THE

INDIAN LAW REPORTS

ALLAHABAD SERIES

PRIVY COUNCIL

COMMISSIONER OF INCOME-TAX *v.* TEHRI-GARHWAL STATE

J. C.*
1933
December, 1

[On appeal from the High Court at Allahabad]

Income-tax Act (*XI of* 1922), *sections* 3, 66—*Business*—*Assessment in respect of previous year's profits*—*Absence of profit in year of assessment*—*Case stated*—*Judgment of High Court*—*Absence of appeal*—*Opinion on hypothetical facts*—*Government Trading Taxation Act* (*III of* 1926), *section* 2.

Under the Government Trading Taxation Act, 1926, which came into force on the 1st of April, 1926, and the Indian Income-tax Act, 1922, section 3, the respondent State was assessed to income-tax for the year ending the 31st of March, 1927, at the amount of the profits made by the State during the year ending the 31st of March, 1926, from a timber business which it carried on in British India. A case stated and referred to the High Court under section 66 of the Act of 1922 formulated the question (among others) whether, since the Act of 1926 came into force only on the 1st of April, 1926, there was any liability to assessment with reference to transactions at an earlier date. The High Court held that under section 3 of the Act of 1922 the assessment was properly made; the judgment added that if in a future year the State stopped carrying on the business the tax paid for that year on the basis of the preceding year would be liable to be refunded in so far as the profits for that year fell short of those for the previous year. The respondent State, having made no profit for 1926-27, claimed that by force of the judgment it was entitled to a refund of a part payment of Rs.25,000 which it had paid in respect of that year; the appellant on the other hand claimed payment of the balance of the tax as assessed. Thereupon a second case was stated. It was heard by the Judges who heard the first reference. They interpreted their earlier judgment as meaning that the assessment was

Present: Lord MACMILLAN, Sir JOHN WALLIS, and Sir GEORGE LOWNDES.

1933

COMMISSIONER OF INCOME-TAX v. TEHRI-GARHWAL STATE

rightly made on the basis of the profits for 1925-26 but that the assessment was merely provisional, and that accordingly the State was entitled to the refund claimed.

Held, that the interpretation of the earlier judgment was consistent with its terms, and that as by section 66(5) of the Act the case had to be disposed of in conformity with the terms of the judgment, which meant the whole judgment, the appellant not having appealed therefrom was bound by the view taken in the judgment whether it was right or not; accordingly the State was entitled to the refund. It was therefore unnecessary to determine whether the view of the High Court as to the effect of section 3 of the Act of 1922, or that of the Calcutta High Court in *In the matter of Behari Lal Mullick* (1) was correct.

Judgment of the High Court affirmed.

Appeal (No. 89 of 1932) from a judgment of the High Court (6th of November, 1931) upon a case stated and referred under section 66 of the Indian Income-tax Act. The appeal arose out of two successive references to the High Court under the above section of cases relating to an assessment to income-tax and super-tax made upon the respondent State, through Ram Prasad, its principal officer, for the year 1926-27, under the Government Trading Taxation Act, 1926, and the Indian Income-tax Act, 1922.

The facts, and the material portions of the joint judgments of MUKERJI and NIAMAT-ULLAH, JJ., upon the respective references, appear from the judgment of the Judicial Committee. The first reference is reported at I. L. R., 52 All., 419.

The respondent's case upon the present appeal included the contention that the Government Trading Taxation Act, 1926, was not applicable to the respondent State, but it became unnecessary to decide that question or whether the contention was open to the respondent upon the appeal.

1933. November, 9, 10.—*Dunne, K.C.*, and *R. P. Hills*, for the appellant: The High Court took an erroneous view of the effect of section 3 of the Indian

(1) (1927) I.L.R., 54 Cal., 630.

Income-tax Act, 1922. That view conflicts with the view taken by the Calcutta High Court in the case *In the matter of Behari Lal Mullick* (1), which it is submitted was right. The section specifically charges the tax upon the profits made in the previous year; the provision in the Act of 1918 whereby the assessment so made was merely provisional forms no part of the Act of 1922. Although the Government Trading Taxation Act did not come into force until the 1st of April, 1926, it was open to the legislature to impose upon Governments trading during 1926-27 a tax calculated as was thought fit. The appellant could not have appealed from the first judgment, as it answered the questions referred in his favour. Any statement made, or opinion expressed, by the judgment outside the questions referred was *obiter* and could not be made the subject of appeal. In the judgment now appealed from the learned Judges state that at the hearing of the first case it was not brought to their notice that the State had ceased to carry on the business. The present questions therefore cannot have been discussed or judicially considered on that occasion. By section 66(5) of the Act of 1922 the Court is to decide "the questions of law raised thereby", i.e. by the case stated; the present question was not so raised. The judgment in conformity with which the case is to be disposed of is, by the terms of section 66(5), a judgment upon the questions referred.

Latter, K.C., and *Wallach*, for the respondent: Upon the first reference the High Court, perhaps on a misunderstanding of the argument for the appellant, clearly held that the assessment was merely on the basis of, or measured by, the profits for 1925-26. That that was the effect of the judgment delivered is supported by the judgment now under appeal. There having been no appeal from the first judgment, the appellant is bound by the view expressed, whether it was right or wrong.

(1) (1927) I.L.R., 54 Cal., 630.

1933

COMMISSIONER OF INCOME-TAX v. TEHRI-GARHWAL STATE

Upon that view the State was not liable to assessment, as there were no profits for 1926-27 from the source in question. The principle on which *Whelan* v. *Henning* (1) and *Brown* v. *National Provident Institution* (2) was decided applies. The specific provision in the Finance Act, 1926, section 22, prevented the question arising in English cases after that date. Reference was made also to *Fry* v. *Burma Corporation* (3).

R. P. Hills in reply: The cases cited as to English income-tax are not applicable. In any case the Act of 1922 contains no provision for a refund of tax paid.

December, 1. The judgment of their Lordships was delivered by Sir GEORGE LOWNDES:—

Between the 1st of April, 1925, and the 31st of March, 1926, the Tehri-Garhwal State, the respondent in this appeal, carried on a timber business in British India, which resulted in considerable profits. The State was not during that year subject to the Indian Income-tax law, but in 1926 the Government Trading Taxation Act was passed by the Indian Legislature and came into force on the 1st of April that year. Section 2 of the Act is in the following terms:—[The section was here quoted.]

Assuming for the purposes of the present appeal that under this section the State became (as has been held in India) liable to taxation for the revenue year 1926-27 upon the profits of its timber business, income-tax would be chargeable under section 3 of the Act of 1922 *in respect of* its trading profits for the previous year, i.e. the year ending the 31st of March, 1926, and super-tax would follow under section 55 at the rates imposed by the Finance Act for the year.

The State was accordingly in the year 1926 called upon to pay by way of income-tax and super-tax sums totalling Rs.43,294-14-0, calculated upon the profits earned in 1925-26. The figures are not now in dispute, but from the first the State has contested its liability to

(1) [1926] A.C., 293. (2) [1921] 2 A.C., 222.
(3) [1930] A.C., 321.

taxation. It appealed from the original assessing authority to the Commissioner, and from the Commissioner, upon a reference made by him under section 66(2) of the Act, to the High Court.

This reference was heard by MUKERJI and NIAMATULLAH, JJ., on the 21st of November, 1929. Four questions of law had been formulated by the Commissioner. Question (1) was upon the State's contention that the Act of 1926 was not applicable to it. Questions (3) and (4) were concerned with the nature of its dealings in British India. Question (2), upon the answer to which their Lordships think that the result of the present appeal depends, was as follows: "(2) Whether, since the Government Trading Taxation Act only came into force on the 1st of April, 1926, there is any liability for assessment with reference to transactions which took place before that date?" Upon this question the judgment of the High Court must be quoted in full:—

"Now we come to Question (2). The argument is that the income that is being taken into consideration for taxation accrued to the State in 1925-26, that the Government Trading Taxation Act came into force on the 1st of April, 1926, and that, therefore, it would have no application to the income which was earned in the previous year (1925-26). On the face of it, this argument is very attractive; but in view of the language employed in section 3 of the Indian Income-tax Act we do not think that it has much force. The Tehri State, we have been told, has continued this business in years subsequent to 1925-26, and the Income-tax Department has sought to assess it for the year 1926-27. The tax is to be paid in and for that year. The Income-tax Department is armed with power to tax the Tehri State any time after the 1st of April, 1926. That being so, let us read section 3 of Act-XI of 1922. We have already read it once before. Now, substituting the years with which we have to deal, the section would read as follows: 'Where any Act of the Indian Legislature enacts that income-tax shall be charged for the year 1926-27 . . . tax . . . shall be charged for the year 1926-27 . . . in respect of all the income, profits and gains of the previous year (1925-26) . . . .'

"This is the natural reading of section 3 in view of the facts before us. It seems to be quite clear to us that the tax which

1933

COMMISSIONER OF INCOME-TAX v. TEHRI-GARHWAL STATE

has to be paid by the Tehri State for the year 1926-27 is to be paid on the amount of profits earned by it in the year 1925-26. If the State decided to stop its business, say, in the year 1930-31, the tax paid by it in 1930-31, on the basis of the income of 1929-30, would be liable to be refunded, in so far as the income of the year 1930-31 fell short of the income earned in 1929-30."

In the result the learned Judges were of opinion that none of the grounds taken by the State were tenable.

By the time this judgment was delivered it had apparently been ascertained that the State had in fact no taxable income in the year 1926-27, though whether the business had been discontinued, as the High Court seems to think, or whether it was only that no profits resulted, seems to be uncertain.

A part payment of Rs.25,000 had been made by the State before the reference, which left a balance of Rs.18,294-14-0 due upon the demand of the income-tax authorities. The State, basing itself upon the judgment of the High Court, claimed the return of the Rs.25,000 on the ground that it had no taxable income in the year 1926-27. The Commissioner with equal confidence claimed payment of the Rs.18,294-14-0. A second reference was thereupon made to the High Court, this time by the Commissioner of his own motion, asking for the determination of the following questions:—

"(1) Does the judgment delivered by the High Court in Miscellaneous Case No. 671 of 1929 on the 21st of November, 1929, operate of its own force to require the Income-tax Department to refund the sum of Rs.25,000 paid by the Tehri Darbar, and to refrain from collecting the balance of Rs.18,294-14-0?

"(2) If the answer to Question (1) is in the negative, then (*a*) Is the Tehri Darbar liable to pay the balance of Rs.18,294-14-0? (*b*) Is the Tehri Darbar entitled to a refund of the amount already paid, i.e. Rs.25,000?"

The reference was heard by the same two Judges as in the previous case, and their judgment was delivered on the 6th of November, 1931. They answered the first question in the affirmative, and held that the State was

not liable to pay the balance of Rs.18,294-14-0, and that it was entitled to a refund of the Rs.25,000.

The learned Judges recited the passage from their previous judgment, which has been quoted above, and proceeded to interpret the language they had used, and the principle upon which their decision was based. They said:—

"We have carefully read our order [of the 21st of November, 1929] and entertain no doubt as to what we intended to hold and did hold. On a consideration of section 2 of the Government Trading Taxation Act (III of 1926), we were quite clear that the liability of the Tehri State to pay the income-tax arose for the first time after the 1st of April, 1926, if it had assessable income in British India after that date. We proceeded to hold that the Tehri State was liable to pay income-tax on the income of 1926-27 which, for the purposes of assessment, was to be measured by the income received in the preceding year (1925-26). We did not intend to hold and did not hold, nor is there anything to that effect in our order dated the 21st of November, 1929, that the Tehri State was liable to pay income-tax on the income received before the 1st of April, 1926, when the liability arose, that is, in the year 1925-26, the income of which year was imported into the consideration of the case merely as the basis of provisionally ascertaining the income of 1926-27, on which the tax was demanded. It was for this reason that a reference to possible refund in some future year was made by us. It is obvious that, if the income of the current year has to be taxed, the exact amount of income cannot be ascertained before the expiry of the year and that, if the tax is assessed and collected on the basis of the income of the preceding year, the question of refund must arise in case the business is discontinued in that year, [or*] if the total income falls short of the income of the preceding year, which was assumed for the purposes of assessment as the income of the current year. This process of reasoning and the assumption that the assessment had been made in respect of the income of 1926-27 were partly, at any rate, inspired by the view expressed in the order of the Income-tax Commissioner dated the 14th of March, 1928, and by the strenuous opposition offered on behalf of the Crown to the contention of the Tehri State that the tax was claimed in respect of the income of the year 1925-26. Holding, as we did, that the Tehri State had been assessed to tax in respect of

*Note—The word "or" seems to have dropped out here.

1933

COMMISSIONER OF INCOME-TAX v. TEHRI-GARHWAL STATE

the income of 1926-27, calculated provisionally on the basis of the income which had accrued in 1925-26, we repelled the objection of the Tehri State. The provision of refund in our order in case of discontinuance of business in any future year in respect of which the tax might be assessed and collected is an integral part of our order and a necessary corollary to the rule on which we upheld the assessment then under reference. It was not an *obiter dictum*."

No inconsistency has been pointed out between the passage here cited and that quoted from the first judgment, and their Lordships think that this must be taken to be the meaning and effect of that judgment.

The Commissioner being dissatisfied with the decision of the High Court has appealed to His Majesty in Council, asking for its reversal. The principal contention on his behalf is that the learned Judges have misconstrued section 3 of the Act of 1922; that the intention of the section is not to treat the income of the previous year merely as a measure of the unascertained income of the year of assessment, but to tax the assessee in the year of assessment upon the income received by him in the previous year, and that this is clearly competent in the case of the Tehri-Garhwal State under the Act of 1926. It is contended that though the theory adopted by the learned Judges may have been right under the provisions of the previous Income-tax Act of 1918, a definite change of system was made by the Act of 1922, and reliance is placed in this connection upon a decision of the Calcutta High Court, *In the matter of Behari Lal Mullick* (1).

Their Lordships think that there is much force in these contentions, and if the question they had to decide on the present appeal were merely as to the true meaning of section 3 of the Act of 1922, they might be prepared to endorse the view taken by the Calcutta High Court. But that is not the position in the case now before them. The former judgment of the 21st of November, 1929, was not appealed against, and, whether

(1) (1927) I.L.R., 54 Cal., 630.

right or wrong, must govern the relations of the parties in the particular case. It is to be noticed that under section 66(5) of the Act of 1922, the judgment of the High Court is to contain the grounds upon which the decision is founded; that a copy of the judgment is to be sent to the Commissioner, and that the case is to be disposed of by the income-tax authorities "conformably to such judgment". Under this provision their Lordships think that the judgment as a whole is binding between the parties in the particular case. If the judgment expounded a wrong construction of the Act, as the appellant now contends, an appeal against it was open, and there is no other procedure by which it could be corrected.

On the assumption, which their Lordships are satisfied must be made for the purposes of the present appeal, that section 3 of the Act was to be construed in the way the learned Judges construed it, they think that the consequences would follow which have been ascribed to this construction in the judgment now under appeal; that the respondent State would be relieved from the demand for payment of the Rs.18,294-14-0, and would be entitled to repayment of the Rs.25,000. In their opinion, therefore, the appeal fails and should be dismissed with costs, and they will humbly advise His Majesty accordingly.

Solicitor for appellant: *Solicitor, India Office.*

Solicitors for respondent: *Hy. S. L. Polak & Co.*