

CALCUTTA HIGH COURT

Calcutta Electric Supply Corpn. Ltd

Vs.

Commissioner of Income Tax

Ref. Under Section 66(1), Income-Tax Act, No. 53 of 1950

(Harries, C.J. and Banerjee, J.)

16.01.1951

JUDGMENT

Harries, C.J.

1. This is a Reference made at the instance of the assesseees by the Income-tax Appellate Tribunal, Calcutta Bench, under section 66 (1), Income-tax Act, in which the following question is framed for the opinion of the Ct.:

"Whether the sum of Rs. 3,27,840/- received by the Appellant Co. from the Govt. of India in the circumstances of this case is taxable as profits under section 10(2) (vii), Income-tax Act?"

2. The assesseees are the well known Electric Supply Co. which provide this city with electricity. The assesseees had a standby electricity generating plant at Bhatpara about sixteen miles from Calcutta. The plant was not in use, but it was kept as a standby or reserve in the event of the main generating plant breaking down.

3. It appears that the Govt. during the War desired to acquire this plant, but the Co. did not want to sell. Eventually the Govt., on 10-4-1942 served a requisition order upon the assesseees under the provisions of R. 83, Defence of India Rules. A letter accompanied the requisition order in which it was stated that the price to be paid for the plant requisitioned was to be determined by Govt. and the writer had been instructed to make an advance payment of Rs. 5,00,000/- without prejudice to any subsequent negotiations. The Co. were informed that arrangements had been made to issue a cheque for this amount without delay. The Govt. also informed the assesseees that it was intended to dismantle this plant and they asked the assesseees for their co-operation.

4. On 29-4-1942 the assesseees replied and pressed Govt. to allow them to retain this plant. They

regarded the Govt. decision as a decision to deprive them of the Bhatpara Power Station and they requested Govt. to re-examine the position and to rescind the order depriving them of the plant. On May 2 or 4 the Govt. replied that they could not reconsider their decision and the plant would have to be removed.

5. From these letters it is quite clear that the assessee so far from desiring to sell declined to sell and treated the whole transaction as one depriving them against their will of the property in this particular plant.

6. The amount which the Co. eventually received as price or compensation for this plant exceeded the written down value of the plant by Rs. 3,27,840/- and the taxing authorities claimed that this amount must be regarded as profits for the assessment year 1943-44. On the other hand, the assessee claimed that this amount could not be regarded as profits under section 10(2) (vii), Income-tax Act, but the taxing authorities assessed the amount to tax and that view was upheld by the Appellate Tribunal. As I have stated, the Appellate Tribunal on being requested framed the question set out earlier in this judgment for the opinion of the Ct.

7. Section 10, Income-tax Act, provides:

"The tax shall be payable by an assessee under the head 'Profits and gains of business.....' in respect of the profits or gains of any business carried on by him."

8. Sub-section (2) provides that such profits or gains shall be computed after making certain allowances and one of these allowances is set out in Section 10(2)(vii). This sub-section has subsequently been amended. But it is common ground that the sub-section read as follows during the year 1942-43 when this acquisition was made:

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

((vii) "in respect of any.....machinery or plant which has been sold or discarded....., the amount by which the written down value "of machinery or plant" exceeds the amount for which the.... machinery or plant..... is actually sold or its scrap value:

Provided that such amount is actually written off in the books of the assessee:

Provided further that where the amount for which any such.... machinery or plant is sold exceeds the written down value.... the excess... shall be deemed to be profits of the previous year in which the sale took place."

9. It will be seen that if an assessee sells or discards any plant or machinery, he can claim an allowance in ascertaining the profits where the amount which he received for the machinery or plant was less than the written down value of such machinery or plant. The allowance, however,

can only be claimed if the plant or machinery is sold or discarded.

10. The second proviso deals with the position where the assessee on the sale of plant or machinery obtains a sum for it greater than the written down value. In that event the difference is treated as part of the profits of the business and therefore taxable. Again, it must be remembered that the difference can only be treated as profits where the plant or machinery is sold or discarded.

11. The contention of the assesseees in this case is that the plant was never sold or discarded. Admittedly this was a sale if at all of a capital asset and apart from this special proviso any profit made on the sale would not be taxable. There is however this special provision which makes the profits part of the profits or gains of the business, if the plant or machinery was sold or discarded and the sum received was greater than the written down value.

12. On behalf of the assesseees Mr. Sukumar Mitra has argued that his clients so far from selling this plant or machinery refused to sell it and that seems to be clear from the judgments of the Appellate Asst. Comr. and the Appellate Tribunal. Govt. then made an order under Rule 83, Defence of India Rules, and there can be no doubt that that was an order acquiring this plant or machinery compulsorily. At the date of the order Rule 83 read as follows:

"(1) Where in the opinion of the Central Govt. any..... article or thing can be used in connection with the prosecution of the war, the Central Govt. may, by order in writing, requisition such.... article or thing, and may make such further orders as appear to the Central Govt. to be necessary or expedient in connection with the requisitioning.

(2) Whenever in pursuance of Sub-rule (1) the Central Govt. requisitions any.... article or thing, the owner of such..... article or thing shall be paid such price therefor as the Central Govt. may determine.

(3) Where the Central Govt. has requisitioned any..... article or thing under Sub-rule (1), the Central Govt. may dispose of and use such..... article or thing in such manner as seems to the Central Govt. necessary or expedient."

13. It will be seen that this rule provides for compulsory acquisition. When an order in writing requisitioning an article is made the Govt. may by Sub-rule (3) dispose of the article immediately in such manner as it deems fit. Further, the amount which Govt. has to pay for the article is to be determined by Govt. itself. That amount is called price, but it is to be observed that when this rule was amended a month or so after the present requisition order was served the word "price" appears to have been regarded as inappropriate and the word 'compensation' appears in the rule as amended.

14. Can plant or machinery requisitioned under this rule be regarded as plant or machinery sold or made the subject-matter of a sale? If it can then the Appellate Tribunal's view is right. But if it

cannot then the amount sought to be taxed cannot be taxed in virtue of the second proviso to Section 10(2) (vii). Income-tax Act.

15. The word 'sale' is not defined in the Income-tax Act and therefore it must be given its ordinary grammatical meaning. According to the Oxford Dictionary 'sale' means 'an act of selling or making over to another for a price.' It has also been defined as an exchange of a thing for a price. Making over anything for a price or exchanging it for a price suggests that the act is voluntary. The ordinary conception of "sale" is that something is handed over for a price as the result of negotiation and agreement. There is an agreement between the parties whereby one person known as the seller hands over a thing or property to the other person known as the buyer for a consideration usually in terms of money which has been agreed between the parties. That is the ordinary English conception of a 'sale'.

16. The word 'sell' is also defined in the English dictionary as 'to give up or hand over something to another for money.' The Appellate Tribunal state the definition to be 'to hand over voluntarily or in response to a demand or request. But that is a special meaning which is given in the Oxford Dictionary. The ordinary meaning is given in the third definition, that is, a sale in respect of 'merchandise, possession, etc' Another meaning of it is 'to dispose of merchandise, possession, etc. to a buyer for price.'

17. It will be seen that in the Oxford Dictionary the word 'sale' is defined as involving agreement. In short, a sale ordinarily means a voluntary act, the transferring of property voluntarily by the buyer to the seller at a price. 'Price' is defined in the Oxford Dictionary as 'the money or other equivalent for which anything is bought or sold' and therefore it is clear that it is something which is handed over for property as the result of agreement.

18. It seems to me quite clear that the acquisition of this plant by the Govt. could never be said to be a 'sale' as that word is ordinarily used in the English language. There was nothing voluntary about the transaction. Against the wishes of the assessee Govt. requisitioned this property. The assessee asked Govt. to stay their hand and cancel the order depriving them of their property. But Govt. refused to do so and stated that they would determine the amount payable and they were paying Rs. 5,00,000/- on account. In short, the order of requisition deprived the assessee of property which they had no desire whatsoever to lose. In fact it deprived them of property which quite clearly they wanted to retain.

19. Dr. Gupta however has contended that eventually the assessee did accept a sum of money for this property and therefore he urges that a sale had been completed. They had been deprived of their property and they had no redress whatsoever. There was no other alternative open to them but to accept this money. Otherwise they would have been deprived of the property and of what Govt. consid. to be the value of it. I do not think it can be said that because the assessee in the circumstances accepted the money and thus mitigated their loss they sold the plant for that sum to Govt.

20. Dr. Gupta has urged that the word 'sale' is wide enough to cover not only voluntary sales but compulsory sales. As I have said, the ordinary meaning of the word 'sale' is a transaction entered into voluntarily between two persons known as the buyer and the seller by which the buyer acquires property of the seller for an agreed consideration known as a price.

21. In the case of *'King v. England'*¹, the Ct. of Queen's Bench had to consider the meaning of the word 'sale'. Goods belonging to the deft. having been distrained for rent on a third person's premises, they were duly appraised, and the landlord, instead of actually selling, took them at the condemned price in satisfaction of the rent and costs, and then handed them as a gift to the pltf. upon which the deft. took possession of them. It was held that there was no sale so as to divest the deft. of the property in the goods, and he had therefore a right to take them.

22. The question which the Ct. had to consider was whether the landlord in retaining these goods at the appraised value could be said to have bought them and that the transaction amounted to a sale. At p. 146 Cockburn, C. J. observes:

¹(1864) 33 L. J. Q. B. (N. S.) 145

"The facts are simply that the goods were distrained and appraised at a certain value, and instead of proceeding to a sale the landlord says, 'I will take the goods at that value', and then gives them to the pltf., the daughter of the tenant. I cannot look upon that as a sale. A sale implies that there shall be one who sells and another who buys."

23. If a sale involves one who buys and another who sells then this transaction by which Govt. acquired this generating plant can never be regarded as a sale.

24. Dr. Gupta concedes that the transaction was not a voluntary sale, but he contends that the word 'sale' covers compulsory sale. It seems to me that the phrase 'compulsory sale' is a contradiction in terms. The word 'sale' in its ordinary meaning means a voluntary transaction and therefore a compulsory sale is really a contradiction and is no sale at all.

25. Compulsory acquisition of immovable property is a common occurrence in this country and such matters are governed by the Land Acquisition Act. It is to be observed that that Act never refers to a transaction of compulsory acquisition as a sale. It is always refd. to as an acquisition and the amount eventually payable is never refd. to in the Act as a price but as compensation. It seems to me that compulsory acquisition of land can never be regarded as a sale in the true sense of that word and neither can a compulsory acquisition of property under Rule 83, Defence of India Rules be regarded as a sale. Compulsory acquisition is a transaction often against the will of one of the parties who is deprived of his property and who is compelled to accept for that property something which he frequently regards as wholly inadequate. A person deprived of his property under Rule 83 was bound to accept what Govt. determined, no matter whether the owner regarded the value fixed by Govt. as totally inadequate or even perhaps unfair or dishonest. In my view such a transaction cannot possibly be said to be a sale as that word is

ordinarily used.

26. Dr. Gupta however has relied upon a decision of the House of Lords in England in *'Commissioner of Inland Revenue v. Newcastle Breweries, Ltd²*. In that case the Respondent Co. carried on the business of brewers and wine and spirit merchants, and in the course of their business kept large stocks of rum which had to be reduced and blended before sale. The blended product was sold either wholesale or retail in relatively small quantities. In January, 1918, during the first World War the Admiralty, acting under the Defence of the Realm Regulations, took over about one-third of the stocks in question then owned by the Respondent Co. Payment of £ 10,315 was offered by the Admiralty based on the actual cost of the rum and allowing a profit of about 1s. per proof gallon, and this amount was accepted on account by the Respondent Co., without prejudice to its claim for a larger amount. In regard to this claim litigation ensued, but before its conclusion the Indemnity Act, 1920, was passed, providing that any person who had sustained loss or damage by reason of interference with his property or business through the exercise or purported exercise of any power under the Defence of the Realm Regulations should be entitled to payment or compensation in respect of such loss or damage, to be assessed on the principles mentioned in the Regulation. Following a claim by the Co., the War Compensation Ct. in November, 1921, gave judgment for payment to them of a total of £ 15,624, and the balance of £ 5,309 was accordingly paid by the

² (1927) 12 T. C. 927

Admiralty in January, 1922.

27. The original payment of £ 10,315 was credited in the Co.'s accounts for the year ended 30-10-1918, under the head of "Sales of Rum", and was included in an Excess Profits Duty assessment for that accounting period. No appeal was entered against this assessment, but in subsequent proceedings the Co. did not admit that the payment was rightly included in its assessable profits. The further payment of £ 5,309 was credited under the same head in the accounts for the half-year ended 30-4-1922, but was charged to Excess Profits Duty by an additional assessment for the accounting period ended 30-10-1918. The Special Comrs. following an Irish decision discharged this additional assessment on appeal on the ground that the sum received did not represent a trade profit. Rowlatt, J. whose decision was affirmed by the Court, of Appeal and the House of Lords held that the payment in question was a profit arising from the Co.'s trade, and that it must be included for Excess Profits Duty purposes in the profits for the accounting period ending 30-10-1918, in which the rum was taken over.

28. Dr. Gupta has urged that in this case all the Cts. in England treated a compulsory sale as a sale. In the case rum was acquired by the Admiralty and there can be no doubt that the transaction was in the nature of a compulsory acquisition, though eventually the amount which the Govt. had to pay was to be fixed in certain proceedings. It is to be observed however that in this case the Cts. were not concerned with the meaning of the word 'sale'. What the Cts. had to consider was whether the profit which admittedly arose as the result of the compulsory

acquisition of this rum could be regarded as profits of the assessee's trade or business and therefore assessable. The Ct. of Appeal in Ireland in the case of *'Arthur Guinness, Son and Co., Ltd. v. Commissioners of Inland Revenue'*³, had held that profits made in such circumstances could not be regarded as profits of the trade or business. The English Cts. however held that the profit made was a profit of the assessee's trade or business as a wine merchant and supplier of rum and therefore taxable. Rowlatt, J. pointed out that it was the assessee's business to dispose of rum at a profit. The rum in question was disposed of at a profit and it did not appear to Rowlatt, J., at all material whether the disposition was voluntary or involuntary. What did it matter whether the assessee voluntarily sold this rum or not, if the transaction resulted in a profit as it did? The profit was profit arising possibly not from a sale of rum in the true sense of the word, but from what the nature of the assessee's business substantially was, namely, the disposing or transferring of this rum to others for a consideration and thereby earning a profit.

29. It had been contended that this could not be a business profit as it was not an ordinary business transaction. But Lord Hanworth, M. R. at p. 944 observes:

"It is important to remember that the Statute does not, in Section 38 or Section 39, refer to normal trade or business, or profits arising in the usual course of business. No such words of limitation appear; but, as I have pointed out, the words of Section 39 are 'all trades or businesses of any description', and the Schedule embraces 'all profits arising' in the accounting period."

³(1923) 2 I. R. 186

30. Lord Hanworth was of opinion that the profit which was made by the compulsory acquisition of this rum was a profit in a trade or business carried on by the assessee and therefore assessable.

31. Warrington, L. J., dealing with the argument that this profit was not earned in the ordinary trade or business of the assessee observed:

"It was no doubt an unusual mode of deriving gain from the particular asset, but as I have already pointed out this fact is not enough to prevent that gain from entering into the account of profits arising from the business of which it was an asset."

32. Later he observed:

"As already stated, I cannot see that the absence of will to trade can make any difference, if the transaction in fact is a commercial transaction giving rise to profit."

33. In the House of Lords Viscount Cave made it clear that the fact that the transaction was what he called a compulsory sale made no difference if it resulted in a profit and as a profit had been

made in the course of disposing wine or rum, though not voluntarily, such profit was taxable.

34. It is to be observed that in this case the Cts. in England were never called upon to decide what precisely was meant by the word 'sale'. What the Cts. had to consider was whether the profit made as a result of this compulsory acquisition of rum was a profit of the assessee's trade or business. If it could be regarded as a profit made in the course of the assessee's trade or business, it mattered little whether the transaction was a sale as that term is ordinarily understood in the English language or whether it was what Viscount Cave describes as a compulsory sale. I do not think therefore that the 'Newcastle Breweries' case is of any real assistance in this case and that also was the view of the Judicial Member of the Appellate Tribunal.

35. It is to be observed that in Section 10 (2) (VII), the words used are "machinery or plant which has been 'sold', and later reference is made to the amount for which the machinery was actually sold. In the proviso which we are now considering the amount for which the machinery is sold is again referred to and the profit shall be deemed to be the profits of the previous year in which the 'sale' took place. The words "sale" and "sold" appear a number of times and it appears to me that unless a Ct. is compelled to give those words a wider meaning than they ordinarily have, we are bound to hold that a transaction described as a compulsory sale, which is nothing more than an acquisition, frequently against the will of the owner, by another, is not included in the proviso; and therefore any profit made as a result of such acquisition would not be taxable.

36. Dr. Gupta has contended that even if compulsory acquisition is not strictly a sale it is substantially a sale as the ownership of property has been transferred and the transferee has paid for the property acquired. An exchange involves the transfer of property from one person to another for a consideration but an exchange is not regarded as a sale. It has many of the incidents of sale but it is always treated as something different from a sale.

37. Dr. Gupta further urged that what mattered was, that the transaction resulted in a profit and therefore it was immaterial whether that profit arose as the result of a sale properly so called or as the result of a transaction having some of the incidents of a sale. If profit was made as a result of a transaction resembling in some respects a sale such could be said to be the result of a sale. If the transaction is in substance a sale, it is argued that it is immaterial whether in law it amounts to a sale or whether it amounts to a sale as that word is ordinarily used and understood in the English language.

38. It must be remembered however that the word "sale" appearing in the second proviso to Section 10(2) (vii), Income-tax Act, is a word found in a taxing statute i. e. a statute imposing financial burdens on the subject. A burden would be imposed if the words of the statute clearly imposed such a burden but it could never be imposed by giving a word a meaning different from its ordinary meaning or by giving a phrase a forced construction or a construction which it ordinarily could not bear.

39. It had been frequently laid down by Cts. in England and Cts. in this country that taxing statutes have to be construed strictly. That does not mean that a forced construction has to be given in favour of the citizen. But it is clear that where a taxing statute admits of two reasonable constructions, the construction most favourable to the citizen should be adopted.

40. The rule is stated in these terms in Maxwell on Interpretation of Statutes, Edn. 9 at p. 291:

"Statutes which impose pecuniary burdens, also, are subject to the same rule of strict construction. It is a well-settled rule of law that all charges upon the subject must be imposed by clear and unambiguous language, because in some degree they operate as penalties. The subject is not to be taxed unless the language of the statute clearly imposes the obligation.....In a case of reasonable doubt the construction most beneficial to the subject is to be adopted."

41. In my view the language of Section 10(2) (vii) does not clearly impose an obligation on the assessee to pay tax on the profits arising from this transaction. It seems to me that the language of the statute only imposes that obligation when plant or machinery is sold or discarded and no obligation arises when plant or machinery is acquired compulsorily by Govt. and the owner left to accept what Govt. is pleased to offer him. If the word 'sale' in this sub-section was capable of two meanings we should have to give it the meaning more favourable to the subject. But in my judgment the word 'sale' can never include a transaction such as the one envisaged in R. 83, Defence of India Rules.

42. In the result therefore I am bound to hold that the view of the Appellate Tribunal cannot be sustained and I would answer the question submitted in the negative.

43. The assesseees are entitled to the costs of these proceedings. Certified for two Counsel.

Banerjee, J.

44. I agree.

Reference answered.