INCOME TAX REFERENCE

Before D. K. Mahajan and H. R. Sodhi, JJ.

THE COMMISSIONER OF INCOME-TAX, PATIALA,—*Applicant.*

versus

M/S. JAI HIND PICTURE CO. (P.) LTD., AMBALA,—*Respondent.*

Income Tax Reference No. 14 of 1971.

August 26, 1971.

Income Tax Act (XI of 1922)—Section 10(2)(xv)—Assessee owning cinema houses and carrying on business of exhibition of motion pictures—Payment of property tax by such an assessee—Whether permissible deduction under section 10(2)(xv).

Held, that in the matter whether a particular tax can be allowed as a permissible deduction under section 10(2)(xv) of the Income Tax Act, 1922, no uniform rule can be laid down. In each case, it will depend as to what is the nature of the business and what is the nature of the tax. Only when the tax has intimate connection with the carrying on of the business that it can be claimed as a permissible deduction. Property tax is payable on the ownership of the property. An assessee who owns a cinema house and carries on business of exhibiting films pays the tax whereas an assessee who carries on the business of exhibiting films but does not own the cinema house does not pay it. This demonstrates that the tax has no connection whatever with the carrying on of the business of film exhibitors. Hence the payment of property tax by an assessee owning cinema houses and carrying on the business of exhibition of motion pictures is not a permissible deduction under section 10(2) (xv) of the Act. (Paras 7 and 11).

Reference under section 256(1) of the Income Tax Act, 1961 made by the Income Tax Appellate Tribunal Chandigarh Bench,—vide his order dated the 18th February, 1971, for opinion of this Court on the following question of law in a case R. A. Nos. 1 & 2/Chandi/1969-70 arising out of I.T.A. No. 23391 & 23392 of 1967-68 regarding assessment year 1961-62 & 1962-63 :—

> *"On the facts and circumstances of the case, whether the property tax levied by the Punjab Government was admissible as a deduction ?"*

D. N. AWASTHY AND B. S. GUPTA, ADVOCATE, for the applicant.

BHAGIRATH DASS, ADVOCATE, WITH B. K. JHINGAN AND S. K. HIRAJEEA ADVOCATES, for the respondents.

JUDGMENT

The judgment of this Court was delivered by:—

MAHAJAN, J.—(1) The Income-tax Appellate Tribunal, Chandigarh Bench, has referred the following question of law for our opinion:—

> "On the facts and circumstances of the case, whether the property tax levied by the Punjab Government was admissible as a deduction?"

(2) The assessee is a private limited company. It derives its income from exhibition of motion pictures. Two cinema houses, one at Gurgaon and the other at Hissar are owned by it. During the previous years to the assessment years 1961-62 and 1962-63, the assessee paid property tax on the cinema houses. Rs. 3,065 was paid in the year 1961-62 and Rs. 2,563 in the year 1962-63. The assessee debited these amounts in the profits and loss account and claimed deduction in computing its total income. The Income-tax Officer disallowed this deduction by his order, dated 12th February, 1964. An appeal by the assessee to the Appellate Assistant Commissioner also failed. The Appellate Assistant Commissioner held that the property tax was not admissible deduction under section 10(2) (ix) of the Income-tax Act, 1922, as it was not covered by the expression "land revenue, local rates or municipal taxes". It was further held that these amounts could not be allowed as permissible deduction under section 10(2)(xv) as the expenditure was not incurred for purposes of business inasmuch as the tax was really on the ownership of property.

(3) A further appeal was taken by the assessee to the Tribunal. The Tribunal allowed the appeal. The operative part of the Tribunal's order reads thus:—

> "The assessee company derives income from two cinemas. Rs. 3,065 and Rs. 2,563 were claimed by the assessee as deduction as these were the payments towards property tax in respect of the buildings of the cinema halls, in which the assessee carries on his business. The Revenue authorities disallowed this claim on the ground that they were incidental to the assessee's position as owner of the property. The learned counsel for the assessee has contended

that the payment of property tax is incidental to the assessee's business of running cinemas, inasmuch as unless the assessee pays the property tax, it cannot carry on its business. He has also pointed out that for the assessment years 1963-64 and 1964-65, this contention was considered by the Tribunal and the claim of the assessee was allowed. In our opinion there is force in the assessee's contention that the payment of urban property tax is incidental to the carrying on of the business and, therefore, we hold the disallowance of these amounts was unjustified and the amount should be allowed as a deduction in both these years."

(4) On the application of the Department under section 256(1) of the Income-tax Act, 1961, the question already set out in the opening part of this order has been referred for our opinion.

(5) Before we proceed to answer the question, it will be appropriate to refer to the provisions of the Punjab Urban Immovable Property Tax Act, 1940. Section 2(c) defines an owner and is in the following terms:—

'Owner' includes a tenant in perpetuity, a mortgagee with possession, and a trustee having possession of trust property".

Section 3 is the charging section and the relevant part with which we are concerned is sub-section (4) and is in the following terms:—

The tax shall be paid by the owner of the buildings and lands in respect of which it has been levied."

(6) It is clear from the language of the statute that the tax is on the ownership of property.

(7) Now, we proceed to determine whether this tax can be allowed as a permissible deduction under section 10(2)(xv). The learned counsel for the assessee conceded that he could not claim it as a deduction under section 10(2)(ix). On first principles, we are of the view that the tax has no direct connection with the carrying on of the business of the assessee. An assessee, who owns a cinema

house and carries on business of exhibiting films pays the tax whereas an assessee who carries on the business of exhibiting films, but does not own the cinema house does not pay the tax. This will demonstrate that the tax has no connection whatever with the carrying on of the business of film exhibitors. Lord Loreburne, *Lord Chancellor* in *Strong and Company of Romsey Ltd.* v. *Woodifield* (1), laid down the test in such matters as follows:—

> "A deduction cannot be allowed on account of loss not connected with or arising out of such trade. That is one indication. And no sum can be deducted unless it be money wholly and exclusively laid out or expended for the purposes of such trade. That is another indication.
>
> It does not follow that if a loss is in any sense connected with the trade, it must always be allowed as a deduction: for it may be only remotely connected with the trade or it may be connected with something else quite as much as or even more than with the trade. I think only such losses can be deducted as are connected with it in the sense that they are really incidental to the trade itself. They cannot be deducted if they are mainly incidental to some other vocation, or fall on the trader in some character other than that of trader."

This test was accepted by the Supreme Court in *Travancore Titanium Product Ltd.* v. *Commissioner of Income-tax, Kerala* (2). While dealing with the question whether estate duty can be claimed as a permissible deduction under section 10(2)(xv) their Lordships, while dealing with the said provision, summed up the position thus:—

> "The nature of the expenditure or outgoing must be adjudged in the light of accepted commercial practice and trading principles. The expenditure must be incidental to the business and must be necessitated or justified by commercial expediency. It must be directly and intimately connected with the business and be laid out by the tax payer in his character as a trader. To be a permissible deduction, there must be a direct and intimate connection between the

(1) 5 Tax Cases 215.
(2) 60 I.T.R. 277.

expenditure and the business, i.e., between the expenditure and the character of the assessee as a trader, and not as owner of assets, even if they are assets of the business."

The matter of property tax directly came up for consideration before the Calcutta High Court in *Commissioner of Income-tax, West Bengal* v. *Kawasaki Kisen Kaisha Ltd.* (3), and it was held:—

"Property tax, in Japan is a tax levied on property which is to be paid by its owner and the payment of this tax is not a condition precedent to the actual carrying on of any business. There is no direct and intimate connection between the payment of the tax and the business of the assessee."

(8) In a case relating to the profession tax, the matter came to this Court in (*Commissoner of Income-tax, Punjab* v. *The Saraswati Industrial Syndicate, Yamunanagar* (4), and the following observations of Pandit and Sandhawalia JJ., are very instructive:—

"The first question to be determined is whether the case set up by the assessee itself would come under section 10(2)(xv) of the Act. It can claim the exemption of this tax only if it can show, as is alleged by it, that this tax was an expenditure laid out or expended wholly and exclusively for the purpose of its business. In other words, can it be said that this was an expenditure which had been incurred by the assessee exclusively for the purpose of its business? It is quite different to say that the assessee was taxed, because it carried on its business. Only that expenditure will be covered by this clause, which the assessee has spent or laid out exclusively for the running or betterment of its business. If a tax has been imposed simply because a person was carrying on a particular business, that, in my view, will not be covered by this clause, because the tax is the result of that person's doing the business. If he had not done that business, the tax would not have been levied on him. The tax, in the instant case, was the outcome of the assessee's carrying on the business. That, however,

(3) 75 I.T.R. 537.
(4) I.T. Ref. No. 54 of 1965 decided on 16th December, 1970.

does not mean that the said tax was an expenditure which had been incurred by the assessee for the purpose of its business."

(9) It would be another matter if the business of exhibiting cinema films could not be carried on without the payment of tax. In that event, we would have no hesitation in holding that the tax would be a permissible deduction under section 10(2)(xv). But that is not the case here. Therefore, the decision of the Privy Council in *Commissioner of Income-tax, Bengal* v. *Gurupada Dutta* (5), is of no assistance to the learned counsel for the assessee. Incidentally, that case was determined under section 10(2)(ix) and not under section 10(2)(xv). Same reasoning will apply to the decision of this Court in *Commissioner of Income-tax, Delhi and Rajasthan,* v. *Banarasi Dass and Sons* (6).

(10) The learned counsel for the assessee also placed his reliance on *Commissioner of Income-tax, Kerala* v. *Malayalam Plantations Ltd.* (7), particularly on the interpretation of the expression 'for the purpose of the business' in section 10(2)(xv). While dealing with this expression, Subba Rao J., (as he then was) observed as follows:—

"The expression 'for the purpose of the business' is wider in scope than the expression 'for the purpose of earning profits'. Its range is wide; it may take in not only the day to day running of a business, but also the rationalisation of its administration and modernisation of its machinery, it may include measures for the presevation of the business and for the protection of its assets and property from expropriation, coercive process or assertion of hostile title; it may also comprehend payment of statutory dues and taxes imposed as a pre-condition to commence or for the carrying on of a business; it may comprehened many other acts incidental to the carrying on of the business. However wide the meaning of the expression may be, its limits are implicit in it. The purpose shall be for the purpose of the business, that is to say, the expenditure incurred

(5) 14 I.T.R. 100.
(6) 61 I.T.R. 414.
(7) 53 I.T.R. 140.

shall be for the carrying on of the business and the assessee shall incur it in his capacity as a person carrying on the business. It cannot include sums spent by the assessee as agent of a third party, whether the origin of the agency is voluntary or statutory."

This case is of no assistance to the assessee. The contention of the assessee before us has been that he cannot carry on the business of exhibiting films without payment of this tax. We are unable to agree with this. His further contention that his tax has intimate relation with the carrying on of business of exhibiting films has been demonstrated by us to be futile.

(11) In the matter whether a particular tax can be allowed as can be allowed as a permissible deduction under section 10(2)(xv), no uniform rule can be laid down. In each case it will depend as to what is the nature of the business and what is the nature of the tax. Only when the tax has intimate connection with the carrying on of the business that it can be claimed as a permissible deduction. So far as the present case is concerned, we have not the least doubt that the property tax cannot be allowed as a permissible deduction under section 10(2)(xv). In our opinion, the decision of the Tribunal to the contrary cannot be sustained either on principle or authority. The Tribunal seems to have taken a very superficial view of the matter.

(12) For the reasons recorded above, we answer the question referred to us in the negative, that is, in favour of the Department and against the assessee, but there will be no order as to costs.

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