

## APPELLATE CIVIL—SPECIAL BENCH.

*Before Sir John Wallis, Kt., Chief Justice, Mr. Justice Ayling  
and Mr. Justice Krishnan.*

1921,  
April 19.

THE CHIEF COMMISSIONER OF INCOME-TAX, MADRAS,  
REFERRING OFFICER,

v.

M. A. R. N. RAMANATHAN CHETTIAR  
AND ANOTHER, ASSESSEES.\*

*Excess Profits Duty Act (X of 1919)—Whether duty should be assessed within  
the revenue year.*

Under the Excess Profits Duty Act (X of 1919) it is not necessary that the duty should be assessed within the year for which the duty is payable.

CASE stated under section 51 of the Indian Income-tax Act read with section 15 of the Excess Profits Duty Act (X of 1919) by the Deputy Commissioner and Secretary to the Chief Commissioner of Income-tax, Madras.

All the material facts are set out in the Letter of Reference which is as follows :

“I am directed by the Board of Revenue to submit, under section 51 of the Indian Income-tax Act read with section 15 of the Excess Profits Duty Act, for the decision of the High Court, the question of the legality of assessments to Excess Profits Duty made after 31st March 1920, which has arisen in the following case.

“2. M. A. R. N. Ramanathan Chettiar, Tanjore, was on 29th March 1920 assessed to income-tax by the Collector of Tanjore on Rs. 74,366, income derived from rice mill and rice trade during the year 1918-19. As the income was above Rs. 30,000, a notice was issued by the Collector on the same date (29th March 1920) to the assessee to furnish within two months the particulars required under section 11 of the Excess Profits Duty Act. The assessee replied to this notice on 30th May 1920, and the Collector assessed him to the Excess Profits Duty on 20th September 1920. The assessee contends that the assessment is illegal because it was made after 31st March 1920, and requests that the question may be referred to the High Court for decision.

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\* Referred Case No. 2 of 1921.

"The question has been already raised before the Board and it was decided that such assessments are legal: but in view of the observation of the High Court in the judgment, dated 11th November 1920, in the *mandamus* application of the North Anantapur Gold Mines, Limited, the Board considers that the question should now be referred to the High Court.

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"3. The assessee relies on section 19 of the Excess Profits Duty Act and section 3 of the Super-tax Act (VIII of 1917). He argues that because section 19 of the Excess Profits Duty Act directs that where the profits of a business are chargeable to Excess Profits Duty and to super-tax, only duty or tax, whichever is higher, shall be charged, and because section 3 of the Super-tax Act (VIII of 1917) directs that super-tax shall be charged, recovered and paid in each year, the Excess Profits Duty also must be assessed in the year so as to make it possible for the authorities to determine which sum is larger and to levy it accordingly. In the Board's opinion the argument is very far-fetched. There is nothing in the Excess Profits Duty Act itself to justify the inference that assessment under it must be made before 1st April 1920, and the only rule which in any way restricts the Collector's power in the matter is rule 24 (3), which lays down that no proceedings for the recovery of any sum payable under the Act or the rules shall be commenced after 31st March 1921, that is, assessment proceedings should be begun in sufficient time to permit of steps being taken by this date for the recovery of the duty. If the assessee's contention were correct, it might have been expected that section (2) of the Act would have read:—"It shall come into force on 1st April 1919 and shall remain in force until 31st March 1920.

"4. A reference to the provisions of the Revenue Acts in the matter, for example, the Madras Irrigation Cess Act (VII of 1865) and the Revenue Recovery Act (II of 1864), appears to lead to the same conclusion. Section 1 of the Irrigation Cess Act specifically restricts the time for the levy of water cess to one year succeeding that in which the irrigation takes place. In the Revenue Recovery Act there is no provision limiting the period within which land revenue should be collected. These appear to show that when it is intended to restrict the powers of the executive in the matter of the collection of Government dues, such restrictions are clearly stated in the legislation itself.

"5. The question now under reference was raised before the Board in connexion with certain other Excess Profits Duty appeals when two other arguments were adduced against the assessments;

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'(a) That the Act was temporary for one year and therefore the assessments should be made before 1st April 1920, and

'(b) That section 15 of the Excess Profits Duty Act, which makes certain sections of the Income-tax Act applicable to the Excess Profits Duty Act, omits section 25 under which the income escaping assessment in the year is assessable in the succeeding year.'

"(a) It is true that the Act was intended to be temporary, but temporary in the sense that it related only to the profits of one single year. See paragraph 2 of the Statement of Objects and Reasons, dated 13th December 1918, which runs thus:

"2. Although no guarantee can be given by the Government of India on the point, the change which has recently come over the military situation makes it possible that the sum raised by the duty will not be required for more than one year, and the duty is, therefore, imposed by the bill only on the profits of a single year (clauses 2 and 4). The proposed duty will absorb 50 per cent of the excess of the profits made in an accounting period of twelve months over a certain standard called in the bill the "Standard profits" (clause 4).

"In the Board's opinion there is nothing to suggest that the intention of the legislature was to limit the period within which the duty should be actually levied to one year as contended.

"(b) The argument here appears to be based on a misapprehension of the scope of the Income-tax Act. Under section 14 (2) of that Act, the tax shall be levied in respect of each year in that year, and section 25 provides for cases that escape in the year. The section of the Excess Profits Duty Act corresponding to section 14 (2) of the Income-tax Act is section 4 which makes no mention of the year in which the tax is to be levied and hence there was no necessity to make section 25 of the Income-tax Act applicable to the Excess Profits Act. The difference in the wording of these two sections seems further to support the Board's view.

"I am to add that the Board will be glad to furnish any further particulars that may be required by the High Court."

*E. L. Thornton, A. Krishnaswami Ayyar, M. Patanjali Sastri and T. S. Krishnaswami Ayyangar* for the assesseees. The Income-tax Act, the Super-tax Act and the Excess Profits Duty Act must all be read together. The two former Acts enjoin the levy of tax only within the year of the tax. The same rule applies to excess profits duty. If a person is liable to pay super-tax and excess profits duty, only that which

is higher can be levied; see section 19 of the Excess Profits Duty Act. In this case the party was not assessed to super-tax within the year; hence he cannot be charged with super-tax. Indefinite postponement of levy of tax is not contemplated.

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*The Advocate-General (C. P. Ramaswami Ayyar)* with the *Government-Pleader (C. Madhavan Nayar)* for the Referring Officer.—The duty need not be levied within the year. The calculation of Excess Profits duty is a complicated matter. The Collector has to calculate the standard profits, the capital at the end of the accounting year and the income, in accordance with section 5 of the Excess Profits Duty Act. All these take a long time. The duty itself is imposed only in respect of the profits of one year, viz., 1918-19. The limitation of one year prescribed in the other Acts does not find a place in the Excess Profits Duty Act. The new provision in section 25 of the Income-tax Act that income of any year which has escaped taxation can be assessed in the following year is not repeated in the Excess Profits Duty Act for the reason abovementioned. The only limitation of time is that contained in section 30 (5) of the Income-tax Act which has been made applicable to the Excess Profits Duty Act.

#### OPINION.

The question referred to us is whether the Excess Profits Duty Act, 1919, requires the duty to be assessed within the year from the 1st April 1919 to 31st March 1920 for which the duty is imposed. A comparison of the Act with the earlier Income-tax Acts makes it quite clear that this was not the intention of the legislature. It is expressly provided in section 4 of the Indian Income-tax Act, 1886, section 3 of the Super-tax Act, 1917, and section 14 of the Income-tax Act, 1918, that the tax under each of these Acts shall be paid or collected in the year for which it is imposed and this necessarily implies that the assessment must also be within the year. Consequently under the Acts of 1886 and 1917, income which escaped assessment within the year went free, but in section 25 of the Act of 1918 it was for the first time provided that in cases governed by that Act it might be assessed in the following year, and the Super-tax Act, 1917, has recently been amended to the same effect. On the other hand, the Excess Profits Duty Act, 1919, which we have to construe, contains no provision that the tax

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is to be paid within the year but simply provides in section 4 that it is to be "charged, levied and paid," and the legislature whilst making sections 21 to 24, 26 and 27 as well as other sections of the Indian Income-tax Act, 1918, applicable in proceedings under this Act has omitted section 25 which, as already mentioned, provides for the assessment in the following year of income which has escaped assessment in any year. The omissions of any provision that the tax should be paid within the year and of any provision for the assessment of income which had escaped assessment in the year itself are conclusive indications that it was the intention of the legislature to depart from the scheme of the earlier Acts and not to require assessment and payment within the year. The reason, as pointed out by the learned Advocate-General, no doubt, was that the assessment of the standard profits under section 9 for the purposes of calculating the Excess Profits Duty was a complicated matter and in many cases could not be completed within the year. Consequently the legislature considered it a sufficient limitation to incorporate by reference, the provisions in section 30 (5) of the Indian Income-tax Act, 1918, that no proceedings for recovery of the tax should be taken after the expiration of one year from the last day of the year in which any demand is made under the Act.

It has, however, been argued that as the income with which we are dealing is not chargeable with super-tax under the Act of 1917 because it was not assessed to super-tax within the year, it must also be held exempt from excess profits duty under section 19 of the present Act. That section merely provides, for the protection of the tax-payer, that the profits of any business shall not be chargeable both with super-tax and excess profits duty, but with whichever is the higher, and has no application to a case in which profits are chargeable only with excess profits duty and not with super-tax. It does not relieve profits from the liability to excess profits duty imposed by section 4 unless such profits are chargeable with super-tax and the super-tax exceeds the excess profits duty. The answer must be that it is not necessary that the Excess Profits Duty should be assessed within the year. The assessee will pay cost to Crown Rs. 250.