

INCOME-TAX REFERENCE.

Before Lord-Williams and Jack J.J.

1934

Dec. 5 ;
1935

Jan. 24.

In re SADHUCHARAN RAY CHAUDHURI.*

Income-tax—Lease of jute press—Lessee bearing costs of repairs—Lessor, if carrying on business—Depreciation allowance—Indian Income-tax Act (XI of 1922), ss. 10(2) (vi), 12, 66(2).

The letting of a jute press at a rent (the lessee being liable for repairs to the engines, machinery and plant, godowns and buildings) is the carrying on of a business of letting the jute press within the meaning of the Indian Income-tax Act of 1922, and the lessor is entitled to an allowance for depreciation under section 10(2)(vi) of the Act.

Commissioner of Income-tax, Madras v. Mangalagiri Sri Umamaheswara Gin and Rice Factory, Ltd., Guntur (1) followed.

INCOME-TAX REFERENCE at the instance of the assessee, Sadhucharan Ray Chaudhuri and others.

The material facts appear from the judgment.

S. N. Banerjee (Sr.) (with him *M. N. Ghose*) for the assessee. I rely on *Commissioner of Income-tax, Madras v. Mangalagiri Sri Umamaheswara Gin and Rice Factory Ltd., Guntur* (1) and *Sutherland v. Commissioner of Inland Revenue* (2).

A. K. Roy (*Advocate-General*) (with him *Radha-binode Pal*) for the Commissioner of Income-tax. Those cases are distinguishable.

Cur. adv. vult.

LORD-WILLIAMS J. In this case the facts found are that the assessee purchased the Salkiya Jute Press in 1907, and worked it until 1930. In 1931, he leased it out for a term of one year to the Salkiya Jute Pressing Company, Limited—a private company, in which he holds more than 60 per cent. of the shares,

*Reference under section 66(2) of the Indian Income-tax Act, No. 6 of 1934.

(1) (1926) I. L. R. 50 Mad. 529.

(2) (1918) 12 Tax Cas. 63.

and that lease is subsisting, the lessee holding over under the terms of the lease. Those terms, *inter alia*, are :—

(a) You shall pay us a nett annual rent of Rs. 22,500 only, payable as follows, *i.e.*, Rs. 2,500 to be paid by the 31st day of August, 1931, and the balance by four instalments of Rs. 5,000 each, on the 1st November, 1931, 1st February, 1st May and 1st August, 1932.

(b) During the said period of one year, we shall only pay the rents payable to the superior landlords and you shall pay the municipal taxes, Fire Brigade license, and all other outgoings and public charges.

(c) You shall carry out all repairs to the engines, machinery and plant, godowns and buildings during the said period at your own expense.

The assessee's income from this source was assessed under section 12 as income from "other sources". He claimed to be assessed under section 10, as upon profits or gains of business, and to be entitled to an allowance for depreciation under section 10 (2) (*vi*). The assessee had another jute press, which he purchased in 1915 and worked until 1921, when he leased it out until 1930, and subsequently, after a year's vacancy, leased it out again.

The Commissioner decided against the assessee's contention and referred the following question for the decision of this Court :—

Whether in the circumstances set forth above, the assessee is entitled to an allowance for depreciation in respect of the buildings, plant and machinery leased to the jute pressing company under section 10(2)(*vi*) of the Act ?

The reasons for his decision are mainly that, under section 10(2) (*vi*), depreciation is allowable only when the machinery and plant in question are the property of the assessee, and are used for the purpose of the business, the income of which is being taxed, and, secondly, that the assessee originally worked the jute press himself, and that was his intention at the time of acquisition. I cannot appreciate the cogency of the distinctions, which the Commissioner has sought to draw. The press is the property of the assessee, and is used for the purpose of the business, the income of which is being taxed, namely, the business of letting out the press. The fact that the assessee originally intended to work the press himself seems to be irrelevant.

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The decision in the case of *Commissioner of Income-tax, Madras v. Mangalagiri Sri Umamaheswara Gin and Rice Factory, Ltd., Guntur* (1) supports the assess-ee's contention. That the lessor in that case was a registered company seems to me to be irrelevant. It was decided that where a limited company incorporated for the purpose of milling rice, acting in pursuance of authority given in the memorandum of association, leased out the buildings, plant, machinery, *etc.*, to another company for a fixed annual rent, the lessors bearing any loss by depreciation and the lessees being liable for repairs, the company was carrying on the business of letting a rice mill, and was entitled to an allowance for depreciation under section 10(2) (vi) of the Income-tax Act.

In the case of *Sutherland v. Commissioner of Inland Revenue* (2), Lord Mackenzie stated that—

It is clear, I think from what has already been read from judgment of Lord Hardwicke in the case of *Doddington v. Hallet* (3) and a series of subsequent cases that the letting of a ship to freight is just as much a trade as any other.

In *Doddington v. Hallet* (3) Lord Hardwicke had said that—

It must be admitted, the ship may be the subject of partnership as well as any thing else ; the use and earnings thereof being proper subject of trade, and the letting a ship to freight as much a trade as any other.

This statement was approved by Thompson C. B. in *Attorney-General v. Borrodaile* (4).

The decision in the case of *In re Commercial Properties, Ltd.* (5), that 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 Income-tax Act, in the same way as a private individual owning such property, is clearly distinguishable, and so is the decision in the case of *In re Kaladan Suratee Bazaar Co., Ltd.* (6). Such property consisted of buildings, or lands appurtenant thereto, within

(1) (1926) I. L. R. 50 Mad. 529.

(4) (1814) 1 Price 148 (163) ;
 145 E. R. 1359 (1364).

(2) (1918) 12 Tax Cas. 63.

(5) (1928) I. L. R. 55 Cal. 1057.

(3) (1750) 1 Ves. Sen. 497 (498) ;

(6) (1920) 1 Ind. Tax Cas. 50 ;

27 E. R. 1165 (1166).

56 Ind. Cas. 914.

the meaning of section 9 which specifically provides for the taxation of income from this kind of property. It has not been suggested by either party that income arising from letting out a jute press comes within the purview of this section, but that it comes under either section 12 or section 10.

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In my opinion, the letting of a jute press at a rent is as much a business as the letting of a ship to freight, or the letting of a motor-car or any other kind of machine, or machinery for hire. In *Mangalagiri's* case (supra) the learned Judges pointed out that the Crown would not suffer if an allowance were made to the lessors for depreciation under section 10(2) (vi), because, under the conditions of the lease, the lessors had to bear the loss caused by depreciation. Therefore, a similar allowance for depreciation could not be claimed a second time by the lessees, though they could claim an allowance for repairs for which they were liable under the lease.

Similarly, in the present case, the lessees are liable only for repairs and not for depreciation, and, in no circumstances, could they claim an allowance for depreciation under section 10(2) (vi), because the buildings, machinery, *etc.*, mentioned in that subsection must be the property of the assessee.

The result is that the question referred to us for decision must be answered in the affirmative.

The assessee is entitled to his costs of the Reference.

JACK J. I agree.

Attorneys for assessee: *Roy Choudhuri & Co.*

Advocate for Commissioners of income-tax:
Radhabinode Pal.

A. K. D.