VENKATASAM CHETTY v. GULABCHAND.

OPINION.

The judgment of the Privy Council in *Sabitri Thakurain* v. *Savi*(1) makes it clear that the provisions of Order XLI will apply to Original Side appeals under the Letters Patent. Rule 22 of that Order expressly provides for cross-objections being raised by respondents. If there were any doubt about it, it would be resolved by the provisions of our own Orders XLI-A and XLI-B. See also Order XLIX, rule 3. Had the Privy Council case been cited before the Court in the case of *Bhimasena Rao* v. *Venugopal Mudali*(2) it would no doubt have come to a different conclusion. We decide accordingly that the memorandum of objections in this case is competent.

Costs will be costs in the cause.

Grant and Greatorex, Attorneys for the respondents in Original Side Appeal No. 22 of 1925.

N.R.

APPELLATE CIVIL—SPECIAL BENCH.

Before Sir Murray Coutts Trotter, Kt., *Chief Justice, Mr. Justice Krishnan and Mr. Justice Beasley.*

1925, October 29.

THE COMMISSIONER OF INCOME-TAX, MADRAS (REFERRING OFFICER),

v.

KING AND PARTRIDGE (RESPONDENTS).*

Income-tax Act (XI of 1922), *sec.* 11—*Profession tax paid to Municipality under sec.* 111 *of the Madras City Municipal Act (IV of* 1919), *not a proper deduction under sec.* 11 *of Income-tax Act.*

Profession tax paid by a person under section 111 of the Madras City Municipal Act (IV of 1919) is not a proper

(1) (1921) I.L.R., 48 Calc., 481 (P.C.). (2) (1925) I.L.R., 48 Mad., 631.

* Referred Case No. 3 of 1925.

deduction from his taxable income "as an expenditure incurred solely for the purposes of the profession" within section 11 of the Income-tax Act (XI of 1922).

CASE stated under section 66 (2) of the Indian Income-tax Act XI of 1922 by the Commissioner of Income-tax, Madras, referring for the decision of the High Court the following question, viz.—

"whether the profession tax levied under section 111 of the Madras City Municipal Act must be allowed as a deduction from the taxable income as an expenditure incurred solely for the purpose of the profession within the meaning of section 11 of the Indian Income-tax Act XI of 1922."

The facts appear from the judgment.

R. N. Aingar for the Assessees.—On the wording of section 111 it is clear that the professional tax is to be paid "by way of licence fee" for carrying on a profession. Rule 9 of Part II of Schedule IV to the Act shows that the tax is not based on income. So it is incurred for the purpose of profession within the meaning of section 11 (2) of the Income-tax Act. Even if it is based on income, an expenditure incurred for the purpose of the profession, whether statutory or voluntary is a proper deduction; See *Smith* v. *Lion Brewery Company, Limited*(1), *Usher's Wiltshire Brewery, Limited* v. *Bruce*(2), *Scottish Union and National Insurance Compaay* v. *New Zealand and Australian Land Company*(3), *Vulcan Motor and Engineering Co.* v. *Hampson*(4), *Patent Castings Syndicate, Limited* v. *Etherington*(5) and *Commissioner of Income-tax* v. *Nedungadi Bank*(6), which allowed a deduction of Companies' tax. Profession tax differs in many respects from income-tax. Income-tax is based on last year's income, whereas profession tax is based on future income.

M. Patanjali Sastri for Commissioner of Income-tax.—Professional tax is like income-tax based only on income and just like income-tax it is not a proper deduction. It is not a licence fee. Profession tax is payable under section 111 also by Government servants and pensioners and by all upon aggregate income. See section 111 (1) and (2). "By way of licence fee" in section 111 means "on the analogy of a licence fee" and distress is the mode of enforcing profession tax as in the case of income-tax. It is only in certain professions such as keeping

(1) [1911] A.C., 150. (2) [1915] A.C., 433 at 443.
(3) [1921] 1 A.C., 172. (4) [1921] 3 K.B., 597 at 606.
(5) [1919] 2 Ch., 254 at 267. (6) (1924) I.L.R., 47 Mad., 667.

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slaughter-houses, under section 297, that a licence must be taken beforehand. In other cases such as in the case of vakils, etc., no licence is taken or issued ; yet all have to pay profession tax. All compulsory payments are not proper deductions unless they are incurred solely for the purpose of the profession within section 11 (2) of the Income-tax Act. It is not sufficient if they are merely incurred in the course of or in connexion with the trade. The meaning of the words "for the purpose of trade" is given by Lord DAVEY in *Strong & Co., Limited* v. *Woodifield*(1) ; they mean "for the purpose of enabling a person to carry on and earn profits in the trade." See also *Smith* v. *Lion Brewery Company, Limited*(2) and *Usher's Wiltshire Brewery, Limited* v. *Bruce*(3). Income-tax paid is not a proper deduction ; see *Aston Gas Company* v. *Attorney-General*(4). Even income-tax is paid only on future income, though the estimate is made on last year's income. See *Brown* v. *National Provident Institution*(5).

R. N. Aingar replied.

OPINION.

This is a reference under section 66 (2) of the Indian Income-tax Act XI of 1922 and the question submitted for our opinion is whether profession tax paid under section 111 of the Madras City Municipal Act should be allowed as a proper deduction from the taxable income "as an expenditure incurred solely for the purposes of the profession" of the assessee within the meaning of section 11 of the Income-tax Act.

The assessees are a firm of attorneys practising in Madras and they claim that they are entitled to the deduction above-mentioned. The Commissioner of Income-tax was of opinion that the deduction claimed was not an allowable item.

The answer to the question put to us depends in our opinion upon the nature of the profession tax levied by the Municipality. If the profession tax is a contribution from the income of the assessee to the Municipality, it will stand on the same footing as income-tax itself which

(1) [1906] A.C., 448.
(2) [1911] A.C., 150
(3) (1915) A.C., 433 at 443.
(4) [1906] A.C., 10.
(5) [1921] 2 A.C., 222.

is such a payment to the Government. It is clear in assessing the income of a person the income-tax he pays could not be deducted, for what is paid is a part of the income itself and not as expenditure for earning that income or profit. It was so ruled in *Ashton Gas Company* v. *Attorney General*(1) and the proposition is conceded before us. What then is the profession-tax? Is it a payment made out of the income of the taxpayer or is it an expenditure which he has to incur to enable him to earn his income? We are of opinion that it is the former and not the latter.

Under the City Municipal Act (Act IV of 1919), section 111, every person not liable for the companies' tax who within the city and for a period of 60 days in the half year exercises "a profession, art, trade or calling or holds any appointment public or private" bringing him within the taxation rules of schedule IV is liable to pay the profession tax. Now schedule IV makes it clear that the amount of tax payable is dependent on the income of the person taxed, the minimum being an income of Rs. 100 a month, except in the cases of hotel-keepers, etc., dealt with under class IX. Professional men are taxed not because they carry on their profession but because they do so and earn an income. The amount of tax varies with the income and if a person is overtaxed he has a right of appeal.

Now the nature of the tax cannot vary with the individual taxed. In the case of persons holding appointments under the Government it seems to us impossible to predicate that they pay profession tax to enable them to earn their salary. Section 111, Explanation 2, makes even pensioners liable for profession tax as if they were holders of appointments carrying a salary equal to the pension. In their cases it is still more difficult to treat the profession tax as a payment by them to earn their

(1) [1906] A.C., 10.

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income. It is clear in those cases the Municipality claiming a part of their income as a tax. A different rule it seems to us cannot be applied in the case of men who make their income by professional services. It is argued that because section 111 uses the words "by way of licence fee," we must hold that the payment of the profession tax is for the purpose of obtaining a licence to carry on one's profession in the city. We are unable to accept this argument. The Act deals with several matters in which the obtaining of a licence is a pre-requisite to the carrying on of a business or profession within the municipal limits. We find examples of it in Chapter XII of the Act. There is no provision in the Act which makes the carrying on of one's profession without paying the profession tax illegal; and no formal licence is issued on payment. The tax if unpaid can no doubt be collected by coercive processes of distraint, etc., but the carrying on of the profession is not interfered with. It is clear therefore that the Act does not treat the profession tax as a payment for a licence. The words "by way of a licence fee" seem to us to show that the payment is to be made in the manner of a licence fee but do not imply that in itself the tax is a licence fee. It is true that under Part II, schedule 4, rule 9, the tax is estimated on general considerations and not on the exact amount of ascertained income of the person taxed. This merely provides a method of estimating one's income to avoid the trouble of having accounts produced and examined in every case. The fact that when an over-estimate is made liberty is given to the person taxed to produce his accounts and prove his income and get his tax reduced indicates that the proper basis of the tax is the income earned. In this view payment of the profession tax cannot be held to be "an expenditure for the purpose of such profession," though it is incurred in connection with it. The words "for the purpose of"

were construed by Lord DAVEY in the case of *Strong & Co., Limited* v. *Woodifield*(1) where the expression was "for purposes of the trade." His Lordship observed—

"These words appear to me to mean for the purpose of enabling a person to carry on and earn profits in the trade, etc. I think the disbursements permitted are such as are made for that purpose. It is not enough that the disbursement is made in the course of, or arises out of, or is connected with, the trade or is made out of the profits of the trade. It must be made for the purpose of earning the profits."

Following that view we consider that the payment of profession tax does not fall within section 11.

The cases of *Smith* v. *Lion Brewery Company*(1) and of *Usher's Wiltshire Brewery, Limited* v. *Bruce*(2) were cited by the learned Counsel for the assessees. But instead of helping him they show what may properly be treated as money spent for purposes of trade. The expenses referred to in those cases were directly incurred for the purpose of increasing the income of the trade and were therefore allowed to be deducted. These cases do not apply here in the view we take of the nature of the profession tax. Along with these cases should be considered the case of money spent for an anti-prohibition compaign by a brewer which was disallowed as a deduction, as it was held that it was not money directly spent for increasing the brewer's income, though it may have indirectly had that effect. *Ward & Company* v. *Commissioner of Taxes*(3). The case of *Commissioner of Income-tax* v. *Nedungadi Bank*(4) referred to the companies tax and not to the profession tax. The observation in it regarding profession tax that it stands on the same footing as income-tax supports the contention of the Government, but we do not look upon it as any authority on the point before us as the

(1) [1906] A.C. 448, 453.
(2) [1911] A.C., 150.
(3) [1915] A.C., 433.
(4) [1923] A.C., 145.
(5) (1924) I.L.R., 47 Mad., 667.

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observation is only an *obiter dictum*. The case is not otherwise applicable. *Patent Castings Syndicate, Limited* v. *Etherington*(1) referred to excess profits duty which stands on a different footing altogether; as pointed out by the learned Judge there, it was declared by statute to be an admissible deduction. Furthermore, the case was one of net profits of the company on which dividend was payable to the manager and not an income-tax case.

For the above-mentioned reasons we have come to the conclusion that the amount of profession tax paid is not a proper deduction for assessment of income-tax and we answer the question submitted in the negative. The assessees will pay the Commissioner's costs and Vakil's fee Rs. 200.

T. D. Narasayya, Attorney for assessees.

N.R.

APPELLATE CIVIL.

Before Sir Murray Coutts Trotter, Kt., *Chief Justice, and Mr. Justice Reilly.*

1925, September 16.

K. SATYANARAYANA (SECOND DEFENDANT), APPELLANT,

v.

Y. CHINNA VENKATARAO AND FIVE OTHERS (PLAINTIFFS AND DEFENDANTS 3, 8, 7 AND 9), RESPONDENTS.*

Sec. 77 *of Indian Registration Act* (*XVI of* 1908)—*Plaintiff (purchaser) tendering sale-deed for registration—Denial of execution—Refusal to register—Plaintiff's only remedy, suit under sec.* 77 *of the Registration Act and not suit for specific performance.*

If, on denial of execution by the vendor, a Registrar refuses to register a sale-deed presented by the purchaser for registration, the sole remedy of the purchaser is to a file a suit as provided by section 77 of the Registration Act for registration

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(1) [1919] 2 Ch., 254.

* Appeal No. 68 of 1922.