For the above reasons, I respectfully differ from the view taken by my learned brother regarding issue No. 7 and this issue should be decided against the Bank, though so far as the result of the case is concerned, that would not really matter.

As already stated, I agree with the conclusions of Mehar Singh, J., that the appeal of the plaintiff Bank should be allowed and the suit decreed as proposed by him.

B. R. T.

APPELLATE CIVIL.

Before I. D. Dua, J.

THE DISTRICT BOARD, KANGRA,—(*Defendant*)-*Appellant.*

versus

E. D. MANEEKNA AND OTHERS,—(*Plaintiffs*)-*Respondents.*

Regular Second Appeal No. 817 of 1953.

1959

April 29th

Punjab District Boards Act (XX of 1883)—Sections 10(3) and 30—Levy of professional tax—Checkers of a Transport Company having its Head Office at Pathankot and running its buses in the district of Kangra—Whether liable to pay professional tax imposed by the District Board of Kangra—Construction of taxing statutes—Mode of.

Held, that where the persons employed in a transport company reside at Pathankot in the District of Gurdaspur and the Company has its Head Office also in Pathankot, from where the employees obtain instructions for their activities as employees, merely because they perform their duties as Checkers on the P.W.D. roads in the district of Kangra, the District Board of Kangra, has no jurisdiction to levy professional tax on them. The tax being payable on the basis of income, the place of its accrual can also be legitimately taken into account for the purpose of determining the place of assessment, unless the statute suggests

a contrary legislative intent; and that place in the instant case is obviously Pathankot.

Held, that legislation dealing with revenue in a social welfare State should not be too rigidly construed against the State as the State Departments must have their revenues so that amenities can be provided for the benefit of the citizens. At the same time it must always be borne in mind that a subject cannot be taxed unless the language of the statute clearly and indubitably applies to him.

Second appeal from the decree of the Court of Shri Gulal Chand, Jain, Senior Sub-Judge, with enhanced appellate Powers, Kangra at Dharamsala, dated the 29th day of August, 1953, affirming that of Shri Pritam Singh, Sub-Judge Ist Class, Kangra, dated the 16th March, 1953, granting the plaintiffs a decree for declaration as prayed for in the plaint against the defendant and also granting a decree for permanent injunction against the defendant to the effect that lt would not collect the professional tax in dispute from them (plaintiffs) and dismissing their suit as regard the prayers (b), (c) *and* (d) *mentioned in the plaint as that court had got no jurisdiction to entertain the suit regarding those reliefs and the plaintiffs would seek their remedy in a proper Court and leaving the parties to bear their own costs.*

Y.P. GANDHI, for Appellants.

D.K. MAHAJAN, for Respondents.,

JUDGMENT

Dua, J.

DUA, J.—The plaintiffs, who are the three employees of the New Snow View Transport Company, Limited, Pathankot, hereinafter referred to as the Company, working as checkers from Pathankot to Baij Nath on the P.W.D. Road, instituted the present suit for a declaration and perpetual injunction against the District Board, Kangra, to the effect that the defendant has no right to impose

upon and realise from the plaintiffs the professional tax and that the order, dated 19th of February, 1952, directing the Manager of the Company to pay the tax is contrary to law and *ultra vires;* an injunction is claimed against the defendant to restrain it from imposing and realising the tax from the plaintiffs. The suit was contested on various grounds, but in the present appeal the only point for consideration is whether or not the plaintiffs are liable to pay the tax. Both the Courts below have decreed the plaintiffs' suit on the grounds that the Head Office of the Company is at Pathankot and that the plaintiffs are not carrying on any profession within the limits of the District Board concerned. It is where the plaintiffs reside or where they receive their pays that they can be deemed to be employed. This place according to the Courts below is Pathankot, which is outside the defendant's jurisdiction.

On second appeal Mr. Gandhi has drawn my attention to section 10, sub-section (3), of the Punjab District Boards Act, 1883 (Act XX of 1883), which is in the following terms :—

> "10(3). A district board shall have authority throughout the district for which it is established, and a local board shall have authority throughout such portion of the district in which it is established, as the State Government may, by notification, direct :
>
> Provided that a board shall not have authority over any portion of a district which is for the time being included in a military cantonment, small town as defined in the Punjab Small Towns Act, 1921, or a municipality."

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Dua, J.

He has next referred to section 30 of the same Act which prescribes procedure for imposing taxes. The counsel submits that the present plaintiffs are actually engaged in checking and supervising the traffic on the road, which is within the jurisdiction of the appellant (District Board). He submits that major portion of the road covering nearly 75 miles is in Kangra District where the plaintiffs' employer (Company) has also got a number of booking offices. In support of his contention he has also placed reliance on a Single Bench judgment of this Court in *Banu Mal* v. *District Board of Karnal* (1), where Grover, J., upheld the levy of professional tax by the District Board, Karnal, on a person who had taken agricultural land on lease and had given it on cultivation to various tenants. In my opinion, this decision is of no real value to the learned counsel. It deals with an entirely different set of facts and is, therefore, of no guidance. Reliance has next been placed on *District Board, Rohtak* v. *Master Jamna Das and others* (2), where Harnam Singh, J., upheld the validity of imposition of the tax on clerks and teachers employed in schools on the ground that they were carrying on business at the places where the schools were situated. The plea that this tax was in the nature of a tax on income and was, therefore, invalid was repelled. This authority again, in my opinion, is clearly distinguishable. Teachers and clerks employed in a school would obviously be amenable to the jurisdiction of the District Board if the situation of the school fell within that jurisdiction. Mr. Gandhi tried to distinguish the case of *Lala Jagat Pershad and others* v. *District Board, Ambala* (3), which had been relied upon by the Courts below, on the ground

(1) 1959 P.L.R. 309
(2) 1956 P. L. R. 293
(3) A. I. R. 1944 Lah. 385

that the question of professional activities of a lawyer is different from that of the present plaintiffs. In the reported case a Division Bench consisting of Harries, C.J., and Mahajan, J., while dealing with imposition of professional tax on lawyers made the following observations, at pages 385 and 386,—

> "Similarly, in the case of a lawyer it is the place where he can be engaged that matters and that is his place of business. The place where the contract is entered into and where the *vakalatnama* is signed appears to me to be where the lawyer carries on his profession or trade and if his office or chambers are not within the municipal limits of Ambala, then it cannot be said that he carries on his profession within those limits. He might perform certain acts connected with his engagement within those limits but that does not amount to following his profession within those limits."

Support for this view was also sought from the decision in *Ramasame Ayyar* v. *Municipal Council, Salem* (1),

Mr. D. K. Mahajan, has on behalf of the respondents submitted that for the purpose of determining where a person is employed it is pertinent to consider where his contract of employment was entered into, where he can claim payment of his salary, where he can ask for leave etc., and where he can be called upon to account for his conduct by his master. Situs of the employment is the crucial test according to the learned counsel.

(1) I.L.R. 18 Mad. 183

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Dua, J.

It is unfortunate that even a copy of the relevant notification concerned should not have been placed on the record by the District Board. However, on the facts as established on this record, I am clearly of the view that the present plaintiffs-respondents are not liable to pay the professional tax imposed. I am not unmindful of the fact that legislation dealing with revenue in a social welfare State should not be too rigidly construed against the State. The State Departments must have their revenue, so that amenities can be provided for the benefit of the citizens. At the same time it must always be borne in mind that a subject cannot be taxed unless the language of the statute clearly and indubitably applies to him. In the present case according to the judgment of the learned Senior Subordinate Judge the tax is payable by every person carrying on a trade, profession, calling or employment in the area subject to the authority of the District Board. The plaintiffs are employees of the Company. The question, therefore, arises as to whether they are employed within the area subject to the authority of the District Board. It is not denied that they reside in Pathankot and the Head Office of their employer is also in Pathankot, from where they obtain instructions for their activities as employees. It is of course admitted by the respondent that the Company is carrying on its activities also outside the limits of the District Board concerned. But merely because the present plaintiffs have been ordered by their employer to check or supervise the various buses plying on the P.W.D. Road within the jurisdiction of the District Board would not, in my opinion, make them liable to be taxed by the Board. The road on which they may be called upon to perform their duties as employees may run through the jurisdiction of several District Boards. To hold that these employees would be

liable to be taxed by all the District Boards, through the jurisdiction of which, they may have to pass while performing their duties as employees or actually to perform them would, in my opinion, lead to such harsh, oppressive and inequitable results that they could never have been intended by the legislature in a welfare State. Unless, therefore, the language of the statute is explicit and clear, I would be disinclined to subject a citizen to such unreasonable burden as is suggested by the learned counsel for the appellant. It is true that as quoted by Maxwell on the Interpretation of Statutes, Tenth Edition, at page 288, from *Cape Brandy Syndicate* v. *I.R.C.* (1).

> "In a Taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

The author, however, further proceeds on the same page—

> "A construction, for example, which would have the effect of making a person liable to pay the same tax twice in respect of the same subject-matter would not be adopted unless the words were very clear and precise to that effect. In a case of reasonable doubt the construction most beneficial to the subject is to be adopted. Still less is the language of a section to be strained in order to tax a transaction which, had the legislature thought of it, would have been covered by appropriate words."

(1) (1921) 1 K.B. 64

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Dua, J.

The above observation in my view apply with greater force to a welfare democracy particularly where the tax concerned imposes burden largely or predominantly on citizens like the plaintiffs-respondents who may have very limited means and where such tax is not confined only to the mere wealthy class of the society.

Crawford on Statutory Construction observes as follows at page 503—

> "This view rests, so it would seem, upon the principle that a tax cannot be imposed without the use of clear and express language. To hold otherwise, would allow the courts to impose taxation, and that would clearly constitute an encroachment upon the power of the legislature. More than that, taxation is a process which inteferes with the personal and property rights of the people, although it is a necessary interference. But because it does take from the people a portion of their property, seems to be a valid reason for construing tax laws in favour of the taxpayer. It is also a destructive power. So far as property rights are concerned, it occupies an analogous position to that occupied by statutes which restrict and destroy personal rights. Accordingly, in case of doubt or of ambiguity, that construction should be adopted which opposes the imposition of tax. And, obviously, this strict rule of construction is especially applicable to statutes which impose a privilege tax, or a tax on an occupation, or impose penalties or forfeitures or deprive the taxpayer of his property by summary proceedings."

Again, at page 505, the following observations occur—

> "But regardless of the rule to be used, the tax statute should not be extended by construction beyond the clear meaning of its language, to include either persons or property not expressly embraced. Because in all probability it does not represent the legislative intent, an unjust or oppressive construction should be avoided if possible. For the same reason, double taxation is not to be favoured."

In the light of the above rule of interpretation of taxing statutes, in my opinion, the two Courts below have rightly construed the impunged notification, in favour of the citizen and no sufficient or adequate ground has been shown for differing from their view.

I must also notice the contention advanced by Mr. Gandhi questioning the correctness of the view contained in *Jagat Parshad's case* (1). No convincing argument has, however, been advanced in showing how the rule of law laid in that decision is incorrect or unjust. The language of the statute is reasonably capable of the construction placed on it by the Courts below which has not been shown to be clearly erroneous. The contention of Mr. Gandhi that the ratio of *Jagat Parshad's case* (1), runs counter to the clear language of the statute is not permissible.

Before concluding it may be observed that tax being payable on the basis of income, the place of its accrual can also be legitimately taken into account for the purpose of determining the place

(1) A.I.R. 1944 Lah. 385

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of assessment, unless of course the statute suggests a contrary legislative intent; and that place is obviously Pathankot.

Dua, J.

For the reasons given above, I dismiss this appeal with costs.

B.R.T.

APPELLATE CIVIL

Before K. L. Gosain and Harbans Singh, JJ.

BHARAT NIDHI BANK Ltd., KHANNA,—Appellant.

versus

FIRM M/s RAJ KUMAR & Co., JULLUNDUR CITY AND OTHERS,—*Respondents.*

Regular First Appeal No. 96 of 1950.

1959

May 1st

Contract Act (IX of 1872)—Section 133—Guarantee broker's contract fixing the amount of advances to be made by the creditor to the principal debtor—Creditor exceeding that limit and varying security—New documents taken from the principal debtor—Guarantee broker's liability—Whether discharged.

Held, that the mere fact that the Bank for its own procedural purposes took a writing from the principal debtor authorising it to close the previous account and open a new account would not make any difference. The agreement of the guarantee brokers was for guaranteeing the advances to be made from time to time up to a limit of Rs. 80,000 and not for guaranteeing any specific pre-existing debt and consequently the closing of one account and opening of another would not materially affect the contract of guarantee. Similarly, the taking of collateral documents, like a pronote and a writing, dispensing with presentation etc., would, in no way, materially affect the contract entered into by the guarantee brokers.

Held, that the agreement of guarantee brokers taken as a whole did not put any limit on the Bank to advance