CALCUTTA HIGH COURT

Bengal Jute Mills Co., Ltd

Vs

Commissioner of Income-Tax

(Harries, C.J.)

05.05.1949

JUDGMENT

Harries, C.J.

1. This is a reference under Section 66(1) of the Indian Income-tax Act, made by the Appellate Tribunal, Madras Bench, in which the following question is propounded for the opinion of this Court :-

> "Whether in the facts and circumstances of the case, the income in question, viz., Rs. 2,000, was rightly treated as the income form business for excess profits tax purposes ?"

The facts giving rise to this litigation may be shortly stated as follows : The assessees are a limited liability company carrying on business as manufacturers of jute products. The assessees had let a portion of their business premises to a firm known as Radha Kant & Co. who were conducting the business of dehydrating potatoes. The assessees claimed that the rent payable by Radha Kant & Co. had not been fixed and that there was a dispute concerning it. Hence their return did not show any rent received in respect of this letting. The Income-tax Officer did not accept this contention and estimated the income from this letting for ten months of the assessable year at Rs. 2,000. This amount was added to the income of the company for the purpose of assessing excess profits tax. The assessee company appealed to the Appellate Assistant commissioner from the order of the Income-tax Officer, but the appeal was dismissed. There was a further appeal to the Tribunal and there it was contended that this sum of Rs. 2,000 could not be taken into account for the purposes of assessing the income liable to excess profits tax. The appeal was however dismissed as in the view of the Tribunal this sum of Rs. 2,000 was rightly taken into consideration for the purposes of the excess profits tax. The Tribunal pointed out that the assessee company let other portions of their premises to various tenants for use as godown and had received form these tenants yearly a sum of about of Rs. 37,000. This sum, the Tribunal point out, was shown by the assessee company as part of their income from business and they

were accordingly assessed in respect of it under Section 10 of the Income-tax Act. The assessee company apparently denied this before the Tribunal, but the Tribunal point out that the actual assessments show that in respect of this income they were assessed under Section 10 of the Act. Further the Tribunal point out that the memorandum of association of the assessee company permits them to purchase, sell, hire and let lands, buildings, warehouses, etc. Those being the circumstances the Tribunal were satisfied that the assesses were carrying on "an operation of business when it was regularly letting out a portion of its business premises to third parties." The Tribunal accordingly held that this sum of Rs. 2,000 payable in respect of the portion of the premises let to Radha Kant & Co., was to be assessed as part of the business income.The Tribunal relied in the main for its finding on rule 4, sub-rule (4), of Schedule I, of the Excess Profits Tax Act, 1940. This sub-rule reads as follows :-

> "In the case of business which consists wholly or partly in the letting out of property on hire, the income form the property shall be included in the profits of the business whether or not it has been charged to income-tax under Section 9 of the Indian Income-tax Act, 1922, or under any other section of that Act."

In the view of the Tribunal the business of the assessees consisted partly in letting out property on hire and therefore the income derived form such letting was rightly included in the profits of the business.It will be seen that this rule deals with cases where a business consists wholly or partly in letting out property and before it can apply, the letting of the property must be wholly the business of the company or at least part of the business.In the Income-tax Act, 1922, "business" is defined in Section 2(4). The term "business", it is said, includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture. It has been held by this Court in the case of In re Commercial Properties Ltd., that owning property and carrying on only the business of letting such houses is not a business within the meaning of that term as used in the Income-tax Act and that the income from letting of such property cannot be regarded as the profits and gains of a business and therefore taxable under Section 10 of the Act. The Income must be regarded as the income from property and therefore taxable under Section 9 of the Act.In that case the Commercial Properties Limited were a registered company the sole object of which was to acquire land, build houses and let premises to tenants in Calcutta or elsewhere in India. At the time of assessment the sole assets of the assessees was the management and collection of the rents from the said properties. It was held that the income from these properties could not be treated as the profits and gains of business, but rather as income from property taxable under Section 9 of the Act. At page 1061, Rankin, C.J., who delivered the judgment of the Special Bench of three Judges observed :-

> "In the present case we have a company which owns three estates. It does not appear that any part of that property is outside the definition given in Section 9. It is found to let the

houses from time to time to see to the payment of the rent and doubtless doing of repairs. If that carrying on a business, then this company carried on a business in the sense in which every landlord or owner of this type of property must necessarily carry on business."

At page 1062 the learned Chief Justice observed :-

"In my judgment of the words of Section 6 and Section 9 and Section 10 must be read so as to give some effect to the contrast that is there made between income, profits and gains from property and form business; and I entirely refuse my assent to the proposition that because it happens that the owner of property a company which has been incorporated for the purpose of owning such property, therefore the income derived from property must be regarded as income derived form business. In my judgment, income derived form property is a more specific category applicable to the present case."

At page 1066 the learned Chief Justice after discussing certain English cases sums up the matter in these words :-

"In my judgment, these cases are not authorities to the effect that as between the word property and the word business in Section 6 of the Indian Income-tax Act, 1922, a case of this character is to be put under the word business. It comes more directly and specifically under the word property. In my judgment, the mere fact that the house-owner is a company does not change the incidence of the tax in the way contended for. The income of the assessee is income derived form its ownership of buildings and their cartilages. To obtain such income a certain amount of management is always necessary but the Act does not regard such income as profits of management. To won houses one must buy or build them, but the Act does not regard such income as profits of investment."

The Madras High Court took a different view in Commissioner of Income-tax, Madras v. Gin and Rice Factory, Guntur, and Commissioner of Income-tax, Madras v. Bosotto Brothers Limited. However it is clear that this Bench is bound by the view of this Court and therefore I am bound to hold that for the purpose of the Indian Income-tax Act, the mere management of property does not amount to a business and income derived from such property cannot be regarded as the profits and gains of the business.If a company whose sole activities consist in building houses, letting out the same and collecting the rents thereof does not carry on a business, in the sense that the rents and profits it receives are profits and gains of business, it appears to me to follow that if a company engaged in some manufacturing business lets out part of its property to tenants the rents and profits received from such letting cannot be regarded as the profits of its business, and therefore the letting of that property is not either part of its business or separate

business as that term is regarded in the Indian Income-tax. Act. That being so, I should be found to hold that this sum of Rs. 2,000 received in respect of the letting to Radha Kant & Co., could not be assessed to income-tax, as part of the profits and gains of the business, but would have to be assessed as income derived from property. The Tribunal point out that in the past certain other rents for godowns have been included as part of the profits and gains of the business and that is used as an argument for including this sum of Rs. 2,000 as part of the profits and gains of the business. In my view, the rents for these godowns were wrongly included as part of the profits of the business and the assessees were wrongly assessed under Section 10 of the Act in respect of them. The fact that similar rents have been wrongly assessed in the part is no reason whatsoever why this sum of Rs. 2,000 should now be regarded, for the purposes of income-tax at least, as part of the profits and gains of the business.The definition of "business" in the Excess Profits Tax Act, 1940, is the definition contained in the Indian Income-tax Act, 1922, but somewhat enlarged.

> "Business" is defined in Section 2(5) of the Excess Profits Tax Act, 1940, as including "any trade, commerce or manufacture or any adventure in the nature of trade, commerce or manufacture or any profession or vocation, but does not include a profession carried on by an individual or by individual by individuals in partnership if the profits of the profession depend wholly or mainly on his or their personal qualifications unless such profession consists wholly or mainly in the making of contracts on behalf of other persons or the giving to other persons of advice of a commercial nature in connection with the making of contract s :
>
> Provided that where the functions of a company or of a society incorporated by or under any enactment consist wholly or mainly in the holding of investments or other property, the holding of the investment or property shall be deemed for the purpose of this definition to be a business carried on by such company or society."

It will be seen from this proviso that it is conceded that the holding of investments or other property is not a business for the purpose of the definition contained in Section 2(5) of the Excess Profits Tax Act. But it provides that if the functions of a company or of a society incorporated by or under any enactment consists wholly or mainly in the holding of investments or property then the holding of such investments or property, though not a business, shall be deemed to be a business for the purpose of the Act.This proviso to my mind admits the correctness of the decision in In re Commercial Properties Ltd. But it expressly make the activities of a company wholly or mainly concerned with the holding of property a business for the purpose of the Act.The assessee company in this cases was, as its name suggests, a company engaged in the manufacture and sale of jute products. It apparently owned a jute mill and the letting of godowns or parts of their business premises appears to have been incidental to the main business of the

assessee. There is no finding by the Tribunal that the letting of the property was the whole business or the main business of the assessee company, but the Tribunal was satisfied that it was part of the business and therefore the income form the letting of such property was rightly included as part of the business income for the purposes of the Excess Profits Tax Act.It is true that in rule 4, sub-rule (4), of Schedule I of the Excess Profits Tax Act it is stated that in the case of a business which consists wholly or partly in letting out a property on hire, the income from such property shall be included in the profits of the business. It is therefore said that as the business of the assessees consisted partly in letting out property, the income form such letting was rightly included as income from business.The rules of Schedule I cannot be construed as being at variance with the substantive provisions of the Excess Profits Tax Act and it appears to me that by the plain terms of Section 2(5) of the Excess Profits Tax Act the holding of property is not a business unless it is the whole function or the main function of a company or a society incorporated under any Act. It follows therefore that if the holding of property is not the whole function or at least the main function of a company then the holding of such property dope not in itself constitute a business and it cannot be said that the business of the company consists in part of holding property, The business of a company Civil Appeal No. only consist in part of holding property (sic) if the holding of such property amounts to a business and by the teams of the proviso to Section 2(5) to the Excess Profits Tax Act, holding property can only amount to a business where it is the sole or main function of a company.

Letting out property is the ordinary method of obtaining income form the property and management of property by letting it out does not result in an income from business unless, as I have said, the function of managing and letting out the property are the sole or main function of company. It follows therefore that where a manufacturing company derives a certain income form letting out part of its premises to tenants its cannot be said to be conducting a business with read to such letting. Further, it appears to me clear that such letting cannot be part of its manufacturing business and therefore the income from such property and the letting thereof cannot be regarded as part of the business income unless the case falls within the proviso to Section 2(5) of the Excess Profits Tax Act.Had sub-rule (4) of the rule 4 of the Schedule I of the Excess Profits Tax Act read, "In the case of a business which consists wholly or mainly in the letting out property on hire, the income form property shall be included in the profits of the business whether or not it has been charged to income-tax under Section 9 of the Indian Income-tax Act, 1922, or under any other Section," no difficulty could have arisen. But it is strongly urged that as the word "party" is used in the rule instead of the word "mainly" in the proviso to the definition of "business" Section 2(5) of the Excess Profits tax Act, the rule has a wider application. But, as I have said, the rule and the definition of "business" must be construed so as to avoid conflict. If by the definition a company holding property does not carry on a business unless the holding of such property is its whole or main functions, then the rule cannot extend the

definition so as to make a company which holds property as a minor function, carry on business with regard to such property. In my view, the income derived form the holding and letting ofproperty by the assessee company was income derived from property and it could not be regarded as the profits and gains of a business as there is on finding that the holding and letting of such property was the sole or the main function of the company.For these reasons, the question stated by the Tribunal in the case submitted should be answer in the negative. The assessee company will be entitled to its cost and the return of the deposit of Rs. 100. Certified for two counsel.

CHATTERJEE, J. - I agree.

Reference answered in negative.