INCOME-TAX REFERENCE

Before Mr. M. C. Chagla, Chief Justice, and Mr. Justice Tendolkar

THE COMMISSIONER OF INCOME-TAX EXCESS PROFITS TAX, BOMBAY CITY, APPLICANT *v.* THE SHAMSHER PRINTING PRESS, BOMBAY, RESPONDENT.*

1953 *Mar.* 5

Indian Income-tax Act (XI of 1922), ss. 10 and 4 (3) (vii)—Defence of India Rules, r. 75-A (1)—Order requisitioning premises—Compensation paid to assessee for such requisitioning—Compensation included certain amount for loss of profits 'in business' for two years—Whether amount paid for loss of profits in business liable to tax under s. 10—Whether such amount constitutes capital receipt or revenue receipt—Whether receipt of such amount is also a casual and non-recurring receipt.

On September 11, 1943, the Collector of Bombay by his order issued under the Defence of India Rules, R. 75-A (*i*) requisitioned assessee's premises. On March 14, 1944, the assessee was awarded a sum of Rs. 93,106 for compensation. This sum included an item, *inter alia*, of Rs. 57,435 which was allowed on account of loss of profits in business for two years. The Income-tax Department contended that the item of Rs. 57,435 was income falling under s. 10 of the Indian Income-tax Act, 1922, and liable to tax.

Held, that the amount of Rs. 57,435 received by the assessee was a capital, and not a revenue, receipt and therefore not liable to tax.

The Glenboig Union Fireclay Co. Ltd. v. *The Commissioner of Inland Revenue*,[1] followed.

Ensign Shipping Co., Ltd. v. *The Commissioner of Inland Revenue*,[2] distinguished.

Held, also, that if the receipt of Rs. 57,435 is considered as entirely independent of the business of the assessee, it is a casual and non-recurring receipt and exempt from taxation under s. 4 (*3*) (*vii*) of the Act.

Facts material to this report are fully set out in the judgment.

At the instance of the Commissioner of Income-Tax/Excess Profits Tax, Bombay City, the following questions were referred to the High Court:

(1) Whether there was evidence before the Tribunal to hold that the receipt of Rs. 57,435 was of a casual and non-recurring nature and, therefore, exempt from taxation under s. 4 (3) (*vii*) of the Income-tax Act?

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* Income-tax Reference No. 30 of 1952.

[1] (1930) 12 T. C. 427. [2] (1930) 12 T. C. 1169.

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(2) Whether on the facts and circumstances of the case the receipt of Rs. 57,435 was a capital receipt in the hands of the assessee and, therefore, not liable to tax?*

The reference was heard.

Sir N. P. Engineer, for the applicant.

Sir J. B. Kanga, with *N. A. Palkhiwala,* for the respondent.

CHAGLA C. J. The assessee before us is the Shamsher Printing Press which is a registered firm. The assessment year we are concerned with is 1945-46, the relevant accounting year corresponding to it being Samvat Year 2000. The business of the assessee consists of purchasing and selling paper, stationery, etc. and it also carries on business as manufacturers of books, exercise books, diaries, etc. The premises in which the assessee carries on this business were requisitioned by the Collector of Bombay by his order dated September 11, 1943 under r. 75-A (*i*) of the Defence of India Rules. The assessee filed a claim before the requisitioning authorities claiming a sum of Rs. 8,10,300 as compensation. A sum of Rs. 93,106 was ultimately awarded for compensation to the assessee. The Income-Tax Officer treated a sum of Rs. 61,129 out of this sum as a revenue receipt and in this particular Reference we are only concerned with an item of Rs. 57,435 and the only question that we have to consider is whether this sum of Rs. 57,435 received by the assessee as compensation for the requisitioning of his premises constitutes a revenue or a capital receipt or in the alternative it is an income of a casual and non-recurring nature.

In the claim that the assessee made in respect of this item, he claimed a sum of Rs. 4,58,900 for the following reason. "On account of the compulsory vacation of the premises disturbance and loss of business on the basis of two years at Rs. 2,29,450 per annum," and in the order awarding compensation the description of the item is the same with the exception of "loss in business" being substituted for "loss of business" and against a claim of Rs. 4,53,900 a sum of Rs. 57,435 is awarded.

The contention of Sir Nusserwanji on behalf of the Commissioner is that this sum represents loss of profits, and therefore it is a revenue receipt and taxable as profits arising out of the

* In the opinion of the High Court question No. 2 was the main question and therefore the Court treated question No. 2 as question No. 1, and question No. 1 as question No. 2 and thus re-numbered, reframed question No. 2 as follows:—

(2) Whether in any event the receipt of Rs. 57,435 is of a casual and non-recurring nature and therefore exempt from taxation under s. 4 (3) (*vii*) of the Income-tax Act?

business of the assessee. The contention of the assessee, on the other hand, is that this amount was awarded to him for damage done to his business and when a businessman receives compensation for damages that compensation can never constitute a revenue receipt. It is important to note that in awarding compensation under the Defence of India Rules the measure of damages that has got to be adopted is the same as laid down in s. 23 of the Land Acquisition Act, and one of the factors that the Court has to take into consideration in determining the amount of compensation is the damage if any sustained by the person interested at the time of the Collector's taking possession of the land by reason of the acquisition injuriously affecting his other property, moveable or immoveable, in any other manner or his earnings. Therefore if by reason of the premises of the assessee being requisitioned his business was prejudicially or injuriously affected or even if his earnings were prejudicially or injuriously affected the assessee would be entitled to compensation for the damages so caused, and it seems to us clear that if the assessee can successfully bring his case under this head, the compensation cannot constitute a revenue receipt.

The department has attempted to tax this amount of compensation as income falling under s. 10 of the Income-Tax Act, and we have to be satisfied that the tax is payable in respect of the profits, gains or any business carried on by the assessee. Can it possibly be said that when damages are awarded to the assessee for his business or his earnings being injuriously affected by reason of the Government taking possession of his property, the compensation that he receives is in respect of the profits or gains of his business? This compensation is certainly not received in the course of the business of the assessee. Sir Nusserwanji says that the amount is assessed on the profits of the business but the mode of assessment or the measure of damages cannot possibly affect the nature of the payment received by the assessee and paid by the requisitioning authorities. Whatever measure the assessee might have adopted and whatever measure might have been accepted by the requisitioning authorities the question that we have to consider is what is the exact nature of the payment received by the assessee, and if the payment received by him sounds in damages and is compensation for damages, then it is clear that the receipt of compensation for damages by the assessee cannot constitute income from his business.

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Mr. Palkhiwala has relied on rather an interesting case reported in *The Glenboig Union Fireclay Co. Ltd.* v. *The Commissioners of Inland Revenue.*[1] In that case the assessee company carried on business as manufacturers of fireclay goods and they were lessees of certain fireclay fields over part of which ran the lines of the Caledonian Railway. Calidonian Railway acquired these fields and compensation was paid for it to the assessee company. The assessee company for the purposes of excess profits tax treated the compensation received as profits in order to compare their profits with the profits of the subsequent year, and the question that arose before the Court of Appeal was whether the assessees were entitled to treat the compensation as profits. It is in this connection that Lord Buckmaster at page 463 made the following observations:

"The argument in support of its inclusion can only be well founded if the sum be regarded as profits, or a sum in the nature of profits, earned in the course of their trade or business. I am quite unable to see that the sum represents anything of the kind."

Therefore the first point that was emphasised by Lord Buckmaster was that the amount which was sought to be included must be regarded as profits or a sum in the nature of profits which was earned in the course of the business of the assessee. Lord Buckmaster further took the view that compensation was paid to the assessee company as damages because its capital asset was sterilised or destroyed; and Mr. Palkhiwala says that in this case also to the extent that the assessee was prevented from carrying on their business in the premises which were acquired there was a sterilisation of their capital asset. Now, two views are possible on this statement. It is possible to take the view that in this particular case Lord Buckmaster was thinking of a capital asset being permanently taken away by the acquiring authorities and the expression, "sterilised or destroyed" is used in that context. The other view for which Mr. Palkhiwala has contended is that the same principle would apply whether the sterilisation is of a permanent duration or a temporary duration. In our opinion, it is unnecessary to decide whether this principle would also apply where the assessee is not permanently deprived of his capital asset. Then at page 464 a little later Lord Buckmaster says:

"But there is no relation between the measure that is used for the purpose of calculating a particular result and the quality of the figure that is arrived at by means of the application of that test."

Applying this very significant observation to the facts of the present case, there is no relation whatever between the measure

[1] (1930) 12 Tax Cases 427.

of damages adopted and the quality of the payment actually made to the assessee. Whatever the test that might be applied, we are more concerned with the quality of the payment rather than the nature of the test applied; and Lord Wrenbury at page 466 considers the question of the profits of the business being capitalised and compares them to an annuity. That would be another difficulty in the way of Sir Nusserwanji. Even assuming that the compensation paid constitutes loss of profits, what has been done by the requisitioning authorities is to capitalise the profits which may be lost by the business over a period of time, and it is difficult to see how capitalised profits can constitute a revenue receipt.

Sir Nusserwanji has relied on another case in the same volume which is reported, in *Ensign Shipping Co. Ltd.* v. *The Commissioners of Inland Revenue.*[1] In our opinion that case, far from supporting Sir Nusserwanji, emphasises the decision to which reference has just been made, and enunciates the same principle. In that case during a coal strike in 1920 two ships belonging to the assessee, which were ready to proceed to sea with cargoes of coal, were detained in port by orders of the Government for periods of 15 and 19 days. The assessee company made a claim against the Government for compensation for loss of use of the ships, and they were paid a certain sum, and the assessee company treated this amount as a capital receipt, and the question that arose was whether it was a capital receipt or a trading receipt and the Court of Appeal upholding the decision of Mr. Justice Rowlatt held that it was a trading receipt.

Now, the distinction between that case and ours is immediately apparent. In the case before the Court of Appeal the Government actually had the use of the two ships and what was received by the assessee company was in the nature of the hire for the two ships. Therefore the amount that the assessee company received was in the course of its business. Instead of a private party hiring the two ships, the Government hired them and had the use of them and the Government paid for the hire and therefore it was on those facts that the Court of Appeal held that the amount received was a revenue receipt and not a capital receipt, and at page 1178 Lord Hanworth M. R. makes the position clear:

"Their business (i.e., the business of the assessee) is to make use of the vessels that they own, to hire out the vessels to charterers, and to make profits from the earnings of the ships. If one treats the ships as

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being capable of being hired out under freight for every day of the year, it is then, I think, plain that if you hold up a ship for 15 days as in the case of the "Charlus" or 19 days as in the case of the "Webburn", you have prevented the vessels from earning money."

Now, in this case it is not as if the Government took over the business of the assessee, ran it and paid to the assessee a certain amount for the use of the business or for the profits of the business. The assessee continued to carry on its own business and its claim was based on the injury done to that business, and however that injury might have been assessed and whatever test might have been applied to determine what the damages were, the payment which was actually received was damages and not income arising out of the business or in the course of the business. Therefore, the Tribunal was right in taking the view that the assessee was not liable to pay tax on this sum as constituting profits or gains from the assessee's business. The payment would either constitute a capital receipt or if one takes the view that the payment was entirely independent of the business of the assessee as a casual and non-recurring receipt.

The Tribunal has framed a question with regard to casual and non-recurring nature of the receipt as the main question and in the alternative it has framed the question with regard to the receipt being a capital receipt. In our opinion the main question is whether the receipt is a capital receipt or a revenue receipt and the argument at the Bar has proceeded on that basis. Therefore, we will treat Question No. 2 as Question No. 1 and answer it in the affirmative and we will also hold, it neceesary, that receipt is of a casual and non-recurring nature. We will frame Question No. 2 as follows:

"Whether in any event the receipt of Rs. 57,435 is of a casual and non-recurring nature and therefore exempt from taxation under s. 4 (3) (*vii*) of the Income-Tax Act?"

and the answer is in the affirmative. The Commissioner to pay the costs.

Attorneys for respondent: *N. K. Petigara.*

Attorneys for applicant: *Payne & Co.*

Answer accordingly.

P. M. P.