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Maharaja Chintamani Saran Nath Sah Deo
v.
The Commissioner of Income-tax, Bihar & Orissa

Kapur J.

In our opinion the High Court was in error and the question referred should have been decided in favour of the appellant. We therefore allow the appeal, set aside the judgment and order of the High Court and answer the question in favour of the appellant who will have his costs in this Court and the High Court.

Appeal allowed.

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November 30.

DELHI STOCK EXCHANGE ASSOCIATION LTD.

v.

COMMISSIONER OF INCOME TAX, DELHI

(J. L. KAPUR, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Income-tax—Assessment—Company running a Stock Exchange and dealing in shares—Admission fees of Members and Authorised Assistants—If taxable income.

The object with which the appellant company was formed was to promote and regulate the business in shares, stocks and securities etc., and to establish and conduct a Stock Exchange in order to facilitate the transaction of such business. Its capital was divided into shares on which dividend could be earned. It provided a building wherein business was to be transacted under its supervision and control. It made rules for the conduct of business of sale and purchase of shares in the Exchange premises. During the assessment year in question the company's receipts consisted of certain amounts received as admission fee from Members and Authorised Assistants and the question stated to the High Court for its opinion was whether these fees in the hands of the appellant were taxable income. The High Court answered the question in the affirmative. It held that the appellant was not a mutual society, that dividends could be earned on its share capital, that any person could become a share-holder but every share-holder was not a member unless he paid the admission fee and the real object of the company was to carry on business of exchange of stocks and earn profits. The case of the appellant, inter alia, was that as the amount received as membership fee was shown as capital in the books of the company and there was no periodicity, it should be treated as capital receipt exempt from assessment.

Held, that the High Court was right in its decision and the appeals must be dismissed.

It was wholly immaterial how the appellant treated the amounts in question. It is the nature of the receipt and not how the assessee treated it that must determine its taxability.

Since the fee received on account of Authorised Assisstants fall within the decision of this Court in *Commissioner of Income-tax* v. *Calcutta Stock Exchange Association Ltd.*, (1959) 36 I.T.R. 222, it must be held to be taxable income.

The question as to whether the Members' admission fee was taxable income was to be determined by the nature of the business of the company, its profits and the distribution thereof as disclosed by its Memorandum and Articles of Association and the rules made for the conduct of business. They showed that the income of the company was distributable amongst its share-holders as in any other joint stock company, and the body of trading members who paid the entrance fees and share-holders were not identical. The element of mutuality was, therefore, lacking.

Liverpool Corn Trade Associatian v. *Monks*, (1926) 2 K. B. 110,. applied.

Commissioner of Income-tax, Bombay City v. *Royal Western India Turf Club Ltd.*, [1954] S.C.R. 289 and *Styles* v. *New York Life Insurance Co.*, (1889) 2 T.C. 460, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 187 and 190 of 1960.

Appeals from the judgment dated 22nd January, 1957, of the Punjab High Court (Circuit Bench), Delhi, in Civil Reference No. 6 of 1953.

Veda Vyasa, S. K. Kapur and *K. K. Jain*, for the appellant.

R. Ganapathi Iyer and *D. Gupta*, for the respondent.

1960. November 30. The Judgment of the Court was delivered by

Kapur J.

KAPUR, J.—These appeals are brought by the assessee company against a common judgment and order of the Punjab High Court by which four appeals were decided in Civil Reference No. 6 of 1953. The appeals relate to four assessment years, 1947-48, 1948-49, 1949-50 and 1950-51. Two of these assessments, i.e., for the years 1947-48 and 1948-49 were made on the

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appellant as successor to the two limited companies hereinafter mentioned.

Briefly stated the facts of the case are that the appellant company was incorporated in the year 1947. Its objects *inter alia* were to acquire as a going concern activities, functions and business of the Delhi Stock & Share Exchange Limited and the Delhi Stock and Share Brokers Association Limited and to promote and regulate the business of exchange of stocks and shares, debentures and debenture stocks, Government securities, bonds and equities of any description and with a view thereto, to establish and conduct Stock Exchange in Delhi and/or elsewhere. Its capital is Rs. 5,00,000 divided into 250 shares of Rs. 2,000 each on which dividend could be earned. The appellant company provided a building and a hall wherein the business was to be transacted under the supervision and control of the appellant. The appellant company also made rules for the conduct of business of sale and purchase of shares in the Exchange premises. The total income for the year 1947-48 was Rs. 29,363 out of which a sum of Rs. 15,975 shown as admission fees was deducted and the income returned was Rs. 13,388. In the profit and loss account of that year Members' admission fees were shown as Rs. 9,000 and on account of Authorised Assistants admission fees Rs. 6,875. The Income-tax Officer who made the assessment for the year 1947-48 disallowed this deduction. The return for the following year also was made on a similar basis but the return for the years 1949-50 and 1950-51 did not take into account the admission fees received but in the Director's report the amounts so received were shown as having been taken directly into the balance sheet. The Income-tax Officer, however, disallowed and added back the amount so received to the income returned by the appellant.

Against these orders appeals were taken to the Appellate Assistant Commissioner who set aside the additional assessments made under s. 34 in regard to the assessment years 1947-48, 1948-49 and 1949-50 and the 4th appeal in regard to the year 1950-51 was decided against the appellant. Both sides appealed

to the Income-tax Appellate Tribunal against the respective orders of the Appellate Assistant Commissioner and the Tribunal decided all the appeals in favour of the appellant. It was held by one of the members of the Tribunal that the amounts received as entrance fees were intended to be and were in fact treated as capital receipts and were therefore excluded from assessment and by the other that as there was no requisite periodicity, those amounts were not taxable. At the instance of the respondent a case was stated to the High Court on the following question:—

"Whether the admission fees of Members or Authorised Assistants received by the assessee is taxable income in its hands?"

The High Court answered the question in favour of the respondent. The High Court held that the appellant was not a mutual society and therefore was not exempt from the payment of income-tax; that it had a share capital on which dividend could be earned and any person could become a shareholder of the company by purchasing a share but every shareholder could not become a member unless he was enrolled, admitted or elected as a member and paid a sum of Rs. 250 as admission fee. On becoming a member he was entitled to exercise all rights and privileges of membership. It also found that the real object of the company was to carry on business as a Stock Exchange and the earning of profits. It was held therefore that the admission fees fell within the ambit of the expression "profits and gains of business, profession or vocation". The further alternative argument which was raised, i.e., that the income fell under s. 10(6) of the Act, was therefore not decided.

Mr. Veda Vyasa contended on behalf of the appellant that there were only 250 members of the appellant company; that the amount received as membership fees was shown as capital in the books of the company and there was no periodicity and therefore the amounts which had been treated as income should have been treated as capital receipts and therefore exempt from assessment. It was firstly contended that the question did not arise out of the order of the

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Tribunal and that a new question had been raised but the objection is futile not only because of the absence of any such objection at the stage of the drawing up the statement of the case but also because of failure to object in the High Court; nor do we see any validity in the objection raised. That was the only matter in controversy requiring the decision of the court and was properly referred by the Tribunal. It was then contended that the question had to be answered in the light of facts admitted or found by the Tribunal and that the nature of the appellant's business or the rules in regard to membership could not be taken into consideration in answering the question. That again is an unsustainable argument. The statement of the case itself shows that all these matters were taken into consideration by one of the members of the Tribunal and the learned judges of the High Court also decided the matter on that material which had been placed before the Income tax authorities and which was expressly referred to in their orders and which again was placed before the High Court in the argument presented there on behalf of the appellant company.

It is wholly immaterial in the circumstances of the present case to take into consideration as to how the appellant treated the amounts in question. It is not how an assessee treats any monies received but what is the nature of the receipts which is decisive of its being taxable. These amounts were received by the appellant as membership admission fees and as admission fees paid by the members on account of Authorised Assistants. As far as the latter payment is concerned that would fall within the decision of this Court in *Commissioner of Income-tax* v. *Calcutta Stock Exchange Association Ltd.* (1) and therefore is taxable income. The former, i.e., members admission fees has to be decided in accordance with the nature of the business of the appellant company, its Memorandum and Articles of Association and the Rules made for the conduct of business. The appellant company was an association which carried on a trade and its profits were divisible as dividend amongst the shareholders.

(1) (1959) 36 I.T.R. 222.

The object with which the company was formed was to promote and regulate the business in shares, stocks and securities etc., and to establish and conduct the business of a Stock Exchange in Delhi and to facilitate the transaction of such business. The business was more like that in *Liverpool Corn Trade Association* v. *Monks* (1). In that case an association was formed with the object of promoting the interest of corn trade with a share capital upon which the association was empowered to declare a dividend. The Association provided a Corn Exchange market, newsroom and facilities for carrying on business and membership was confined to persons engaged in the corn trade and every member was required to be a shareholder and had to pay an entrance fee. The Association also charged the members and every person making use of facilities a subscription which varied according to the use made by them. The bulk of the receipts of the Association was derived from entrance fees and subscriptions. It was therefore contended that the Association did not carry on a trade and that it was a mutual association and entrance fees and subscriptions should be disregarded in computing assessment of the assessable profits. It was held that it was not a mutual association whose transactions were incapable of producing a profit; that it carried on a trade and the entrance fee paid by members ought to be included in the association's receipts for purposes of computing the profit. Rowlatt, J. said at p. 121:

"I do not see why that amount is not a profit. The company has a capital upon which dividends may be earned, and the company has assets which can be used for the purpose of obtaining payments from its members for the advantages of such use, and one is tempted to ask why a profit is not so made exactly on the same footing as a profit is made by a railway company who issues a travelling ticket at a price to one of its own shareholders, or at any rate as much a profit as a profit made by a company from a dealing with its own shareholders in a line of business which is restricted to the shareholders."

(1) (1926) 2 K.B. 110.

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In *Commissioner of Income-tax, Bombay City* v. *Royal Western India Turf Club Ltd.* (1) this Court rejected the applicability of the principle of mutuality because there was no mutual dealing between members *inter se*. There was no putting up a common fund for discharging a common obligation undertaken by the contributors for their mutual benefit and for this reason the case decided by the House of Lords in *Styles* v. *New York Life Insurance Company* (2) was held not applicable.

In the present case the Memorandum of Association shows that the object with which the company was formed was to promote and regulate the business of exchange of stocks, shares, debentures, debenture stocks etc. The income, if any, which accrued from the business of the appellant company was distributable amongst the shareholders like in every joint stock company. According to the Articles of Association the members included shareholders and members of the Exchange and according to the rules and bye-laws of the appellant company 'member' means an individual, body of individuals, firms, companies, corporations or any corporate body as may be on the list of working members of the Stock Exchange for the time being. In the Articles of Association cls. 7 & 8, provision was made for the election of members by the Board of Directors and Rules 9 & 10 laid down the procedure for the election of these members. The entrance fees were payable by the trading members elected under the Rules and Bye-Laws of the Association, who alone with their Associates, could transact business in stocks and shares in the Association. Therefore, the body of trading members who paid the entrance fees, and the shareholders among whom the profits were distributed were not identical and thus the element of mutuality was lacking. It is the nature of the business of the company and the profits and the distribution thereof which are the determining factors and in this case it has not been shown that the appellant's business was in any way difierent from that which was carried on in the

(1) [1954] S.C.R. 289, 308. (2) (1889) 2 T.C. 460.

case reported as *Liverpool Corn Trade Association* v. *Monks* (1).

In our opinion the judgment of the High Court is right and the appeals are therefore dismissed with costs. One hearing fee.

Appeals dismissed.

M/S. S. C. CAMBATTA & CO. PRIVATE LTD., BOMBAY

v.

THE COMMISSIONER OF EXCESS PROFITS TAX, BOMBAY

(J. L. KAPUR, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Excess Profits Tax—Assessment—Sale of theatre and restaurant —Goodwill—Value of—Principle of computation—Excess Profits Tax Act, 1940 (XV of 1940).

The appellant carried on various businesses and one such was the running of a Theatre and Restaurant. In October, 1943, a subsidiary company was formed which was using the premises of the Theatre under a lease granted to it from April, 1944. In working out the capital of the two companies for excess profits tax, a claim of rupees five lakhs for goodwill as part of the capital of the subsidiary company was not taken into account.

On reference to the High Court it held that the Tribunal should have allowed the value of the goodwill whatever it thought was reasonable at the date of transfer. Thereafter the Tribunal took into account only the value of the lease-hold of the site to the subsidiary company, and came to the conclusion that no goodwill had been acquired by the business of the Theatre as such and whatever goodwill there was related to the site of building itself, and estimated the value of goodwill at rupees two lakhs. Petition under ss. 66(1) and 66(2) read with s. 21 of the Excess Profits Tax Act being rejected by the Tribunal and the High Court, the appellants came in appeal by special leave.

Held, that the goodwill of a business needed to be considered in a broader way. It depended upon a variety of circumstances or a combination of them. The nature, the location, the

(1) (1959) 36 I.T.R. 222.