BOMBAY HIGH COURT

Ismailia Grain Merchants

Vs

Commissioner of Income-Tax

(Chagla, C.J. Tendolkar, J.)

24.08.1956

JUDGMENT

Chagla, C.J.

1. This reference is by an assessee whose case had come up before us in I. T. Reference No. 47 of 1954. The facts are identical and in that reference we held that the assessee was liable to pay tax under section 12.

2. Now, this reference challenges an order of the Tribunal wherein it has been held that the identical income earned by the assessee is liable to tax under section 10 (6). As pointed out in the earlier judgment, the assessee Association receives subscriptions from its members who have given ration shops and this subscription is utilised by the Association for distributing 75 per cent. of this income to those of its members who are not so fortunate as to be given ration shops. The remaining 25 per cent. is utilised towards office expenses and charity and on those facts we held that the net income of the Association was liable to tax under section 12. In this reference the Tribunal has taken the view that the income is liable to tax under section 10 (6). Before section 10 (6) can apply, two essential facts have to be established : that the Association rendered specific services to its members and that a remuneration was paid by the members for these services rendered. Now, when we look at the facts set out in the statement of the case, neither of these two facts has been established. What the Tribunal says is :

> "During the rationing days it is common knowledge that a dealer had a lot to do with the Government. Various formalities had to be complied with, licences had to be obtained. This payment was made by the persons who were in fact allotted the shops. All other members who had not been allotted the shops had nothing to do with the Government at the material time. In the opinion of the Tribunal therefore, services were rendered by the Association to its members."

3. Now, it is difficult to understand how this "therefore" follows from the recital of earlier facts.

There is not a suggestion in what we have just set out that the Association did anything in respect of the various matters mentioned in this paragraph. Therefore, in the first place, there is no finding by the Tribunal that any specific services were rendered by the Association, much less is there a finding that any remuneration was paid to the Association for these services rendered by the Association. Therefore, clearly the tax is not sustainable under section 10 (6). But as we have pointed out in Commissioner of Income-tax v. Swimming Bath Trust, the real controversy between the assessee and the Taxing Department is whether the assessee is liable to tax. Even though he may not be liable to tax under one provision of the Act, if he is liable under another provision and that liability clearly arises from the facts stated in the statement of the case, then it is open to us to say that we disagree with the view of the Tribunal that the assessee is liable under section 10 (6), but that he is liable under some other provision of the Act. In I. T. Reference No. 47 of 1954 we held that this Association was liable to pay tax on its income under section 12. It is difficult to understand how we can take a different or a contrary view on this reference.

4. Therefore we will re-formulate the question as follows :

> "Whether on the facts and in the circumstances of the case the receipts in question have been properly taxed ?"

and answer that in the affirmative.

5. As the assessee was fully justified in coming on this reference by reason of the finding of the Tribunal and as the Department sought to assess the assessee to tax under section 10 (6), we think that the Commissioner should pay the costs of this reference.

6. Reference answered in the affirmative.