(1927) 12 CAL CK 0026

Calcutta High Court

Case No: None

In Re: Howrah-Amta Light Ry. Co. Ltd. — APPELLANT

Vs

RESPONDENT

Date of Decision: Dec. 13, 1927

Acts Referred:

- Income Tax Act, 1961 - Section 10

Citation: 115 Ind. Cas. 33

Hon'ble Judges: George Claus Rankin, C.J; Philip Lindsay, J; Charu Chunder Ghose, J

Bench: Full Bench

Judgement

George Claus Rankin, C.J.
In this case the Commissioner of income tax has been ordered to state and has stated three points for the opinion of the Court. The first question is--whether the assessment is in order. I do not understand that there is any meaning in particular in that passage, but the assessment is plainly in order. The second and the only point is this:

Whether the whole or any part of the amount paid to the District Board is or is not an allowable item of expenditure u/s 10 of the Act.

2. The third question which apparently he was ordered by a Rule issued by this Court to state is not a question at all. It is as follows:

The legal relation subsisting between your petitioners and the District Board and the character of the payment by your petitioners to the District Board.

3. The Commissioner of income tax has in the end said that it appears to him that it is not his place to define the legal relationship subsisting between the petitioner Company and the District Board. I respectfully agree and I am personally pony that any Rule was ever issued or made absolute calling upon the Commissioner of

income tax to state something which was not a question at all. I, therefore, propose to confine my attention to the second question which I have stated and that question takes its meaning from the circumstance that the Howrah- Amta Light Rail way, Co., Ltd., was apparently constructed in or about 1889 pursuant to an agreement between the District Board of Howrah and certain other persons called the "promoters" dated the 12th June, 1889. By that agreement the Board granted to the Company the free use of as much of the portion of a certion road as was necessary for the purpose of laying thereon a steam tramway of two feet gauge to be worked by the Company. It was agreed by Clause 3 that the Board would for twenty-one years exempt the Company from the tax on account of road cess if the law and the Government so allowed or would exact only a nominal tax. The Board further promised, so soon as five miles of the tramway should have been constructed and declared open to the public, to pay to the Company any sum which, might be required to make the net profit of the Company equivalent to Rs. 850 per mile. It is the fifth clause which is the most important:

If and whenever the net profits of the Company in respect of the said tramway from Howrah to Amta should be in excess of 4 per cent, upon the capital for the time being of the Company such surplus profits shall be divided between the Company and the Board in equal moieties.

4. Now, the second question to which I have referred has reference to the sum which the Tramway Company, the Light Railway, has to pay to the District Board as being one-half of the surplus profits in excess of 4 per cent, upon the capital for the time being. In my judgment this is a typical case in which to apply the well-settled principle that the destination of profits has got nothing to do prima facie with the question whether they are liable to income tax. What may be done with the profits after the tax has been paid upon them is a different matter, but the question is whether the Company in this case is liable to pay income tax upon its profits or only upon that part of its profits which it does not hand over to the District Board under Clause 5.

5. In my opinion, the attempt to bring this case under any of the sub-heads of sub-s, (2), a, 10 of the Act cannot succeed. In view of the fact that for the purpose of income tax assessees have a right to be dealt with according to their own method of accounting I desire to guard myself from assuming that Sub-section (2), Section 10 is intended as an exhaustive list of deductions which are permissible for the purpose of income tax. But in the present case an attempt is made to bring it under one or other of the three divisions of Sub-section (2). It is said first of all that this payment under Clause 5 comes under the head of ''rent paid for the premises". In my opinion it is certainly not "rent." Again it is said that it comes under the head "sums paid on account of local rates." In my opinion it is not a sum paid on account of local rates. No. (ix) is:

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

6. In my judgment the Commissioner of income tax has very properly held that this is not a description which covers the money in question. The payment to the District Board is not an expenditure incurred solely for the purpose of earning the Tramway Company''s profits.

7. Howsoever this matter is looked at, I am of opinion that the Commissioner of income tax has correctly decided the only question which arises which is the second of the three questions stated. In my opinion the answer to that question is in the negative.

8. I think, in these circumstances, that the assessees must pay the cost of this reference.

Charu Chunder Ghose, J.

I agree.

Buckland, J.

9. I agree and have nothing to add.