

therefore being contained in the judgments respectively delivered by them, the judgment or decision should be regarded to be confined to and made to comprehend all matters with regard to which they agree to reverse or modify the decree appealed from.

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I find that in an unreported case, Appeal No. 223 of 1920, my learned brother and Justice VENKATASUBBA RAO have arrived, even though without any elaborate discussion, at the same view and conclusion with regard to the contention now raised before us.

I have therefore the less hesitation in following the decision in that case. A decree will therefore be drawn up in these appeals varying the decree appealed from in the manner and to the extent both of us have agreed.

[The preceding and subsequent portions of this judgment are not published as they deal with facts.]

N.R.

APPELLATE CIVIL.

*Before Mr. Justice Wallace and Mr. Justice
Srinivasa Ayyangar.*

THE MADURA, ETC., DEVASTHANAMS (PLAINTIFFS),
APPELLANTS,

1928,
Jan. 30.

v.

THE MADURA MUNICIPAL COUNCIL (DEPENDANT),
RESPONDENT.*

*Madras District Municipalities Act (V of 1920), s. 93 (1)—
Profession tax—Devasthanam funds, investment of—Interest
from investment—Devasthanam, whether liable for profes-
sion tax—Professional income, meaning of.*

Section 93 (1) of the District Municipalities Act, 1920, deals in its first part with the class of persons to be taxed; the latter

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part declares under what circumstances they become liable to pay profession tax, and limits the liability to cases in which they are in receipt of salary or pension or are making a *professional income*.

Professional income is income received from the exercise of a profession.

Where, therefore, a temple derived a small income by investing its surplus funds, it cannot in any sense be said to be exercising a profession or earning a professional income; consequently it is not liable to profession tax.

SECOND APPEAL against the decree of the First Additional Subordinate Judge of Madura in Appeal Suit No. 64 of 1924 presented against the decree of the District Munsif of Madura Town in Original Suit No. 125 of 1923.

The material facts appear from the judgment. Section 93 (1) of the District Municipalities Act is set out in the judgment at p. 303.

P.S. Narayanaswami Ayyar for appellant.—The deity is not a *person* within the meaning of section 95 of the District Municipalities Act, 1920, so as to be liable to profession tax under section 93, clause (1) of the Act.

The deity cannot be said to be doing business within the municipal limits. The definition of "person" under the General Clauses Act does not include the deity; nor does the word "reside" under section 3, clause 25 of the District Municipalities Act, apply to the deity. The word "person" in the Letters Patent, it has been held, does not apply to legal entities. See *Govindarajulu Naidu v. Secretary of State* (1).

Under section 93 of the District Municipalities Act, only professional income can be taxed for profession tax. Income from investments of surplus funds of the temple is not professional income: See *Municipal Council of Tirupathi v. Sree Mahant Prayag Dossjee Varu* (2).

Though the former part of section 93 contemplates that all persons in receipt of any income except from lands, are liable to tax, yet in the latter part of the section, which is the charging portion of the section, only professional income is assessable to profession tax. A fiscal enactment should be strictly construed and in favour of the subject.

(1) (1927) I.L.R., 50 Mad., 440.

(2) I.L.R., (1914) 27 M.L.J., 231.

S. Muthiah Mudaliar, for respondent.—All kinds of income can be charged under section 93 of the Act. Profession tax is only a compendious term for a tax on all kinds of income other than income from lands. Section 93, sub-clause (2), and Schedule IV, rule 17. The section refers to “Tax on persons exercising professions, arts, trades and callings, holding appointments or receipt of a pension, salary or income from money-lending or deriving income from any source other than lands, etc.” Income from investments is professional income: see *Jennings v. The President, Municipal Commission, Madras*(1).

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P. S. Narayanaswami Ayyar, in reply.—The decision in 11 Mad., 253 is distinguishable. There, the calling of the benefit society was the investment of its funds; it is so distinguished in 27 M.L.J., 231. Here the investment of surplus funds is not a calling as in the former case. Decisions under the previous Act of 1884 is not relevant to this case under the Act of 1920.

JUDGMENT.

WALLACE, J.—The decision in this case turns on the WALLACE, J.
interpretation of section 93 of the District Municipalities Act. The Municipal Council of Madura has demanded profession tax from the Receiver of the Sree Meenakshi Devasthanam in Madura on income received by him from investments of surplus devasthanam funds. The devasthanam paid under protest and instituted this suit for a declaration that it was not liable for the tax and for an injunction to prevent collection. The sum in the suit is trifling, a matter of Rs. 2, but the legal and fiscal question involved is obviously of general importance.

So much of the decision in the case will turn on the exact wording of section 93(1) that it is better to quote it in full; section 93, sub-section 1:

“If the chairman publishes a notification under section 80 that a profession tax shall be levied, every person not liable to the companies' tax who within the municipality and for the period laid down in section 95 exercises after the date specified in the said notification a profession, art, trade or calling or holds

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any appointment, public or private, or is in receipt of any pension or income from investments or money-lending or any source other than houses and lands inside the municipal limits bringing him within one or more of the classes of persons specified in Schedule IV, shall pay a half-yearly tax on his professional income, salary and pension on the scale shown in the schedule ”.

The section is headed “ Profession tax ”, and the marginal note is “ licence tax on professions ”. The substance of section 93 (1) which is necessary for purposes of this case, as I read it, is that every one in a municipality who resides there for sixty days in the aggregate in the half-year and is in receipt of income from investments shall pay a half-yearly tax on his professional income. The short point at issue is whether the phrase “ professional income ” is a short, compendious phrase used to include all the kinds of income specified in the sub-section, as contended by the respondent, or whether it means income derived from the actual exercise of a profession, as contended by the appellant. According to the respondent, any income of the kind specified in the first part of the sub-section is taxable; but according to the appellant, such income is only taxable if and when it can be legitimately said to have been obtained from the exercise of a profession.

It cannot be gainsaid that the wording of the section is very unhappy. The word “ profession ” is not defined, but evidently it was not designed to cover *all* the sources of income specified in the sub-section. For example, “ profession ” as used in the sub-section does not mean art, trade calling, holding an appointment, being in receipt of a pension, or an income from investments, etc. It cannot be here used definitively of these other sources of income, because to define a word by using the word defined offends against all canons of interpretation. True, the word is used as descriptive of the tax; but that is merely a device to save time and multiplicity of

words. The tax is on professions and other sources of income, but for purposes of short statement the tax is to be known as "profession tax". I am unable to agree with the respondent that when the word is again met in its adjectival form "professional" it is used in its compendious sense and not in its definitive sense. Had the former been the idea, the addition of the words "salary and pension" would be not only unmeaning but misleading, since "profession" in its compendious sense already includes the receipt of salary and pension, while the words "professional income" evidently exclude salary and pension. The appropriate, exhaustive and compendious word before "income" would then have been the word "such" and not "professional". (Incidentally it may be remarked that the use of the word "and" instead of "or" between "salary" and "pension" is also puzzling.) We must then give some independent meaning to the words "professional income" which are not equivalent to "such income", and the ordinary meaning which the words usually bear is "income received from the exercise of a profession". The first part of the sub-section deals with the class of persons to be taxed; the latter part declares under what circumstances they become liable to pay the tax, and in my view limits it to cases in which they are in receipt of salary or pension or are making a professional income. I am clear that the temple in gaining a small addition to its income by investing its surplus funds cannot in any sense be said to be exercising a profession or earning a professional income.

I do not think that any help is to be derived from a reference to corresponding sections in other Acts, like the District Municipalities Act of 1884 or the Madras City Municipal Act or from rulings thereunder, because we have no means of knowing whether or not

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the legislature in enacting the present section intended to widen or restrict the compass of its net of taxation as cast in other Acts.

It is not necessary in the view that I take above to go into the question of whether or not the deity is a person or whether it resides in Madura within the meaning of section 95 of the Act.

I am therefore of opinion that the tax is not leviable. This result is also in consonance with the well-known principle of interpretation of fiscal enactments, that if the language is at all ambiguous it must be interpreted in the manner most beneficial to the subject. Taxing statutes must state with the utmost clearness what and whom and in what manner they are taxing.

I would therefore allow the appeal and restore the decision of the District Munsif with costs of the appellant in all Courts.

SRINIVASA
AYYANGAR, J.

SRINIVASA AYYANGAR, J.—I am in entire agreement and I wish to add very little. As pointed out by my learned brother the section under consideration is only a specimen of the present-day hasty and inaccurate legislation by large democratic bodies without the aid of trained and competent legislative draftsmen.

The contention of the respondents really amounted to this; that the section should be read as though the word "professional" was not there at all in that part of the section where the taxable income is defined. Such contention, it follows, cannot possibly be accepted. The word "professional" in the expression "on his professional income", being really in the nature of an expression deliberately introduced in the context and otherwise unnecessary, cannot, on any proper rule of interpretation, be omitted to be given its proper definitive significance. In the first part of the section the class is defined of persons who are subject to the tax,

and in the latter part the income that is liable to assessment. The receipt of interest from investment cannot be said to be salary or pension. So, if it is to be taxed, it can only be taxed as professional income. On the face of it the income from investment cannot be regarded as professional income. But in the first part of the sentence a person who is in receipt of income from investment is included amongst the persons liable to be taxed. If so, it seems to follow that it is only when the receipt of the income from investment can be properly said to be a professional income, such income can be taxed. From this it may be derived, on a consideration of such intention of the legislature as is capable of being gathered, and in any case on a strict interpretation of the terms of the section which is called for, it must follow, that it is only when the making of the investment and the receipt of the income therefrom is followed as a profession that such income can be taxed.

It has not been contended before us that either the idol which is the legal person concerned or the members of the committee can, having regard to the nature of the investment made by them, be said to carry on business in investments.

I, therefore, agree to the order proposed by my learned brother.

K.R.

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