

INCOME-TAX REFERENCE.

Before *Lort-Williams and Jack J.J.*

In the matter of THE CALCUTTA STOCK
EXCHANGE ASSOCIATION, LIMITED.*

1934
Dec. 4, 5.

Income-tax—“Residence,” Ordinary and extended meaning of—Company, Case of—Indian Income-tax Act (XI of 1922), ss. 4, 9(2), prov., 42.

The word “residence” in its simple and ordinary meaning signifies a place where a human being, or his family or servants, eat, drink and sleep, and where there is some permanence or continuance of such eating, drinking and sleeping.

A company is a “person” who can be said to “reside,” within the meaning of the said word as used in sections 4 and 42 of the Indian Income-tax Act of 1922, where its real business is carried on; but it cannot “reside” apart from carrying on business.

This extended meaning is not to be given to the word “residence” in the proviso to section 9(2) of the Act, the phrase his “own residence” therein indicating the residence of a human person, and not that of a fictional person, such as a limited liability company.

The King v. The Inhabitants of North Curry (1), *De Beers Consolidated Mines, Limited v. Howe* (2) and *The Calcutta Jute Mills v. Nicholson and Gesena Sulphur Company v. Nicholson* (3), referred to.

REFERENCE under the Income-tax Act.

The material facts appear from the judgment.

S. N. Banerjee (sr.) (with him *Khaitan*) for the assessee cited the aforesaid cases. A company resides where it resides in the artificial sense recognised by the decided cases.

Roy, Advocate General, and *Radhabinode Pal* for the Commissioner of Income-tax.

LORT-WILLIAMS J. This is a case stated by the Commissioner of Income-tax at the instance of the Calcutta Stock Exchange Association, Limited, under section 66 (2) of the Income-tax Act (XI of 1922).

*Reference under section 66(2) of the Indian Income-tax Act, No. 10 of 1934.

(1) (1825) 4 B. & C. 959 ;
107 E. R. 1313.

(2) [1906] A. C. 455.
(3) (1876) L. R. 1 Ex. D. 423.

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The assesseees are a mutual benefit liability company, their main objects being to support and protect the character, status and interest of brokers and dealers in stocks and shares on the stock exchange, to give facilities to its members to carry on business, to make rules and bye-laws, to regulate business, to settle disputes amongst themselves and to maintain a stock exchange.

The company owns a four-storeyed building at No. 7, Lyons Range, Calcutta, on the ground floor of which there is a large hall, used as the meeting place of the stock exchange, two tiffin rooms, a telephone room and a quotation room. On the mezzanine floor are situated the offices and meeting place of the association, while the first, second and third floors are occupied by members. The rooms on these floors are let out by the company to the members for their business as members of the stock exchange. They are not used by them for the purpose of residence.

The company owns, in addition to this building, certain securities and derives an income from other sources, such as the publication of the stock exchange quotation lists which are sold both to members and to non-members of the association.

In the assessment for 1933-34, the Income-tax Officer computed the total income at Rs. 59,798, which included a sum of Rs. 24,117 in respect of income from the house property at 7, Lyons Range. That sum is the *bona fide* annual value of the building and was taxed under section 9 of the Act.

The assesseees objected to the assessment on various grounds. The only one which we need consider is their contention that they are entitled to the benefit of the proviso to section 9, sub-section (2).

The assesseees were not taxed on any income under the head "business," because they contended, and their contention was accepted, that they did not carry on any business within the meaning of the Act.

The question formulated by the Commissioner is as follows :—

In the circumstances set out above, can the property in question or any portion thereof be said to be in occupation of the owner for the purpose of his own residence within the meaning of proviso to section 9, sub-section (2) of the Indian Income-tax Act (XI of 1922) ?

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The Commissioner decided that the answer to that question must be in the negative, and the assessees having complained about that decision, he agreed to state a case for the opinion of this Court. The Commissioner's contention was that, though a company is a "person" and must be deemed for certain purposes of the Income-tax Act, *e.g.*, section 4 and section 42, to have a "place of residence," and that though for certain purposes the "place of residence" of the assessees in this case is the building at 7, Lyons Range, yet the word "residence," as used in the proviso to section 9, sub-section (2), does not refer to such a "person" or such "residence," and the expression "property in the occupation of the owner "for the purpose of his own residence" means and connotes an owner's dwelling-house.

In my opinion, the word "residence" in its simple and ordinary meaning signifies the place where a human being eats, drinks and sleeps, or where his family and servants eat, drink and sleep, and where there is some permanence or continuance of such eating, drinking and sleeping, and the statement of Bayley J. in the case of *The King v. The Inhabitants of North Curry* (1) is, in my opinion, an authority for that proposition. In that case, the learned Judge said that—

Where there is nothing to show that it is used in a more extensive sense the word "residence" denotes the place where an individual eats, drinks and sleeps, or where his family or his servants eat, drink and sleep.

It is true that in certain circumstances and in certain statutes a more extended meaning has been given to the word; for example, it has been held that

(1) (1825) 4 B. & C. 954 (959) ; 107 E. R. 1313 (1315).

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a limited liability company can "reside" for the purposes of income-tax legislation. That was decided by Lord Loreburn in the case of *De Beers Consolidated Mines, Limited v. Howe* (1), wherein it is stated that—

A company cannot eat or sleep, but it can keep house and do business. We ought, therefore, to see where it really keeps house and does business The decisions of Kelly C. B. and Huddleston B. in *The Calcutta Jute Mills v. Nicholson* and the *Cesena Sulphur Company v. Nicholson* (2), now thirty years ago, involved the principle that a company resides for purposes of income-tax where its real business is carried on.

Moreover, it has been decided that a company is a person who can reside within the meaning of the word "reside" as used in the Income-tax Act and other statutes. But, in my opinion, a company can only "reside" within that extended meaning of the term, when it resides for the purpose of carrying on business and it cannot reside apart from carrying on business. Thus in both sections 4 and 42 of the Indian Income-tax Act, it is clear that the word "reside" is only used in connection with the carrying on of a business and not otherwise.

Now it is true that the assessee comes within the terms of the proviso to section 9 (2), if the extended meaning of the word "residence," to which I have referred, is given to that word in this particular section. In my opinion, there is no justification for giving to the word in this particular section that extended meaning, nor do I think the legislature intended that such an extended meaning should be given to it.

In this connection, it is to be noticed that the word "own" has been inserted between the words "his" and "residence." I think that the object of inserting that word was to indicate that the phrase applied only to a human person or persons and not to a fictional person, such as a limited liability company. Little help can be derived from other decisions either in England or in India on other sections of the Income-tax Act, because this seems to be a peculiar section, the reason for the insertion of which is not

(1) [1906] A. C. 455, 458.

(2) (1876) L. R. 1 Ex. D. 428.

apparent. One can imagine various reasons and some of them are indicated in Sunderam's Book on the "Law of Income-Tax" at page 494 in his note upon this proviso.

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The result is that the answer which we give to the question, which has been stated by the Commissioner, is in the negative.

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Costs of the advocates appearing in this Reference will be settled by the Taxing Master.

JACK J. I agree.

Question answered in the negative.

Solicitors for assesseees: *Khaitan & Co.*

Advocate for Commissioner of Income-tax:
Radhabinode Pal.

A.K.D.