

(1925) 06 CAL CK 0076

Calcutta High Court

Case No: None

Isabella Coal Company

APPELLANT

Vs

The Commissioner of Income
Tax

RESPONDENT

Date of Decision: June 9, 1925

Acts Referred:

- Income Tax Act, 1922 - Section 10(2)(viii), 66(2)

Citation: 89 Ind. Cas. 789

Hon'ble Judges: N.R. Chatterjea, J; Cuming, J; C.C. Ghose, J

Bench: Full Bench

Judgement

N.R. Chatterjea and C.C. Ghose, JJ.

This is a Reference u/s 66(2) of the Income Tax Act, XI of 1922.

2. The assessee, 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 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. (sic) lays down that the "tax shall be payable by an assess under the head "business" in respect of the profits or gains of 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 sum 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 riot denned 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 purpose of the business." The assepsee 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. Noivbat Pathak* 32 C. 837 at p. 852 : 1 C.L.J. 437. Cesses paid by the Company, therefore, are paid in respect of the premises and for the purposes of the coal business. Section 5 of the Cess Act (Act IX of 1880. B.C.) lays down that all Immovable property (except as otherwise in Sections 2 and 8 provided) shall be liable to the payment of a-road and public works cess. Section 6 provids 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 Immovable property ascertained respectively as in this Act prescribed." Cesses, therefore, are payable in respect of all Immovable property, and among others mines.

7. The learned Advocate-General, however, p contends that a distinction has been drawn in Section 6 of the Cess Act (IX of 1880, B.C.) a between land and mines, that in the former, the cess is payable on its annual value, a whereas in the case of mines, it is payable a 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 pay able in respect of the net profits of a mine. But Section 5 lays down that all Immovable (property except houses, shops and other buildings) shall be liable to the payment of a road and a public works cess and mine is Immovable 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 Immovable 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 net profits. But unless the coal is taken out there would be no profits.

11. 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 Gess 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.

12. 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 60 Ind. Cas. 357 : (1921) Pat. 81 : 6 P.L.J. 62 : 2 P.L.T. 188, and In Re: K.M. Selected Coal Company of Manbhum, ." 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 reference (under Section 51 of the Income Tax Act of 1918) upon the application of the assessee who did not carry on business but did receive rents and royalties and the question was whether road and public cesses paid by him should be deducted in assessing the tax payable by him. 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 in allowance of expenditure "incurred solely for the purpose of making such income 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-text In the view we take of Clause of Section (2) of Act XI of 1922, it is unnecessary to consider the above question in the present case.

13. In these could case In Re: K.M. Selected Coal Company of Manbhum, it was held that a rate on the annual output of a mine imposed on a colliery proprietor u/s 23(3) of the Bihar 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 the Jheria Water Board do not fall within Section 10(2)(viii) of the Income Tax Act, 1922, but they do not 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 those (sic) local rates, but not rates imposed on it the 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 there had not to consider the rates imposed by the Cess Act, under which cess is imposed upon all Immovable 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.

15. Road cess and public works cess on the other hand are taxes not against a person but against the property itself. In *Surnomoyee Debee v. Koomar Puresh Narain Roy* 4 C. 576 at p. 580 : 2 Ind. Dec. 365, the learned Judges observed that it is a tax upon Immovable property and is assessed 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 Chandra Nandy v. Secretary of State for India* 9 Ind. Cas. 311 : 38 C. 372 at p. 376 : 15 C.W.N. 210 : 8 A.L.J. 140 : 13 C.L.T. 121 : 9 M.L.T. 196 : 13 Bom. L.R. 82 : 21 M.L.J. 365 : (1911) 2 M.W.N. 53 : 38 I.A. 31 (P.C.), 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."

16. 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 2 of the Income Tax Act, and that they are entitled to deduction of the amount of the cesses paid.

17. In this view it is unnecessary to consider whether the payment comes under Clause (ix) of Section 10(2) of the Act.

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

Cuming, J.

19. This is a Reference by the Commissioner of income tax.

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

20. 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 (sic) 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).

21. 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."

22. It is conceded that road cess and public Works cess are local rates.

23. 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 purposes of the business. Hence the present case comes u/s 10(2)(viii).

24. 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.

25. The cess is paid on the profit and hence on the business.

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

27. The expression premises has never as far as I know been legally defined. It has been in one case held to mean a 100 acre 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.

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

29. As Mookerjee, J., points out in *Mohesh Narain v. Nowbat Pathak* 32 C. 837 at p. 852 : 1 C.L.J. 437, 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.

30. 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.

31. The learned Advocate-General would contend that in the case of a mine it is really a cess levied of 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.

32. Section 5 of the Cess Act states that all Immovable properties shall be liable to the payment of a road cess and public works cess. A business cannot be said to be Immovable property.

33. Section 6 on which the learned Advocate-General has relied merely prescribed 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 Immovable property owned by the person or persons carrying on the business. It is the property that is liable, not the person (see Section 5).

34. I am, therefore, of opinion that a colliery is a premises, that it is used for the purposes 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.

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

36. 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.