

(1925) 06 CAL CK 0007

Calcutta High Court

Case No: Reference No. 9 of 1924

Isabella Coal Company

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision: June 9, 1925

Judgement

Chatterjea and C.C. Ghose, JJ.

This is a reference u/s 66(2) of the income tax Act, XI of 1922.

2. The assessees, the Isabella Coal Company, paid road and public works cess in respect of their coal mine, and claimed a deduction of the amount paid by them as cesses, in the computation of the income tax under clauses (viii) and (ix) of section 10(2) of the income tax Act, XI of 1922, and the question referred to us is whether the sums paid by them as cesses should be deducted under clauses (viii) and (ix) of section 10(2) of the Act.

3. Section 10(1) lays down that the "tax shall be payable by an assessee under the head "Business" in respect of the profits or gains or any business carried on by him". (2) "Such profits or gains shall be computed after making the following allowances, namely:-(Omitting the other clauses) -

(viii) any sums paid on account of land-revenue, local rates or municipal taxes in respect of such part of the premises as is used for the purposes of the business;

(ix) any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of earning such profits or gains."

4. It is not, and cannot be disputed that road cess and public works cess are "local rates". The question is whether they are local rates "in respect of such part of the premises as is used for the purposes of the business".

5. The first point therefore is whether a coal mine comes within the expression "premises". The word "premises" is not defined in the Act. It is used with reference to buildings, but it is also used with reference to land, and there is nothing to show

that in law the expression is restricted to buildings. We think that the expression is wide enough to cover a coal mine.

6. The next question is whether the coal mine is "used for the purposes of the business". The assessee is a coal company; they raise and sell coal. It is contended however that so far as the coal taken out in respect of which the cess is levied is concerned, it is not used for the purposes of the business, as "use" does not contemplate the destruction of the thing itself. But having regard to the nature of the property (a coal mine), the cutting and taking away coal is using the premises for the purposes of the business. "In the case of mining properties the only mode in which they may be profitably used is to take from them valuable ores," and the "taking of ore from the mine is rather the use than the destruction of the estate." See *Mahesh Narain v. Nowbat Pathak* [1905] 1 LR 32 Cal. 737 at page 849 & 852. Cesses paid by the Company therefore are paid in respect of the premises used for the purposes of the coal business. Section 5 of the Cess Act (Act IX of 1850, B.C.) lays down that all immoveable property (except as otherwise in sections 2 and 8 provided) shall be liable to the payment of a road and a public works cess. Section 6 provides that "the road cess and the public works cess shall be assessed on the annual value of lands and on the annual net profits from mines, quarries, tramways, railways and other immoveable property ascertained respectively as in this Act prescribed." Cesses therefore are payable in respect of all immoveable property, and among others, mines.

7. The learned Advocate-General however contends that a distinction has been drawn in section 6 of the Cess Act (IX of 1880, R.C.) between land and mines, that in the former, the cess is payable on its annual value, whereas in the case of mines, it is payable on the net profits of the mine, and although if the cess were payable on the mine as land it would be a local rate "in respect of the premises used for the purposes of a business," it is not so as the cess is payable in respect of the net profits of a mine. But section 5 lays down that all immoveable property (except houses, shops, and other buildings) shall be liable to the payment of a road and public works cess and mine is immoveable property. It is true that section 6 lays down (so far as mines are concerned) that the cesses shall be assessed on the annual net profits from mines. But section 6 merely provides the mode of assessment, and does not change the nature of the imposition, which is a tax imposed on all immoveable property which includes mines.

8. It is contended however that the cess is not payable on mine but on such part of it from which coal is taken away, and not even on the coal taken out unless there is a profit, and the cess is payable only on the net profits. But unless the coal is taken out there would be no profits.

9. Lastly it is contended that as cess is payable on the net profits, it is not payable until the net profits are ascertained, and therefore cannot be deducted. But u/s 72 of the Cess Act the net profits of a mine (and quarries, etc.) are to be calculated on

the average of the annual net profits for the last three years for which accounts have been made up.

10. The Commissioner of income tax relies upon the Case No. 102 of 1920 decided by the Patna High Court [In the matter of Raja Jyoti Prasad Singh Deo of Kashipur 1 ITC 103] and In the matter of K.M. Selected Coal Company of Manbhum 1 ITC 28. In the first case it was held that income derived from the rents and royalties of collieries does not fall within "income derived from business" u/s 5(iv) of the income tax Act, 1918, but within "Income derived from other sources" under clause (vi) of that section, and that in assessing income tax on such income, the amount paid in respect of road cess and public works cess should not be deducted from the taxable income. That case was a reference (under section 51 of the income tax Act of 1918) upon the application of the assessee who did not carry on business but who received rents and royalties, and the question was whether road and public works cesses paid by him should be deducted in assessing the tax payable by him.

11. As stated above, it was held that the income derived from rents and royalties of collieries does not come under the head of income derived from business, and therefore did not fall u/s 9 of the Act which provided that the tax shall be payable by an assessee under the head "income derived from business" in respect of the profits of any business carried on by him and then set out allowances which might be deducted in computing the profits. Section 11 of the Act which dealt with income derived from "other sources," made an allowance of expenditure "incurred solely for the purpose of making such income or earning such profits". The learned Judges were of opinion that payments made on account of road cess and public works cess cannot be deducted u/s 11 in assessing the income tax. In the view we take of clause (viii) of section 10(2) of Act XI of 1922, it is unnecessary to consider the above question in the present case.

12. In the second case, K.M. Selected Coal Company 1 ITC 281, it was held that a rate on the annual output of a mine imposed on a colliery proprietor u/s 23(3) of the Behar and Orissa Mining Settlement Act, 1920, by the Local Mines Board of Health, and a cess in respect of the annual despatches of coal and coke from a mine imposed on a colliery proprietor u/s 45 of the Jheria Water-supply Act, 1924, by Jheria Water Board do not fall within section 10(2) (viii) of the income tax Act, 1922, but they do fall within clause (ix) , and, therefore, should be deducted under the latter clause for the purpose of determining the proprietor's taxable income. The rates payable under these two Acts are no doubt local rates, but not rates imposed on such part of the premises as is used for the purposes of business. The rates are imposed on the owners of mines-on the annual output from their mines under one Act, and on the annual despatches of coal and coke from the mine under the other. The Court then had not to consider the rates imposed by the Cess Act, under which cess is imposed upon all immoveable property. So far as clause (viii) of section 10 (2) was concerned all that was necessary to decide was that the word "premises" does

not include the annual output or the annual despatches of coal from the mines, upon which alone the rates were payable under the two Acts mentioned above. Road cess and public works cess on the other hand are taxes not against a person but against the property itself. In *Swarnamoyi Debt v. Kumar Paresh Narain Roy* [1878] 1 LR 4 Cal. 576 at p. 508 the learned Judges observed that it is a tax upon immoveable property and is assessee upon the annual value of that property. They were not considering mines, in which case the mode of assessment is differently laid down. In *Manindra Chandn Nandy v. Secretary of State for India* [1911] 1 LR 38 Cal. 372 at p. 376, the Judicial Committee observed that "both in sections 6 and 72 (of Cess Act, IX of 1880) "the net annual profits have reference to the property and not to the individual."

13. We are accordingly of opinion that cesses paid by the Company are local rates "in respect of such part of the premises as is used for the purposes of the business" within the meaning of clause (viii) of section 10(2) of the income tax Act and that they are entitled to deduction of the amount of the cesses paid.

14. In this view it is unnecessary to consider whether the payment comes under clause (ix) of section 10(2) of the Act.

The petitioner Company is entitled to the costs of this reference which is assessed at Rs. 350 including Counsel's fee.

Cuming J.

16. This is a reference by the Commissioner of income tax.

17. The facts are these : A certain coal company, The Isabella Coal Company, has been assessed to income tax.

18. The Company contended that they were entitled to deduct first the amount they have paid on account of road and public works cess in computing the amount assessable to income tax. They contend that their case falls under either section 10(2) (viii) or section 10(2) (ix) .

19. This claim has been rejected by the Commissioner of income tax and on the application of the company this reference has been made to the Court. The case turns on the construction of these two sections of the income tax Act, Section 10(2) (viii) and (ix) .

20. Section 10(2) (viii) runs as follows:-

Any sums paid on account of land-revenue, local rates or municipal taxes in respect of such part of the premises as is used for the purposes of the business.

21. It is conceded that road cess and public works cess are local rates.

22. Mr. Sircar contends on behalf of the company that the tax is leviable on the mine and not on the income, (Section 5 Cess Act) , that it is calculated on the income no

doubt but this is merely the method of assessment, that the only way of using the mine is by extracting the coal, that a mine is a premises and so the whole of the mine is used for the purpose of the business. Hence the present case comes u/s 10(2) (viii) .

23..The learned Advocate-General would seem to contend that a mine is not a premises, that the assessment is made really on a business, the business being that of cutting coal and that the cess is really paid on account of the business. The cutting of coal is the destruction and not the use of the premises.

24. The cess is paid on- the profit and hence on the business.

25. I think the Company must succeed. I hold that a mine is a premises.

26. The expression premises has never as far as I know been legally defined. It has been in one case held to mean a 100 acres park. Popularly no doubt "premises" usually means a building. Legally I do not think it does. We often hear the expression "house and premises" which clearly shows that the premises are not the house only. I am of opinion that a colliery is a premises.

27. Then the whole colliery is used for the purpose of the business. The colliery is used by digging the coal out of the seams, bringing it to the surface and selling it.

28. The learned Advocate-General would contend that this is destroying the colliery, not using it.

As Mukerji, J., points out in *Mahesk Narain v. Nowbat Pathak* [1905] ILR. 32 Cal. 837 at 852, the taking of ore from a mine is rather the use than the destruction of the estate, the partial exhaustion being but the incidental consequence of the use.

29. As far as I am aware there is no other way of using a colliery or mine except by digging the coal or minerals out of it.

30. The learned Advocate-General would contend that in the case of a mine it is really a cess levied on a business, because the road cess and public works cess is assessed on the annual net profit. This argument confuses the thing, if I may say so, which is liable to pay the tax and the method of arriving at the amount to be paid in any case.

31. Section 5 of the Cess Act states that all immoveable property.... shall be Gable to the payment of a road cess and public works cess. A business cannot be said to be immoveable property.

32. Section 6 on which the learned Advocate-General has relied merely prescribes the method for determining the amount of cess to be paid, in the case of land, on the annual value and in the case of mines, on the annual profit. No doubt the extraction and selling of coal is a business but road cess and public works cess is assessable not on the business but on the immoveable property owned by the

person or persons carrying on the business. It is the property that is liable, not the person (See section 5) .

33. I am therefore of opinion that a colliery is a premises, that it is used for the purpose of the business, which business is the extraction and sale of coal and that the road cess and public works cess is a local rate.

34. That being so, the Isabella Coal Company are entitled to deduct the amount paid as road and public works cess in computing their gains and profits assessable to income tax.

35. In this view of the case it is not necessary to consider whether the case falls u/s 10(2) (ix) of the Income-tax Act.