INCOME-TAX REFERENCE.

Before Rankin C. J., C. C. Ghose and Mukerji JJ.

1928

Jan. 9.

COMMERCIAL PROPERTIES, LTD., *In re.**

Income-tax—"Business", meaning of—Company owning house-property and carrying on business of letting such houses—Company how liable to taxation—Income Tax Act (XI of 1922), ss. 9, 10.

A company owning house-property and carrying on only the business of letting such houses is liable to income-tax under section 9 of the Indian Income Tax Act, 1922, in the same way as a private individual owning such property.

In re Kaladan Suratee Bazaar Co., Ltd. (1), referred to.

Commissioners of Inland Revenue v. *Sangster* (2) and *Commissioners of Inland Revenue* v. *Korean Syndicate, Limited* (3), distinguished.

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The assessees, The Commercial Properties, Limited, are a registered company, of which the sole object is to acquire land, build houses and let premises to tenants in Calcutta or elsewhere in India. The sole assets of the assessees consist of three properties, and the sole business of the assessees is the management and collection of rents from the said properties. The assessees contended before the Income-tax Officer that they were carrying on a business and should be assessed under section 10 of the Income Tax Act, but the contention was disallowed and there was an assessment under section 9. The assessees preferred an appeal to the Assistant Commissioner, who upheld the order of the Income-tax Officer, finding that the assessees were not a "business" within the meaning of the Income Tax Act. The assessees then applied to the Commissioner of Income-tax, who made this Reference to the High Court for its opinion.

* Reference under section 66 (2) of the Indian Income Tax Act, XI of 1922.

(1) (1920) 56 Ind. Cas. 914. (2) [1920] 1 K. B. 587. (3) [1921] 3 K. B. 258.

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Mr. T. Ameer Ali for the assessees. The point raised in this Reference is one of great importance, as there are several other real property companies who would be affected by the decision as to whether such a company comes within section 9 or section 10 of the Act.

In the year under review, the company suffered a loss, and the position was that no income was derived by the share-holders. Probably the rents realised were not as high as in the previous years and also the capital value depreciated.

As to what is carrying on business, see Dowell's "Income Tax Laws", 9th Ed., p. 525 *et seq.* Look at the memorandum of the company. It is an ordinary memorandum.

[RANKIN C. J. Does it contain provision for banking?]

No. There is provision for lending money for building.

See Income Tax Act, sections 2 (*4*), 6, 9 and 10.

The Excess Profits Duty Act, 1919, section 2 is the first attempt to define "business".

In re Kaladan Suratee Bazaar Co., Ltd. (1) is against me. But see *Commissioners of Inland Revenue* v. *Sangster* (2), in which there was no appeal, and *Commissioners of Inland Revenue* v. *Korean Syndicate, Limited* (3). The last-mentioned decision was overruled in appeal (4). See also *Inland Revenue Commissioners* v. *Westleigh Estates Company, Limited* (5). *Inland Revenue Commissioners* v. *South Behar Railway Company, Limited* (6). The last-mentioned two cases were reviewed in appeal (7). The cases of

(1) (1920) 56 Ind. Cas. 914.
(2) [1920] 1 K. B. 587.
(3) [1920] 1 K. B. 598.
(4) [1921] 3 K. B. 258.
(5) [1923] 2 K. B. 515.
(6) [1923] 2 K. B. 528.
(7) [1924] 1 K. B. 409, 412, 416

South Behar Railway Company, Limited v. *Commissioners of Inland Revenue* (1) and *Re Dilke's Settlement Trusts* (2) have hardly any bearing on the question in issue here.

The English cases cited above give us some idea as to the schedule applicable. But if you have two sections and no schedules, you have to find out under what section a case comes.

Smith v. *Anderson* (3) is an insolvency case, but says something as to what "business" is. See per Jessel M. R.

The Advocate-General (Sir B. L. Mitter), with him *the Standing Counsel (Mr. H. R. Panckridge)* and *Mr. S. M. Bose, Sr.*, for the Commissioner of Income-tax. The Company was rightly assessed under section 9 by the revenue authorities. The primary object is in reality the ownership of building. *Primâ facie*, it comes under section 9. There is no question that the company is the owner of the building. In a case like this, the assessee will be assessed under head A, as well as D of sch. III, but the assessment under sch. D will be credited in sch. A, so that there will be no double assessment. See *Coman* v. *Governors of the Rotunda Hospital, Dublin* (4).

When the main purpose is to own buildings and to let them out, it comes under section 9. It is not "business". If the object is business and to have some property incidentally, it might come under section 10.

English cases should not be relied on in construing Indian Act. English cases depend on special English Acts. They may be useful in clearing our ideas.

Mr. T. Ameer Ali, in reply.

(1) [1925] A. C. 476.
(2) (1921) 124 Law Times 231.
(3) (1880) 15 Ch. D. 247, 258.
(4) [1921] 1 A. C. 1, 16.

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RANKIN C. J. This is a case stated by the Commissioner of Income-tax, Bengal, and the question for decision is whether or not the assessees are liable to income-tax under section 9 of the Indian Income-tax Act, 1922, or only under section 10 of that Act.

It is the function of the Commissioner to find the facts, and it is for this Court to accept his findings on all matters of mere fact.

The facts stated are that the assessee, The Commercial Properties, Limited, is a registered company, of which the sole object is to acquire land, build houses and let premises to tenants in Calcutta or elsewhere in India. The sole assets of the assessees consist of three properties and the sole business of the assessees is the management and collection of rents from the said properties.

The opinion of the Commissioner of Income-tax is that "even if the assessees are held to be a business, "they must be assessed in respect of the property "owned by them according to the special provisions "relating to property."

It will be observed that section 6 of the Indian Income-tax Act states that "the following heads of "income, profits and gains shall be chargeable to "income-tax in the manner hereinafter appearing, "namely". Then come six heads of which the third is "Property" and the fourth is "Business". By section 9 "the tax shall be payable by an assessee "under the head 'Property' in respect of the *bonâ* "*fide* annual value of property consisting of any build-"ings or lands appurtenant thereto, of which he is the "owner, other than such portions of such property as "he may occupy for the purposes of his business" and it goes on to lay down the method in which the *quantum* of the tax is to be computed. It points out,

for example, that where the property is in the occupation of the owner, or where it is let to a tenant and the owner has undertaken to bear the costs of repairs, then one-sixth is to be the deduction for repairs. In like manner, a deduction is to be allowed for insurance. Questions of mortgage interest and ground-rent are covered and there are specific provisions as regards allowance to be made for parts of the property being unoccupied from time to time. Again, it is to be noted that the "annual value" is to be deemed to be the sum for which the property might reasonably be expected to let from year to year, so that this class of property is not to be taxed on the basis of *de facto* rent alone, and it is further provided that where the property is in the occupation of the owner for the purposes of his own residence, the annual value is not to be deemed to be more than ten per cent. of the total income of the owner. I mention these matters to show that special computations which arise in the case of house property are dealt with under section 9, which is a particular, detailed and special scheme for ensuring that any property which comes within that section shall be taxed in a particular way.

Section 10, which deals with Business— "profits "or gains of any business carried on by him"—is also provided with certain rules as to allowances to be made before computing profits. These rules, in so far as they refer to house property, refer to "the" premises in which such business is "carried on", but with regard to insurance premiums, land revenue, rates and taxes refer to buildings and premises "used for the purposes of business".

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

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time, to see to the payment of rents and (doubtless) the doing of repairs. If that is 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. We know from section 9 itself that it is applicable to property which is let out to tenants, and it has been argued before us that when one looks at the case law one finds that, at all events, where the owner is a company and the objects of the company include the object of owning and managing house property, then the income that is derived from the tenants is an income that is derived from business. It is in that way that it is contended that these assessees should be charged under section 10. It is said that if the question were to arise under section 10, these assessees would not be liable to pay income-tax at all so that no income-tax would be recovered in respect of any of these estates, the reason being that, in point of fact, they have traded so unsuccessfully during the year in question that they have actually made a loss. This is certainly a very important question, from the point of view of the treasury, because if this argument be right then it will depend to some extent upon the success of the management whether or not the public treasury should derive any income-tax in respect of house property of this character. It is obvious too, that if we are to depart in such a case as this from the careful provisions contained in section 9 for the purposes of computing the correct figure in the case of house property on which tax is to be levied, we will get under section 10 all sorts of complicated questions special to house property, upon which the law will be absolutely at large. In my judgment, 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 from "Business", and I entirely refuse my assent to the proposition that because it happens that the owner of a property is 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 from "business". In my judgment, income derived from "property" is a more specific category applicable to the present case.

The cases to which we have been referred are cases in England, with, I think, one exception, which is a case from Burma. The case in Burma, *In re Kaladan Suratee Bazaar Co., Ltd.* (1), arose out of the Excess Profits Duty Act, 1919. The Excess Profits Duty Act laid a special tax upon the profits of business, and although it contained a special protection for the earnings of a man in his profession, there was no special provision applicable to the case of an owner of property. There was a company called the Kaladan Suratee Bazaar Co, Ltd., which owned certain plots of land and stalls at Moulmein, at a bazaar there. Its income was derived from the rents of houses and bazaar stalls belonging to it, and the Financial Commissioner, not disputing that it was subject to income-tax under section 9, maintained that it was liable to excess profits duty, because it was a "business" within the meaning of the Excess Profits Duty Act. The decision of the Court was that these two Acts were to be interpreted in the same way. It was pointed out that a person or a company drawing income from house property was clearly not contemplated in the Indian Income-tax Act, as carrying on a business, but was treated as a person who derived income from the property and, in the

(1) (1920) 56 Ind. Cas. 914.

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same way, when the question of excess profits duty had to be decided, the Court determined that the company was not carrying on a business within the meaning of that Act. It was pointed out that if the mere letting of stalls was carrying on a business within the meaning of the Act, then every person who had invested his capital in house property was liable to excess profits duty when his income rose above the minimum limit. It was further said that a man who had invested his capital in house property and who kept a rent office and a staff of rent collectors, etc., for the purpose of letting his houses and collecting the rents was not carrying on a business. He was merely taking the ordinary steps necessary for enjoying the income from his property. That, therefore, is the Indian case which bears upon this question and it is not in favour of the assessees.

Of the English cases to which we have been referred, the first is the case of *Commissioners of Inland Revenue* v. *Sangster* (1). That was a decision of Mr. Justice Rowlatt. It was the case of a man who was an inventor and who derived considerable sums of money from royalties paid to him by companies, of which he was a manager. He had sold one invention it is true, but that was a good long time ago, and in these circumstances, it was contended that he carried on the business of an inventor and was therefore, liable under the provisions of the Finance Act of 1915 to excess profits duty. That argument was rejected, Mr. Justice Rowlatt saying that he was not carrying on a business, because he was an owner of royalties and that he was not carrying on a business because he was a shareholder in a certain Company.

Much reliance has been placed, however, upon certain cases, of which the case of *Commissioners of*

(1) [1920] 1 K. B. 587.

Inland Revenue v. *Korean Syndicate, Limited* (1), is the chief. There, again, was a question, not whether the company was liable to pay under Schedule A of the Income-tax Act or under Schedule D but whether it was liable to excess profits duty as carrying on a trade or business at all. It was a very complicated case and I do not propose to set out the facts, but it is clear that the company was originally incorporated to get and work a concession in Korea, but ultimately it obtained a share and had an agreement with a co-sharer to do the actual working of the concession, and a certain sum was to be paid to it under this agreement. The document purported to be a lease and the sum, by the document, was called a royalty; but, on a close examination of the particulars by the Master of the Rolls, Lord Sterndale, it was held that the company was carrying on in this particular way the business of obtaining a working concession for which it had been incorporated, that the document was not really a "lease", that the payments were not truly and strictly "royalties", and that, therefore, it was not entitled to say that it was outside the scope of the excess profits duty. Very similar are the decisions under the Corporation Profits Tax imposed by section 52 of the Finance Act of 1920. There, tax was put *primâ facie* upon every British company which carried on trade or business or anything of that kind. Cases arose on the border line, such as a case where a company having put up money to build an Indian Railway and an Indian Railway having been built by the Secretary of State and managed more or less successfully the company was now in the position of receiving under its agreement certain payments, and it was contended on the one hand that it was not carrying on a business at all. It has ultimately been decided by the House

(1) [1921] 3 K. B. 258.

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of Lords that if you look at the matter from the beginning as a whole, the company was carrying on the business of financing this Indian Railway and that although it had finished finding the finance and only had to receive what was due to it under the agreement it could not be said that it was no longer carrying on business.

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 from its ownership of buildings and their curtilages. 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 own houses one must buy or build them, but the Act does not regard such income as profits of investment.

In my opinion, the Income-tax Commissioner was right, and we should answer the question which he has put to us, that the assessees are to be assessed under section 9 of the Act.

The assesses must pay the costs of the reference.

GHOSE J. I agree.

MUKERJI J. I agree.

Attorneys for the assessee: *Morgan & Co.*

Attorney for the Commissioner of Income-tax: *G. C. Gooding.*

S. M.