Club. Entrance fees to the stand, paddock and enclosures, or gate money. Entrance fees paid by owners of horses. Book-makers' license fees. Percentages on the totalisators. Percentages on sweeps on the Derby and St. Leger.

3. "The case appears to the Board to be parallel to that of the *Carlisle and Silloth Golf Club v. Smith*² That was a case in which a Golf Club admitted persons other than its members, without discrimination to play golf on its ground on payment of certain fees, and it was held by the learned Judge who tried the case in the first instance, at well as by the Court of Appeal, that the fees received from such visitors were income of an adventure or concern in the nature of trade. The Royal Calcutta Turf Club similarly admits the public to its stands, paddocks and enclosures, on race days, on payment of entrance fees, or gate money; allows persons, who are not members of the Club, to enter horses for the races which it conducts, on payment of entrance fees; allows book-makers to carry on their sailing in its enclosures on payment of license fees; allows persons, who are not members of the Club to make bets through its totalisators, and to buy

tickets in the sweep stakes on the Darby and St. Lager races conducted by it. Whether the receipts from these sources yielded a profit, after deducting expenses properly chargeable against them, in the accounting period on which excess-profits duty is leviable, is a question of fact for determination by the Collector.

4. "The fact that the members of the Club do not derive pecuniary profit from its of orations and that a part of its income is devoted to charity, do not, the Board thinks, affect its liability to excess-profits duty."

5. The opinion of the Board was that the Club was liable to excess-profits duty in respect of the following sources of income in so far as the sums received under these heads were not paid by the members of the Club:

- (i) Entrance fees to the stand, paddocks and enclosures, or gate money.
- (ii) Entrance fess paid by owners of license.
- (iii) Back makers' license fess.
- (iv) Percentages on the totalisators.
- (v) Percentages on sweeps on the Derby and St. Leger.

6. It was stated by the learned Counsel for the Royal Calcutta Turf Club, Mr. S. R. Das, in opening the Reference, that he anticipated that the last head would not now be relied upon by the Crown and the learned Counsel who appeared as Junior Counsel for the Crown has just informed us that he is instructed not to press that item. Consequently, this Reference may be taken as if the 5th item was struck out. We have, therefore, to deal with the first four items which I have mentioned. It is to be noted that the Board stated that if it were decided that the Royal Calcutta Turf Club were liable to excess profits duty there would still be the question whether the receipts from the sources which I have mentioned, yielded a profit after deducting expenses properly chargeable against them in the accounting period, on which excess-profits duty was leviable, and that that would be a question of fact for determination by the Collector. Therefore, the only question, which this Court has now to determine is whether, on the facts of this case, the Royal Calcutta Turf Club is liable to excess profits duty, if there be any excess profits in respect of the four heads. Whether any profits will be assessable to that duty will still remain a question which will have to be investigated by the Collector.

7. The objects of the Club are set forth at length in the case which the Turf Club submitted and the material portions may be stated as follows.

8. "The present large operations of the Club are the result of a gradual development. The proprietors of the Club are the present members, none of whom derive or ever have derived any pecuniary profit from the operations of the Club.

9. "The objects of the Club are the control and encouragement of racing, the conduct of the Calcutta Races, the encouragement of country-bred horse breeding, the comfort and convenience of the members of the Club and the general public attending the races in Calcutta and subsidizing of up-country meetings."

10. After setting out the history of the Club and stating that, originally, there were Stewards of

the races distinct from the Turf Club Stewards, the case proceeds: 'Gradually the Turf Club Stewards appear to have assumed control not only of the Club but also of the racing in Calcutta and gradually---how is not known---of up-country race-meetings.' From 1880 there has been a continuous increase in the popularity of racing which produces more funds. Bookmakers have been licensed and totalisators provided, both of which form a source of revenue.

11. "Considerable amounts have been spent on improving the race-course, building stands and the stakes and contributions have been increased. In 1907 a lease was obtained from Government of the race course and enclosures at a nominal rental. No income has been retained beyond the sum considered advisable as a reserve to meet special expenditure in connection with racing. The Club has always made considerable contributions to charities, but during the war the expenditure on racing was kept as low as possible and certain necessary renewals and improvements were held back, so that there might be as large a surplus as possible. Donations to war charities were made to the amount of such surplus and the whole of this was given away in charity. The donations of those years do not form a correct guide to the Club's surplus in other years as ordinarily the expenditure would have been largely increased. A Clubhouse has been held on lease since 1891, but in the year 1919 it was found that the accommodation for the office establishment was insufficient and in view of the rising value of Calcutta properties it was thought advisable to secure the Club's position by purchase of premises in Russell Street. A very large permanent staff is employed by the Club in addition to the official staff and labour. As before stated it has been the policy of the Club to spend its annual receipts, after suitable charitable payments, either on increased stakes and contributions and in improvements, all with a view to the benefit of racing generally. During the war the policy was to save as much as possible, and give the amount to charities. Certainly, since the year 1860 no member of the Club has ever received any Pecuniary benefit. No profits have ever been divided.' It was then submitted as follows "it is impossible to say that a Club which has never (ought to make a profit and of which the members have not derived and do not seek to derive any pecuniary benefit, carries on a business as described in the Act or at all. It is clear that its operations are not trade, commerce or manufacture, nor have they the remotest resemblance to any of these descriptions. It is understood that it has been proposed that it should be decided whether the Club carries on a business before undertaking the somewhat complicated problems of accountancy to ascertain what are the profits, if any, liable to excess-profits duty and accordingly this statement of the case is submitted for consideration with a view to show that the Club is not liable to excess profits duty."

12. The question depends upon Section 3 of the Excess Profits Duty Act which is as follows: This Act, shall apply to every business (other than the businesses specified in Schedule I) which is during any part of the accounting period, either carried on in British India by any person, or owned or earned on in any place in India by a person ordinarily resident in British India." In order to see what is meant by the word business, reference must be made to section of the Act. There we find that "business" includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture. The question which we have to decide is whether, on the facts of this case, and by reason of the Hums received by the Club from persons who are not members of the Club, in respect of the first four heads set out in the Reference, the Club can be said to be carrying on "business" within the meaning of Section 2. On the one hand, the learned Counsel Mr. S. R. Das and Mr. Push who appeared for the Royal Turf Club argued that the definition of "business" in Section 2, was an exhaustive definition and that

the word 'includes' must be read as being equivalent to means and includes." On the other hand, Mr. Sircar on behalf of the Grown argued that "includes" means "includes" Our attention was drawn to the fact that in other definitions which are to be found in Section 2 the word 'means' is used; for instance, accounting period means the twelve months ending on, etc.; "Chief Revenue" authority means the Board of Revenue; "prescribed" meant prescribed by rules. The learned Counsel for the Grown further argued that if the definition of "business" in Section 2 was intended to be exhaustive, then there would be no reason for the insertion in Schedule I of the Act, of the second and third instances which are given in the list of "excepted business" in that Schedule. In my judgment, it is not necessary for us to decide the question whether the definition of business" in Section 2 is exhaustive: and, indeed, the learned Counsel for the Grown did not invite us to decide that question, for he said that he was content to base his case upon the contention that the Royal Calcutta Turf Club were carrying on either a trade or an adventure or concern in the nature of trade. In my judgment, the contention of the Grown is correct; consequently, it is not necessary for us to decide whether the definition of the word "business" in Section 2 is exhaustive or not.

13. The opinion of the Board of Revenue was based upon an English case *Carlisle and Silloth Golf Club v. Smith* (1) which in the first instance was decided by Mr. Justice Hamilton and afterwards by the Court of Appeal, which upheld the judgment of Mr. Justice Hamilton [*Carlisle and Silloth Golf Club v. Smith*³]. It is true that that is a decision upon the question whether the Golf Club was liable to pay income tax, but the decision was to a large extent based upon the consideration of the question whether the Golf Club was carrying on "business" within the meaning of the Income Tax Act, 1842 (5 & 6 Vict. Section 35), Schedule D of which specified "The duties to be charged in respect of any trade, manufacture, adventure or concern in the nature of trade not contained in any other Schedule of the Act." These words, it will be seen, bear a close resemblance to the words which we have to construe. The facts may be taken from the head-note: "The appellants, an 'ordinary members' Golf Club,' acquired land under a lease from a railway company and laid out a golf course and erected a Club house thereon. In addition to the members of the Club, who were entitled on payment of an annual subscription to play on the links and to other privileges for the current year, a considerable number of visitors were permitted to use the Club premises and to play on the links in accordance with a provision contained in the lease which required the Club to allow such visitors to play on payment of certain green fees. The total annual expenditure incurred by the Club in maintaining the links in a proper condition for play exceeded the total amount of fees received from visitors. It was held by the Court of Appeal that the appellants were carrying on an enterprise which was beyond the scope of the ordinary functions of the Club, and as to which separate accounts might be kept so as to ascertain whether there were any profits, and that any profits derived from the visitors' green fees were, therefore, taxable under Schedule D of the Income Tax Act."

14. The learned Master of Rolls in the course of the judgment said as follows: "it seems to me that there is a real difference between moneys received from members, and applied for the benefit of members and moneys received by the Club from strangers. I cannot draw any distinction between gate moneys, which might be, and I believe sometimes are, received by a Golf Club, and green moneys. In each case the Club would be assessable."

15. Lord Justice Buckley said: "If it were necessary (which it is not) to decide whether the Club were carrying on 'an adventure or concern in the nature of trade,' I am of opinion that they were.

To determine this question it is not the character of the person who carried on but the character of the concern which is carried on that has to be regarded. If a land-owner laid down upon his land a golf course and charged fees for admission and user---if, that is to say, the links were a proprietary golf links carried on with a view to profit---there can be no question but that the proprietor would be assessable."

16. Lord Justice Kennedy said: 'But upon the facts appearing in the case, it appears to me that this Club is really carrying on the business of supplying to the public for reward a recreation ground fitted for the enjoyment of the game of golf, and that the receipts derived from this business are in the nature of profits and gains in respect of which it is liable to assessment for income tax.' In my judgment on the facts of this case, the Royal Calcutta Turf Club is carrying on the business of supplying to the public for reward a ground fitted for the purpose of racing---some portion of the public use it for the purpose of racing their horses, namely, the owners of race horses; other members of the public use it for the purpose of carrying on their business, namely, the bookmakers who resort thereto under licenses which are issued to them for reward by the Royal Calcutta Turf Club; other members of the public use it for watching the races and for the purpose of betting on the races. All these, according to the case presented to us, pay money to the Club either in respect of entrance fees at the gates or in respect of fees for the entries of horses in the races or in respect of licenses issued to book makers or in respect of the commission which is taken by the Club from the totalisators. In my judgment, upon the facts stated in the case submitted to the Court, it must be held that the Royal Calcutta Turf Club is carrying on an "adventure or concern in the nature of trade" and consequently is carrying on a "business" within the meaning of Section 3 of the Act, in respect of sums received under the first four heads mentioned in the case, from persons other than members of the Club. An argument was founded on an observation made by Hamilton, J., in the *Trial Court Carlisle and Silloth Golf Club v. Smith* (1912) 2 K. B. 177 : 81 L. J. K. B. 581 : 106 L. T. 573 : 28 T. L. R. 252 : 6 Tax. Cas. 48.(Supra) "Strangers," said the learned Judge, 'are admitted to the Clubhouse as well as to play upon the course and that seems to me a feature outside the ordinary scope of that which this Club is found to be, namely, an ordinary bona fide members' Club.'" It was said that the enterprises of the Turf Club, from which it derives a profit from the public, were all within the scope and purpose of the Club, which is to encourage horse racing. If that be so, the Turf Club differs all the more from an "ordinary bona fide members' Club" and the present case, therefore, is an a fortiori case.

17. It only remains for me to deal with one other point which was raised by the learned Counsel for the Club, and that is that the members of the Club have not and do not receive any profit out of the transactions which are carried on by the Club, and that the admitted surplus has been, and is, used for the purpose of subscribing to charities.

18. It does not seem to me material what is the ultimate destination of the surplus, if any, which the Royal Calcutta Turf Club receives in respect of these matters. The test is, whether the moneys are received by the Club from non-members of the Club and in exchange for something which is given by the Club and in respect of which profit is made.

19. For these reasons, in my judgment, the answer to this Reference should be that the Club is liable to excess-profits duty if upon the accounts being taken, there be any excess profits upon which the duty is leviable in respect of the following sources of income, in so far as the sums received under these heads are not paid by members of the Club; namely, (i) entrance fees to the

stand, paddocks and enclosures, or gate money, (ii) Entrance fees paid by owners of horses, (iii) bookmakers' license fees, (iv) percentage on the totalisators.

20. The Royal Calcutta Turf Club must pay the costs of this Reference. We direct that a copy of our judgment be sent to the Board of Revenue.

Teunon, J.

21. I agree.

Richardson, J.

22. I agree.

Cases Referred.

151 (1912) 2 K. B. 177 : 81 L. J. K. B. 581 : 106 L. T. 573 : 28 T. L. R. 252 : 6 Tax. Cas. 48

2(1912) 2 K. B. 177 : 81 L. J. K. B. 581 : 106 L. T. 573 : 28 T. L. R. 252 : 6 Tax. Cas. 48

3(1913) 3 K. B. 75 : 80 L. J. K. B. 837 : 108 L.T. 785 : 11 L. G. R. 710 : 6; Tax. Cas. 198 : 57 S. J. 532 : 29 T. L. R. 508.]. I