INCOME-TAX REFERENCE.

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

DIBRUGARH DISTRICT CLUB, LTD., *In re.**

1927

Dec. 22.

Income-tax—Company for maintaining and conducting a club, how far liable to assessment.

The entire profits of a registered company, the main objects of which are to maintain and conduct a club for the benefit of such persons as may become members of the club, are liable to assessment for income tax, where the company is not a mere mutual trading society making "*quasi* "profit" by trading with its own members and returning such "profits" to the members.

New York Life Insurance Company v. *Styles* (1) distinguished.

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The Dibrugarh District Club, Ltd., is a company registered under the Indian Companies Act, with a share capital of Rs 50,000, divided into 500 shares of Rs. 100 each. It owns and carries on the business of a club for European residents of the Lakhimpur district at Dibrugarh. Its shares are held partly by members of the club and partly by non-members. There is a distinction between shareholders of the company and members of the club. The holding of a share is not a necessary qualification for membership and there is no limit to the number of members.

The company was assessed in 1925 to income-tax as a business concern on the whole of their profits. The company, thereupon, appealed and the Assistant Commissioner of Income-tax, Lakhimpur, directed assessment only on the annual value of the property.

The company was again assessed on the sum of Rs. 10,510 for the year commencing 1st April, 1926.

* Income-tax reference.

(1) (1889) 14 App. Cas. 381.

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The company appealed again, contending that assessment on profits amounting to Rs. 10,510 was wrong in law, that the assessment should be based on the annual value of the club's house as in the previous year and that the assessment was excessive, even if it were held that the profits were income within the meaning of the Act. The officiating Deputy Commissioner of Lakhimpur reduced the assessment on the ground that it was excessive, but negatived the other two contentions. The company, thereafter, prayed, under section 66 (*2*) of the Income-tax Act of 1922, for a reference to the High Court on the questions of law arising in the case.

Hence this Reference.

Mr. Amarendra Nath Bose (with him *Babu Ambica Pada Choudhuri*), for the assessee. The club had dealings with its members only and afforded facilities to them, it derived profits from such dealings and till dividends were declared and paid to shareholders held the same for the benefit of the members. The members of the club and the shareholders in the company are the same save in thirteen instances and in these instances the said shareholders were at one time members of the club, but who ceased to be members on retirement from India or were relations of such members. The club derives no benefit from outsiders. It is a mutual trading society making profits from its members, which are returned to its members.

The assessment should be on the basis of the annual value of the club's house. The money received by the company from its members does not fall within class (*iv*) of section 6 of the Income-tax Act. It is not "income derived from business", as the company does not trade with its members, but

the object for which it exists is their mutual benefit. See *United Service Club, Simla* v. *The Crown* (1) and *Board of Revenue* v. *The Mylapore Hindu Permanent Fund, Limited* (2).

Upon the facts of this particular case, the Dibrugarh District Club itself is the company which took over the effects and liabilities of the Dibrugarh Station Club and incorporated itself as the Dibrugarh District Club, Limited. The club, or, in other words, the company is a separate entity distinct from its shareholders. See *Flitcroft's case* (3), *Smith* v. *Anderson* (4) and *In re George Newman & Co.* (5). See also Income-tax Act, sections 14 (2) (*a*), 20, 48 and 57. Its money obtained in the shape of profits is the money of the club and no shareholder has a right to have a dividend declared, and till dividend is declared, the money remains the property of the club and does not become the property of the shareholders: *Commissioners of Inland Revenue* v. *Blott* (6). The fact that some of the shareholders were not members of the club does not signify anything. Therefore, *New York Life Insurance Company* v. *Styles* (7) applies. Nothing turns upon the ultimate destination of the surplus profits of the club. See *Calcutta Turf Club* v. *Secretary of State for India* (8) and *Paddington Burial Board* v. *Commissioners of Inland Revenue* (9).

In any view of the matter, the profit derived from the members, who happened to be shareholders, should not have been assessed.

(1) (1921) I. L. R. 2 Lah. 109.
(2) (1923) I. L. R. 47 Mad. 1.
(3) (1882) 21 Ch. D. 519.
(4) (1880) 15 Ch. D. 247.
(5) [1895] 1 Ch. 674.
(6) [1921] 2 A. C. 171; 8 Tax Cases 101.
(7) (1889) 14 App Cas. 381.
(8) (1921) I. L. R. 48 Calc. 844, 855.
(9) (1884) 13 Q. B. D. 9; 2 Tax Cases 46.

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The Advocate-General (*Mr. B. L. Mitter*), with him the *Standing Counsel* (*Mr. H. R. Panckridge*) and *Mr. S. M. Bose, Sr.*, for the Commissioner of Income-tax. In the present case, we are concerned with two different sets of persons, one the proprietary body of shareholders which owns the property and divides the profit; the other the body of members of the club, from whom the profit is derived. The profits, which are paid to the shareholders and not returned to the members from whom they are derived are clearly liable to income-tax. It is wholly immaterial that some of the shareholders and some of the club members are the same people. It is admitted that some shareholders at least are not members of the club. The body of shareholders is a separate entity from the body of members of the club. It is also clear that the company trades with the members of the club and the profits do not revert to the members, either in the form of dividends or of improved amenities. The *Lahore case* (1) is, therefore, distinguishable. The profits are distributed among the shareholders irrespective of their being or not being members of the club. Even if every shareholder were also a member of the club, it would nevertheless be correct to assess the profits of the company to income-tax, even if one permanent member were not also a shareholder. Were this not so, it would be difficult to draw the line at which the absence of identity between members and shareholders became a material fact in deciding the question of liability to income-tax.

The facts of the case in *New York Life Insurance Company* v. *Styles* (2) are quite different from the present one.

(1) (1921) I. L. R. 2 Lah. 109. (2) (1889) 14 App. Cas. 381.

Mr. Bose, in reply.

Cur. adv. vult.

RANKIN C. J. The assessee in this case is the Dibrugarh District Club, Ltd., which is a company limited by shares, incorporated under the Indian Companies Act of 1882. I shall refer to it as "the "company" and I shall not refer to it as "the club", for the reason that by the terms of its regulations the word "club" is reserved for a different body. The main objects of the company are to maintain and conduct a club for the benefit of such persons as may become members of that club. The club's membership is unlimited in number and there are two classes of members—permanent and temporary. Save for certain persons who are, by the rules of the club, entitled to become permanent members without ballot or entrance fees, all permanent members are elected by ballot. The voters at such ballot are the existing body of permanent members of the club. The arrangement as to temporary members need not be set forth here The general management of the club is vested in a committee of seven members, of whom at least five must be shareholders of the company and the directors of the company have an ultimate control in matters affecting the financial position of the company.

It will be seen, therefore, that membership of the club is quite a different thing from membership of the company, which involves the ownership of a share or shares. Article 12 of the company's articles of association provides that "No share-holder as such shall be "entitled to use the company's club premises, or enjoy "the accommodation provided by the company for the "use of members of the club, unless and until he has "been duly elected as a member of the club, or is "exempt from ballot in accordance with the rules and

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"regulations contained in the second schedule hereto, "which shall be read as part of these articles." Conversely, the rules of the club make it equally clear that persons may become members of the club without being shareholders in the company (compare rule 6).

Now, it appears that, in 1925-26, the company made a profit of some ten thousand rupees. It did this clearly enough out of the various charges made to members of the club, but it could be wished that the Commissioner of Income-tax had stated the facts as to this matter more explicitly, for whether the articles of association and the club's rules are logical and consistent on this point may be a question: apparently a member's subscription and the amount of his club bills are payable by him to the club. How and on what account the company becomes entitled to get money from the club or from a member is not clear.

The following facts are stated by the Commissioner of Income-tax, as showing the position in 1926. The number of shareholders in the company is not given, but the number of shares issued was 445 shares. Of these shares, 74 are held by persons who are not members of the club, by how many of such persons is not stated.

The number of members of the club was apparently 289 of whom 220 were not shareholders of the company and 69 held shares.

It appears that in recent years the company has paid dividends out of its profits—8 and 12 per cent. has been declared and paid. By Article 104, it is provided that the dividend shall not exceed 12 per cent. on the issued capital—the balance of profit, if any, being intended for the Reserve Depreciation and Sinking Funds.

In these circumstances, the company claims to escape payment of Income-tax upon its profits and

puts forward statements such as these—that the club does no business with and makes no profit on dealings with non-members, that the members of the club and shareholders are the same, save in 13 instances, and in these instances the shareholders were at one time members or relations of members.

These statements are confused and erroneous. The company dealt in 1926 with 220 members of the club, who were not shareholders, *i.e.*, with 220 persons not members of the company. The company is not a mere mutual trading society making "*quasi* profit" by trading with its own members and returning such "profits" to the members. The case is wholly different on the material facts from *New York Life Insurance Company* v. *Styles* (1). I agree with the Commissioner in his view that in this case it is not a matter of importance that some of the shareholders and some of the club members are the same people. I am further of opinion that in this case the fact of incorporation cannot be neglected and the company (which is the assessee) is not to be confounded with the individual shareholders. In this case it is found that the assessee has made a profit and it must pay income-tax on the full amount thereof independently of what it proposes to do with that profit.

The assessee must pay the costs of this reference.

GHOSE J. I agree.

BUCKLAND J. I agree.

Attorneys for the assessee: *Morgan & Co.*

Attorney for the Commissioners of income-tax: *S. S. Hodson, Government Solicitor.*

S. M.

(1) (1889) 14 App. Cas. 381.