MISCELLANEOUS CIVIL

Before Mr. Justice Collister and Mr. Justice Bajpai

1938
February, 3

AURAIYA PAY OFFICE (APPLICANT) *v.* NOTIFIED AREA COMMITTEE (OPPOSITE PARTY)*

Municipalities Act (Local Act II of 1916), *sections* 128(1)(ix), 338—*Notified Area—Circumstances and property tax—Rules for assessment of tax—"Profits" means net profits—Deduction of expenses for carrying on business—Interest paid on capital borrowed for purpose of the business—Interpretation of statutes—Fiscal rule—Principles of natural justice as recognized in similar fiscal enactments—Income-tax Act (XI of* 1922), *section* 10(2)(iii).

A 'circumstances and property' tax under section 128(1)(ix) of the Municipalities Act was imposed in the Notified Area of Auraiya, by virtue of section 338 of the Act, and rules for the assessment and collection of the tax were promulgated by the Commissioner. The Auraiya Pay Office of the Imperial Bank of India was a sub-branch office of that Bank; it used to borrow money at a low rate of interest from the Etawah branch of the Bank and make profit by lending the same at a high rate of interest to debtors in Auraiya. On the assessment of the Auraiya Pay Office to the tax, the question arose whether the interest paid by the Office to the Etawah branch should be deducted in assessing the "income" or "profits", mentioned in the assessment rules, there being no mention therein of any deductions:

Held, that the word "profits", rather than "income", was more appropriate in the case of a firm carrying on a banking business, and the word "profits" in the assessment rules should be interpreted as meaning net profits after deduction of necessary expenses incurred for the purpose of the business, i.e. the balance after deducting from the interest obtained the interest paid, as well as the establishment charges, etc.; and the analogy of clause 2(iii) of section 10 of the Income-tax Act made this further clear.

In construing a fiscal rule, which imposes a liability on a subject, that interpretation should be given which would be consistent with the principles of natural justice recognized in other similar fiscal enactments.

No doubt the Auraiya Pay Office and the Etawah Branch Office were both offshoots of the parent bank, the Imperial Bank of India; but the taking of money by one branch from another, on interest, for the purpose of being invested in

*Miscellaneous Case No. 482 of 1937.

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business for earning profits, as in the present case, could legitimately be regarded as "borrowing" money, and not as a mischievous device in order to evade the payment of just dues.

Messrs. *A. P. Dube* and *R. N. Gurtu*, for the applicant.

Mr. *B. Mukerji*, for the opposite party.

COLLISTER and BAJPAI, JJ.:—This is a reference under section 162 of the Municipalities Act, Local Act No. II of 1916. It appears that during the hearing of an appeal under section 160 the District Magistrate of Etawah entertained a reasonable doubt as to the principle of assessment of a tax imposed by the Notified Area of Auraiya on the Auraiya Pay Office of the Imperial Bank of India, and he has, therefore, drawn up a statement of the facts of the case and has referred the same to us with his own opinion for decision.

The tax in question is a tax under section 128(1)(ix), that is, a tax on inhabitants assessed according to their circumstances and property. Under section 337 the Local Government may declare a local area as a notified area after issuing a notification to that effect under sub-section (1), and under section 338 the Local Government may by notification impose in the whole or a part of such area any tax which might be imposed therein under the provisions of the Municipalities Act or any other Act if the said area were a municipality. By a notification dated the 31st of March, 1920, appearing in the *U. P. Gazette* for the 10th of April, 1920, the Commissioner of the Allahabad Division imposed in the Notified Area of Auraiya with effect from the 1st of April, 1920, a tax on all inhabitants within the limits of the Auraiya Notified Area to be levied according to their circumstances and property subject to a minimum of Re.1-8-0 and a maximum of Rs.150 on certain incomes graded in a particular manner. In the same Gazette the Commissioner promulgated rules for the assessment and collection of the above tax under section 153 of the Act. The relevant rule is rule 2 and it provides that the income

or profits of the year ending on the 31st of December previous to the date of the assessment shall, when possible, be taken as the basis of assessment.

In the year in question the Notified Area of Auraiya assessed the Auraiya Pay Office of the Imperial Bank of India at Rs.99 under the above rule. The accounts submitted by the Pay Office have not been challenged, and they showed that Rs.11,360 were realised on account of interest within the limits of the Notified Area. Out of this amount a sum of Rs.4,734 was spent on salaries, house rent, etc. and it is of some importance that the Notified Area allowed a deduction for this sum and taxed the Pay Office on the amount of Rs.6,626. The Pay Office wanted a further deduction of Rs.4,116 paid as interest to the Branch Office of the Imperial Bank of India at Etawah, and when the Notified Area did not agree to this deduction and assessed the Pay Office at Rs.99, there was an appeal by the Auraiya Pay Office, during the hearing of which the learned District Magistrate of Etawah was in doubt. He entertains the opinion that the tax should be assessed on a total sum of Rs.6,626 without making any deduction of Rs.4,116 on the head of interest paid to the Branch office at Etawah.

Now the tax is leviable on the income or profits of the inhabitant. Learned counsel for the parties have freely referred to the provisions of the Indian Income-tax Act by way of analogy, and we might also derive some assistance therefrom. It is said by counsel for the Notified Area that "income" in rule 2 means "gross income" and similarly "profits" mean "gross profits", and it is said that the rule, unlike the Indian Income-tax Act, makes no provision for any deductions. On behalf of the Auraiya Pay Office it is argued that the deductions contained in the Indian Income-tax Act ought to guide us in construing the meaning of the word "income" or "profits" used in rule 2. A somewhat similar point arose in Oudh, and a Bench of the Oudh Chief Court in the case of *Allahabad Bank* v. *Municipal Board*,

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Sitapur (1), was of the opinion that in the case of a firm or company carrying on banking business the expression "profits" was more appropriate than the expression "income", and then it went on to decide how the profits should be calculated for the purpose of assessing the tax and they said that it was reasonable to make deductions from the gross profits of expenses necessarily incurred by the Bank for the purpose of carrying on the business and earning the profits, and that this principle was recognized for the purpose of assessment to income-tax and therefore the same principle should be recognized for the purpose of calculating the profits which framed the basis of assessment to tax on circumstances and property. The question there related only to the expenses of establishment, etc., and not to interest paid by the inhabitant in the earning of the profits. "Income" in one sense might mean the total receipts of the assessee and "profits" in the same sense might mean the total profits of the assessee without any deduction whatsoever, but when we are construing a fiscal rule, which imposes a liability on a subject, we have got to give a meaning to these words which would be consistent with the principles of natural justice recognized in other similar fiscal enactments. We feel inclined to agree with the view taken in Oudh that in the case of a firm carrying on a banking business, the more appropriate expression is "profits". Now "profits" has been defined in Murray's Dictionary as "the pecuniary gain in any transaction", as "the amount by which value acquired exceeds value expended", and in Webster's Dictionary it has been defined as "the excess of returns over expenditure in a given transaction or series of transactions".

As we mentioned before, it is of some importance that the Notified Area saw the justice of deducting Rs.4,734 spent by the Pay Office on salaries, house rent, etc., from the gross receipts, although according to the contention advanced boldly by learned counsel for the Notified

(1) A.I.R. 1936 Oudh 206.

Area this sum should also not have been deducted inasmuch as the rule itself does not provide for any deduction and "profits" might very easily be considered to be "gross profits." Under the Indian Income-tax Act, when tax is to be determined on an assessee under the head "business" under sub-clause 2(iii) of section 10, an allowance for the amount of interest paid is given to the assessee in respect of capital borrowed for the purpose of the business.

The books of the Pay Office, which are not challenged, show that a sum of Rs.4,116 was paid as interest to the branch office, Etawah. Here the alternative argument on behalf of the Notified Area is that this entry in the books is only a paper entry inasmuch as the Auraiya Pay Office is not a distinct entity from the branch office of the Imperial Bank of India at Etawah. The fact, however, remains that in order to earn profits the Auraiya Pay Office has to borrow money from the Etawah branch of the Imperial Bank of India. It gets this money at a low rate of interest and advances the same at a high rate of interest to debtors in Auraiya. The net profit which the Pay Office makes is the balance between the interest received from debtors and the interest paid to the branch office at Etawah. In one sense the Auraiya Pay Office and the branch office at Etawah are all offshoots of the parent bank, namely the Imperial Bank of India, but the profits earned by the various branches are noted down in the books of those branches, and the profits earned by the Imperial Bank of India itself are noted in other books, and if any legitimate taxation is leviable, it is easy for the taxing authorities to find it out. It cannot be said that the Auraiya Pay Office adopted a mischievous device in order to evade the payment of just dues. It is a system prevalent perhaps not only in this particular Pay Office but in other branches and concerns of the Imperial Bank of India, and we can see nothing pernicious in the system.

For the reasons given above, we are of the opinion that the principle of assessment in this particular case

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ought to be that the Pay Office should be given an allowance for the sum of Rs.4,116 paid as interest to the branch office, Etawah. This is our answer to the reference. A copy of our judgment under the signature of the registrar shall be sent to the court of the District Magistrate of Etawah.

APPELLATE CIVIL

Before Mr. Justice Collister and Mr. Justice Bajpai

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GOBIND BIHARI AND OTHERS (PLAINTIFFS) *v.* SHUJAATMAND KHAN AND OTHERS (DEFENDANTS)*

Civil Procedure Code, section 144—Application for restitution —Preliminary decree for foreclosure amended, and specification of property altered by trial court—Revision against the amendment—Pending revision, final decree passed and foreclosure effected—Amendment of preliminary decree then set aside in revision—Final decree not appealed from—Restitution—Evidence Act (I of 1872), sections 92, 94—Alleged intention of parties at variance with language of document.

A preliminary decree for foreclosure was amended under sections 151 and 152 of the Civil Procedure Code by the trial court and specification of the property mentioned therein was altered. A revision was filed in the High Court against this amendment and alteration, but pending the disposal of the revision a final decree was passed by the trial court in accordance with the amended preliminary decree and foreclosure was effected. Thereafter the revision was allowed by the High Court and the amendment was set aside. The judgment-debtor applied for restitution under section 144 of the Civil Procedure Code and the question was whether the application was maintainable in view of the fact that the final decree had not been appealed from: *Held* that the application was maintainable.

Where the preliminary decree is varied or reversed by a higher court, whether in appeal or in revision, it follows that the final decree passed on the basis of that preliminary decree automatically falls through and there would be no necessity for appealing from it.

Where the terms of a mortgage deed are clear and unambiguous and apply to existing facts, and it cannot be suggested

*First Appeal No. 102 of 1935, from a decree of Muhammad Ahmad Ansari, Civil Judge of Farrukhabad, dated the 15th of February, 1935.