APPELLATE CIVIL.

Before Mr. Justice Venkatasubba Rao.

1934, November 5.

SREE RAJA MALRAJU VENKATA NARASIMHA RAO BAHADUR, ZAMINDAR (PLAINTIFF), PETITIONER

v.

THE CHAIRMAN, MUNICIPAL COUNCIL, NARASARAOPET (DEFENDANT), RESPONDENT.*

Madras District Municipalities Act (V of 1920), as amended by Madras Act X of 1930, ss. 93 and 354, proviso—Profession-tax—Levy of—Dividends received by a shareholder from a company—Disregard of provisions of Act within proviso to sec. 354, if.

Dividends received by a shareholder from a company cannot be treated as a source of income for the purpose of levying the profession-tax under the Madras District Municipalities Act. The levying of such a tax on a shareholder in respect of such dividends is a substantial disregard of the provisions of that Act within the meaning of the proviso to section 354 thereof.

PETITION under section 25 of Act IX of 1887 praying the High Court to revise the decree of the Court of the District Munsif of Narasaraopet, dated the 20th day of February 1933, and passed in Small Cause Suit No. 437 of 1932.

B. T. M. Raghavachari for petitioner.

Y. Govindarajulu Naidu and *K. Ramamurthi* for respondent.

JUDGMENT.

The question that arises is whether the dividends received by a person from a company can be treated as a source of income for the purpose of levying the profession-tax under the Madras

* Civil Revision Petition No. 789 of 1933.

NARASIMHA RAO v. MUNICIPAL COUNCIL, NARASARAOPET.

District Municipalities Act. For the petitioner, it is contended that to levy a tax on a shareholder would amount to "taxing twice over", the company having been already assessed in respect of its profits which in effect belong to the shareholders. The Income-tax Acts, as is pointed out in *Purshottamdas Harkisondas* v. *The Central India Spinning, Weaving and Manufacturing Company*(1), proceed upon the footing that the entire profits are subject to the common burden of income-tax, which in truth is paid by the shareholders, although the payment is made by the company (see page 588). That this is the true view appears also from the following passage in the judgment of ROMER L.J.:

> "If such a company as we have to deal with pays income-tax on its profits, the income-tax, as has been pointed out, is payable out of the profits, and is part of the profits; and if the profits, after deducting the income-tax, have subsequently to be distributed amongst the members of the company, that income-tax is not payable again by those members so far as they receive their share of the profits, because the income-tax is to be taken as having been paid out of their profits, and on their behalf." *Attorney-General* v. *Ashton Gas Company*(2).

Although no doubt, as the petitioner's Counsel contends, this principle is recognized for the purpose of the levying of the income-tax, I do not think I shall be justified, while dealing with this case, in relying upon any such general principle. Different considerations may apply to the levy of the profession-tax and therefore I shall base my judgment on a construction of the sections of the Act in question.

First, section 92 of Act V of 1920, which provided for the levy of a company's tax, was by the

(1) (1917) I.L.R. 42 Bom. 579, 588. (2) [1904] 2 Ch. 621.

Amendment Act (Madras Act X of 1930) deleted and section 93 is by the same new Act so amended as to take in companies also. The result is, that companies as well as individuals are now liable to pay profession-tax, the distinction between companies' tax and profession-tax having been abolished. But what is important to note is, that when companies were before the present amendment liable for what was then termed "companies' tax", section 93 expressly exempted individual members from taxation in respect of their interest in the company. That result was achieved by the qualifying phrase "not liable to the companies' tax" being inserted after the words "every person". I do not think that in enacting the present section (section 93 as it now stands) the Legislature has shown any intention to depart from that rule.

Secondly, the definition of "Company" has been by the Amendment Act (Madras Act X of 1930) so altered as to make it comprise or include a firm, i.e., a partnership. Under section 93 a firm (the word "Company" including thus a firm also) has to pay profession-tax in respect of its profits and the scheme of the Act shows that when profession-tax is levied on a firm, the individual members thereof are not in respect of those same profits again liable. Section 94 enacts *inter alia* that the profession-tax leviable from a firm may be levied from any adult member thereof. A Bench of this Court held, construing provisions similar to these, though of a different Act (Madras City Municipal Act I of 1884), that a partnership trade is a single trade or business for the purpose of taxation and that there can be but one tax

NARASIMHA RAO v. MUNICIPAL COUNCIL, NARASARAOPET.

levied as profession-tax when several persons jointly carry on one trade or business. As is observed in that judgment :—

"It would hardly be reasonable that the profits and extent of a business remaining unchanged, the amount leviable from the firm should vary with the number of the members." *Davies* v. *President of the Madras Municipal Commission*(1).

This principle, which has been held applicable to partnerships, must equally apply to companies also—the reason being that, as in the case of partnerships, so in the case of companies, the profits belong to the entire body of persons composing it.

Thirdly, the construction of the various sets of words shown as sources of income in section 93 leads me to the same conclusion, namely, that as regards dividends received by a person, he is exempt from taxation. The notion that every share-holder "transacts the business" of his company is, in my opinion, clearly wrong. To hold that a person by reason of possessing shares, say, in ten different companies, transacts the business of each of those companies, would lead to obvious anomalies. Nor do I think that dividends, which represent a share of the profits, can appropriately be termed as "income from investments". That being so, it seems to me that the very structure of the section excludes dividends from its ambit.

There remains another point to deal with, namely, that of jurisdiction. Mr. Ramamurti for the respondent contends that the assessment was final and could not be impeached in a Court of law. Section 354 lays down that no proceeding under the Act shall merely for defect in form be

(1) (1890) I.L.R. 14 Mad. 140.

quashed or set aside by any Court of justice ; but this rule is subject to the proviso which runs thus :

"provided that the provisions of this Act have been, in substance and effect, complied with."

It was held by a Bench of this Court that where a company not liable to the tax had been taxed, there was a substantial disregard of the provisions of the Act ; *Municipal Council, Cocanada* v. *The Standard Life Assurance Company*(1). Again, where the Municipality wrongly took the gross income instead of the net income as the basis for determining the class in which a person was to be placed, it was held that the provisions of the Act were not, in substance and effect, complied with ; *Municipal Council of Mangalore* v. *The Codial Bail Press*(2). The words in section 354 (of Act V of 1920) were similarly construed in *Municipal Council, Cuddalore* v. *Krishnan Nambiar*(3). Nor does the use of the word "final" in rule 28 of Schedule IV (Taxation and Finance Rules) operate as a bar to the filing of a suit. As has been pointed out in *Valli Ammal* v. *The Corporation of Madras*(4), the word "final" must be taken to refer to the proceedings before the Municipality and could not have been intended to shut out the jurisdiction of the Courts.

In the result, I must hold that the petitioner is entitled to a refund of Rs. 140. The lower Court's decree is accordingly modified to that extent. Each party shall bear his costs here as well as in the Court below.

K.W.R.

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(1) (1900) I.L.R. 24 Mad. 205.
(2) (1903) I.L.R. 27 Mad. 547.
(3) (1927) I.L.R. 50 Mad. 987.
(4) (1912) I.L.R. 38 Mad. 41.