COMMISSIONER OF INCOME-TAX, BOMBAY CITY

v.

ROYAL WESTERN INDIA TURF CLUB LTD.

1953

Oct. 26.

[PATANJALI SASTRI C.J., S. R. DAS, VIVIAN BOSE, GHULAM HASAN and BHAGWATI JJ.]

Income-tax Act (XI of 1922), s. 10(1), s: 10(6)—Race course company—Receipts from members—Whether receipts from business —Assessability—Applicability of rule in Styles' *case—Difference between mutual insurance societies and clubs, and race course companies—"Trade association", meaning of.*

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The assessee, the Royal Western India Turf Club Ltd., was formed *inter alia* for the purpose of carrying on the business of a race course company in all its branches and to establish clubs, hotels and other conveniences in connection with the property of the company. It had two classes of members, club members, whose number was limited to 350 and stand members who were elected by ballot. Every member paid an entrance fee and an annual subscription. The liability of the members was limited by guarantee and if there was any surplus on winding up, it was to be paid to the members in equal shares. An admission fee was levied from the members for admission to the Members' Enclosure, and from non-members for admission to the other Enclosures, and in each Enclosure there was a totalisator. The moneys received from members as well as non-members were included in one pool and distributed amongst the holders of the winning tickets. In each Enclosure refreshments were supplied on payment. The company admitted that moneys realised from non-members were receipts from business and taxable, but contended that the following items of receipts received from members were not assessable to income-tax, *viz.*, (1) season admission tickets from members, (2) daily admission gate tickets from members, (3) use of private boxes by members, (4) income from entries and forfeits received from members whose horses did not run. The High Court of Bombay held that items 1, 2 and 3 did not fall either under s. 10(1) or s. 10(6) of the Income-tax Act and were therefore not taxable, but item 4 fell within s. 10(1) and s. 10(6) and was taxable. The Commissioner of Income-tax appealed:

Held, (i) that the principles of *Styles'* case as explained by subsequent cases had no application to the company as there was no mutual dealing between the members *inter se* in the nature of mutual insurance and no contribution to a common fund put up for payment of liabilities undertaken by each contributor to the other contributors, and no refund of surplus to the contributors, but on the other hand, the company realised moneys both from the members and non-members for the same consideration, namely, by the giving of the same or similar facilities to all alike in the course of one and the same business carried on by it;

(ii) that, as the company was formed for carrying on a business, it had dealings with its members also in the ordinary course of business, and gave the same or similar amenities to members and non-members, and there were no mutual dealings between the members or a common fund for the discharge of common obligations to each other, the principle applicable to the surplus of contributions made by members of a club for providing themselves with amenities was also not applicable to the case;

(iii) a "trade association" means an association of tradesmen, businessmen or manufacturers for their common protection and advancement, and the assessee was not therefore, "a trade or similar association" within s. 10(6) of the Income-tax Act;

(iv) that all the abovementioned 4 items of receipts from members were received by the company from business carried on by it with its members within the meaning of s. 10(1) and none of them was received by the company as a trade, professional or similar association within the meaning of s. 10(6), and all the items were accordingly assessable to income-tax.

The New York Life Insurance Co. v. *Styles* (*Surveyor of Taxes*) (1889) 14 App. Cas. 381, *The Cornish Mutual Assurance Co. Ltd.* v. *The Commissioners of Inland Revenue* L. R. [1926] A. C. 281, *Jones* v. *South Wales Lancashire Coal Owners' Association Ltd.* L. R. [1927] A. C. 827, *Municipal Mutual Insurance Co. Ltd.* v. *Hills* (1932) 16 Tax Cas. 430, *English & Scottish Joint Co-operative Wholesale Society Ltd.* v. *Commissioner of Agricultural Income-tax, Assam* [1948] A. C. 405; 16 I.T.R. 270, *Carlisle and Silloth Golf Club* v. *Smith* [1913] L. R. 3 K. B. 75, *Royal Calcutta Turf Club* v. *Secretary of State* (1921) I.L.R. 48 Cal. 844, *United Services Club, Simla* v. *The Crown* (1921) I.L.R. 2 Lah. 109, *Eccentric Club Case* [1924] L.R. 1 K. B. 390, *Dibrugarh District Club Ltd.* v. *Commissioner of Income-tax, Assam* (1927) I.L.R. 55 Cal. 971, *The Maharaj Bag Club Ltd.* v. *Commissioner of Income-tax, C. P. & Berar*, (1931) 5 I.T.C. 201, *Commissioners of Inland Revenue* v. *Stonehaven Recreation Ground Trustees* (1929) 15 Tax Cas. 419, *The National Association of Local Government Officers* v. *Watkins* (1934) 18 Tax Cas. 499, *Commissioner of Income-tax, Bombay* v. *Karachi Chamber of Commerce* [1940] I.L.R. Kar. 140; [1939] 7 I.T.R. 575 and *Commissioner of Income-tax, Bombay* v. *Karachi Indian Merchants Association* A.I.R. 1939 Sind 56; 7 I.T.R. 595, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 165 of 1951.

Appeal by special leave granted by the Supreme Court on the 27th March, 1951, from the Judgment and Order dated the 22nd March, 1950, of the High Court of Judicature at Bombay (Chagla C. J. and Tendolkar J.) in its Original Civil Jurisdiction in Income-tax Reference No. 30 of 1947.

M. C. Setalvad, Attorney-General for India (*G. N. Joshi*, with him) for the Commissioner of Income-tax.

B. J. M. Mackenna (*P. N. Mehta*, with him) for the respondent.

1953. October 26. The Judgment of the Court was delivered by DAS J.

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DAS J.—This is an appeal, by special leave granted by this court, from the judgment and order pronounced by the High Court of Judicature at Bombay on the 22nd March, 1950, on a reference (I. T. Reference No. 30 of 1947) made by the Income-tax Appellate Tribunal at the instance of the appellant under section 66(1) of the Income-tax Act (XI of 1922).

The facts necessary to be stated for the purpose of disposing of the present appeal are these: The Royal Western India Turf Club Ltd. (hereinafter referred to as the "company") was incorporated in 1925 under the Indian Companies Act, 1913. The objects for which the company was incorporated were, *inter alia* as follows:—

(a) To take over the assets, effects and liabilities of the then unincorporated club known as the Western India Turf Club;

(b) to carry on the business of a Race Course Company in all its branches.....;

(c) to establish any Clubs, Hotels and other conveniences in connection with the property of the company;

(d) to carry on the business of Hotel Keepers, Tavern Keepers, licensed victuallers and refreshment purveyors;

(e) to sell, improve, manage, develop, lease, mortgage, dispose of or otherwise deal with all or any part of the property of the company, whether movable or immovable, with power especially to sell and distribute or to permit to be sold and distributed wines, spirits, tobacco and other stores.

The liability of the members is limited by guarantee, each member undertaking to contribute to the assets of the company, in the event of its being wound up, such sum as may be required, not exceeding one rupee, for payment of the debts and liabilities of the company and the costs, charges and expenses of the winding up. Clause 6 of the memorandum provides that if upon the winding up or dissolution of the company there remains after the satisfaction of all debts and liabilities any

property whatsoever, the same would be paid to or distributed among the members of the club in equal shares.

Under the company's articles of association that were in force during the accounting year, besides Honorary Stand Members, Visiting Members and Temporary Members there were two main categories of members, namely, the Club Members and Stand Members. The number of Club Members was limited to 350, exclusive of four designated high dignitaries and the number of Stand Members was liable to be limited by the committee at any time. Club Members and Stand Members had to be elected by ballot by the committee. On election every Club member had to pay an entrance fee of Rs. 150 and a stand member had to pay an entrance fee of Rs. 75. Members of either class had also to pay an annual subscription of Rs. 25. The entire management of the company and the control over its funds and property were left in the hands of a committee of nine Club Members elected as provided in the articles of association of the company.

The company was and is the lessee of two plots of land, one in Bombay and the other in Poona. Two race courses have been laid out on these plots of land. On each race course there are three enclosures known as Members' Enclosure, First Enclosure and Second Enclosure. Each enclosure has a stand or stands from which races are watched. The Members' Enclosure is for the exclusive use of the members, their wives and unmarried daughters above the age of 12 years and their guests. The First and Second Enclosures are open to the public. For admission into each of the three enclosures an admission fee is charged. In the Members' Enclosure admission is by season tickets or daily admission gate tickets. Private Boxes in the Members' Enclosure are available to members on payment according to the number of chairs in the box. In addition to the admission fees to the Members' Enclosure, a member has to pay, in respect of his guests, an additional fee. In each of the enclosures there is a totalisator run on the pari-mutual system at which

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persons in that enclosure place their bets on each race. These several totalisators are linked by electric appliances, so that the moneys received from members and non-members are included in one pool and distributed amongst the holders of the winning tickets in equal proportions. In each enclosure there is arrangement for the supply of refreshments on payment.

The present disputes arose in connection with the assessment of the company's income, profits or gains in the accounting year 1st July, 1938, to 30th June, 1939. The company received large sums of money on admission tickets from members as well as from non-members, besides other moneys on other accounts. The company claimed that in computing its total income, the following four items of receipts should be excluded :—

(1) Season admission tickets from members	Rs. 23,635
(2) Daily admission gate tickets from members	Rs. 51,777
(3) Use of private boxes by members	Rs. 21,490
(4) Income from entries and forfeits received from the members whose horses did not run in the races during the season	Rs. 82,490

There was no dispute as to the liability of the company in respect of moneys received from non-members and moneys received on all other accounts. The Income-tax Officer held that all the four items mentioned above were receipts from business falling under section 10(1) of the Income-tax Act or, in the alternative, were receipts by an association performing specific services for its members for remuneration definitely related to those services within the meaning of section 10(6) of the Act and assessed accordingly. On appeal by the company the Appellate Assistant Commissioner dismissed the appeal. He held that the company was carrying on business and that all the above-mentioned four items were receipts from business within the meaning of section 10(1), although none of those items fell within section 10(6). On a further

appeal by the company to the Income-tax Appellate Tribunal the latter came to the conclusion that none of the sums in question could be said to be profits or gains of a business coming under section 10(1). The Tribunal also held that items 1, 2 and 3 did not also come within the ambit of section 10(6) of the Act. Apparently the Tribunal did not consider the applicability of section 10(6) with regard to the fourth item.

On the application of the Commissioner of Income-tax, Bombay, the Appellate Tribunal, under section 66(1) of the Act referred the following two questions for the opinion of the Bombay High Court, namely—

(1) whether on the facts found or admitted in the case, The Royal Western India Turf Club Ltd., Bombay, received the sums of Rs. 23,635, Rs. 51,777, Rs. 21,490 and Rs. 82,490 from a business carried on by it with the members within the meaning of section 10(1) of the Indian Income-tax Act?

(2) whether on the facts found or admitted in the case, The Royal Western India Turf Club Ltd., Bombay, received the sums of Rs. 23,635, Rs. 51,777 and Rs. 21,490 [and Rs. 82,490 with regard to which sum the Tribunal did not consider the applicability of section 10(6)] as a trade, professional or similar association performing services for its members for remuneration definitely related to those services within the meaning of section 10(6) of the Indian Income-tax Act?

The reference having come up for hearing the High Court found that the statement of the case was insufficient and incomplete and accordingly it sent back the reference to the Appellate Tribunal with directions to submit a proper statement of facts. The Appellate Tribunal thereupon submitted a supplementary statement of the case setting forth in greater detail the facts necessary for the disposal of the reference. On further hearing of the reference in the light of this supplementary statement of the case the High Court held that the company performed two distinct functions, namely, the carrying on of the business of racing and the carrying on of the club and that the first three

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items of Rs. 23,635, Rs. 51,777 and Rs. 21,490 were charged to the members in respect of the various amenities specified in the supplementary statement of the case which were given by the club only to its members namely, the use of the Members' Enclosure on payment of admission fee, the use of the members' totalisator, the right to watch the races from the lawn or from an unreserved seat in the Members' stand, the use of a private box subject to payment and the use of the Guest House at Poona. Accordingly the High Court held that the said first three items did not fall either under section 10 (1) or section 10 (6) of the Act. With regard to the sum of Rs. 82,490 the High Court held that it did not come under section 10 (6) but was a part of the income of the business of horse racing done by the company. Accordingly the High Court answered question No. 1 in the negative as regards the first three items of Rs. 23,635, Rs. 51,777 and Rs. 21,490 and in the affirmative as regards the fourth item of Rs. 82,490 and it answered question No. 2 in the negative in respect of the first three items and in the affirmative with regard to the fourth item. In effect the High Court held that the first three items were not taxable either under section 10 (1) or section 10(6) and that the fourth item was taxable under both the said sub-sections of that section.

The Bombay High Court having dismissed the application of the Commissioner of Income-tax under section 66-A (2) to appeal to this court, the Commissioner applied for and obtained special leave to appeal to this court. The company has not appealed from that part of the order which declared that the fourth item of Rs. 82,490 was taxable. Therefore, the questions we have to decide in this appeal are :

(1) whether the first three items are receipts from business carried on by the company, and

(2) whether those three items are receipts by a trade or professional or similar association performing specific services for its members for remuneration definitely related to those services.

On the first point our attention is drawn to the objects of the company as set forth in its memorandum

of association. It appears that the objects of the company are, *inter alia*, to carry on the *business* of a Race Course company in all its branches and to carry on the *business* of Hotel Keepers, tavern keepers, licensed victuallers and refreshment purveyors. Although this circumstance may not be decisive, it cannot at the same time be overlooked altogether. It has to be noted as one of the material facts. Then we have the fact that so far as non-members are concerned the company does carry on a horse racing business and the moneys it realises from non-members for admission into the First and Second Enclosures to watch the races from an unreserved seat therein and for the use of the totalisator and other amenities are income, profits or gains of that business. It is also to be noted that the rates of daily admission fee charged on the non-members for admission into the First Enclosure and for the railway tickets are exactly the same as those charged from the members for admission into the Members' Enclosure. Finally, it has been declared by the High Court by the order under appeal—and it is now accepted by the company—that the company derived the sum of Rs. 82,490 (the fourth item mentioned above) from the horse racing business carried on by it with its members within the meaning of section 10(1) of the Act. If this sum of Rs. 82,490 received from members represents, as held by the High Court, a part of the income of the horse racing business, why are not the first three items of receipts also parts of the income, profits or gains of that very business ? On what principle or authority are those three items to be excluded from the computation of the total business income of the company ?

In support of its claim for exemption from tax liability in respect of these three items the company relies on the principles laid down by the House of Lords in the much discussed case of *The New York Life Insurance Co.* v. *Styles* (*Surveyor of Taxes*) (1). The appellant in that case was an incorporated company. The company issued life policies of two kinds, namely, participating and non-participating. There were no shares or shareholders in

(1) (1889) 2 Tax Cas. 460; L.R. 14 App. Cas. 381.

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the ordinary sense of the term but each and every holder of a participating policy became *ipso facto* a member of the company and as such became entitled to a share in the assets and liable for a share in the losses. A calculation was made by the company of the probable death rate among the members and the probable expenses and liabilities and calls in the shape of premia were made on the members accordingly. An account used to be taken annually and the greater part of the surplus of such premia over the expenditure referable to such policies was returned to the members *i.e.*, (holders of participating policies) and the balance was carried forward as fund in hand to the credit of the general body of members. The question was whether the surplus returned to the members was liable to be assessed to income-tax as profits or gains. The majority of the Law Lords answered the question in the negative. It will be noticed that in that case the members had associated themselves together for the purpose of insuring each other's life on the principle of mutual assurance, that is to say, they contributed annually to a common fund out of which payments were to be made, in the event of death, to the representatives of the deceased members. Those persons were alone the owners of the common fund and they alone were entitled to participate in the surplus. It was, therefore, a case of mutual assurance and the individuals insured and those associated for the purpose of meeting the policies when they fell in and receiving the surplus, were identical and it was said that that identity was not destroyed by the incorporation of the company. Lord Watson even went to the length of saying that the company in that case did not carry on any business at all, which perhaps was stating the position a little too widely as pointed out by Viscount Cave in a later case; but, be that as it may, all the noble Lords who formed the majority were of the view that what the members received were not profits but were their respective shares of the excess amount contributed by themselves.

The cases of *The Cornish Mutual Assurance Co. Ltd.* v. *The Commissioners of Inland Revenue*(1) and *Jones* v,

(1) [1926] A.C. 281; 12 Tax Cas. 841.

South Wales Lancashire Coal Owners' Association Ltd.(1), both of which were cases of mutual assurance companies with the liability of the members limited by guarantee carry the matter no further. Indeed, the decision in the *Cornish* case as to the surplus of the contributions over the expenses would have been the same as in *Styles'* case (supra) but for the special provisions of section 52(2)(b) according to which profit was made to include in the case of mutual trading concerns the surplus arising from transactions with members. *Jones'* case also shows that the fact that under the rules the surplus was not distributable except on the winding up of the company makes no difference in the application of the principle laid down in *Styles'* case (supra).

Municipal Mutual Insurance Ltd. v. *Hills*(2) was relied on by the learned Attorney-General as showing the real ground on which *Styles'* case (supra) was decided. The appellant there was an incorporated company. It was formed by the representatives of various local authorities by co-operation to insure against fire on favourable terms. Effective control was in the hands of the fire policy holders who alone were entitled, on winding up of the company, to participate in the surplus assets. In course of time the company undertook an extensive business in employers' liability and miscellaneous insurance. The Crown admitted that fire insurance business which was a mutual business was not taxable. The company admitted that the employers' liability and miscellaneous insurance business done with outsiders were liable to tax. The question was whether the employers' liability and miscellaneous insurance business done with fire policy holders who were members of the company were liable to be brought to charge. It was held by Rowlatt J. that they were and this decision was upheld by the Court of Appeal and the House of Lords. The argument in that case was that where the person with whom employers' liability or miscellaneous insurance business was done happened to be also a fire policy holder, the profit or

(1) [1927] A.C. 827; 11 Tax Cas. 790.
(2) (1932) 16 Tax Cas. 430; 48 T.L.R. 301; 147 L.T. 62.

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surplus arising from that operation came back into a body of which he himself was a member. This circumstance, it was claimed, made it mutual and as such exempt from taxation under *Styles'* case. This argument was repelled by Rowlatt J. on the ground, *inter alia*, that there was not the slightest distinction between what was made out of a member in respect of non-fire business and what was made out of a non-member out of non-fire business, for *qua* that business the member was a stranger. In other words, there was no identity in character of the contributor and the participator. Said Viscount Dunedin in the House of Lords :—

"In so far as the surplus arises from a fire policy they are really entitled to the money as being those who contributed it and accordingly it has been admitted that any profit made on the fire policies is governed by the New York case. But as regards employers' liability business and miscellaneous business it does not go to the contributors for, as fire policy holders in a body, they have not contributed and therefore the business is in the same position as business with complete outsiders, the surpluses in which are admitted to be profit."

Lord Macmillan said at page 447 of the report in Tax Cases :—

"The cardinal requirement is that all contributors to the common fund must be entitled to participate in the surplus and that all the participators in the surplus must be contributors to the common fund ; in other words there must be complete identity between the contributors and the participators. If this requirement is satisfied, the particular form which the association takes is immaterial."

Styles' case (supra) has recently been examined and explained by the Judicial Committee in *English & Scottish Joint Co-operative Wholesale Society Ltd.* v. *Commissioner of Agricultural Income-tax, Assam* (1). After referring to various passages from the speeches of the different Law Lords in *Styles'* case, Lord Normand, who delivered the judgment of the Board, summarised the grounds of the decision in *Styles'* case as follows :

(1) [1948] A.C. 405 ; 75 I.A. 196 ; 16 I.T.R. 270.

"From these quotations it appears that the exemption was based on (1) the identity of the contributors to the fund and the recipients from the fund, (2) the treatment of the company, though incorporated as a mere entity for the convenience of the members and policy holders, in other words, as an instrument obedient to their mandate and (3) the impossibility that contributors should derive profits from contributions made by themselves to a fund which could only be expended or returned to themselves."

The Judicial Committee held that none of these grounds was available on the special facts of the case before them and, therefore, the principles laid down in *Styles*' case (supra) were wholly inapplicable to that case.

It is clear to us, taking the facts admitted or found in the case before us, that the principles of *Styles*' case, as explained by subsequent decisions noted above, can have no application to this case. Here there is no mutual dealing between the members *inter se* in the nature of mutual insurance, no contribution to a common fund put up for payment of liabilities undertaken by each contributor to the other contributors and no refund of surplus to the contributors. There being no mutual dealing the question as to the complete identity of the contributors and the participators need not be raised or considered. Suffice it to say that in the absence, as there is in the present case, of any dealing between the members *inter se* in the nature of mutual insurance the principles laid down in *Styles*' case and the cases that followed it can have no application here. The principle that no one can make a profit out of himself is true enough but may in its application easily lead to confusion. There is nothing *per se* to prevent a company from making a profit out of its own members. Thus a railway company which earns profits by carrying passengers may also make a profit by carrying its shareholders or a trading company may make a profit out of its trading with its members besides the profit it makes from the general public which deals with it but that profit belongs to the members as shareholders and does

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not come back to them as persons who had contributed them. Where a company collects money from its members and applies it for their benefit not as shareholders but as persons who put up the fund the company makes no profit. In such cases where there is identity in the character of those who contribute and of those who participate in the surplus, the fact of incorporation may be immaterial and the incorporated company may well be regarded as a mere instrument, a convenient agent for carrying out what the members might more laboriously do for themselves. But it cannot be said that incorporation which brings into being a legal entity separate from its constituent members is to be disregarded always and that the legal entity can never make a profit out of its own members. What kinds of business other than mutual insurance may claim exemption from tax liability under section 10(1) of the Act under the principles of *Styles'* case need not be here considered; it is clear to us that those principles cannot apply to an incorporated company which carries on the business of horse racing and realises money both from the members and from non-members for the same consideration, namely, by the giving of the same or similar facilities to all alike in course of one and the same business carried on by it.

Learned counsel for the company then contends that the carrying on of the business of horse racing is not the only function or activity of the company. It also runs a club, that is to say, an association of persons who co-operate to provide for themselves social, sporting and similar amenities. If the contributions from the members of the club exceed the cost of providing the amenities and if the surplus is held for the benefit of the members such surplus, according to him, is not taxable. For this purpose no distinction, it is said, can be made between the entrance fees or the periodical subscriptions or any other sum (*e.g.*, admission fee, daily or seasonal) paid by the members for the right to make use of the amenities provided by the club. For the purposes of this argument it is said to be immaterial whether the club is an incorporated company or an unregistered association. Finally it is urged that

the fact that a club has business dealings with the public in respect of which tax is payable does not render the club liable to tax in respect of the difference between the cost of providing amenities for its members and the contribution towards this cost which the club takes from its members either by way of subscription or of charges for the use of club amenities. The advantage of a member, it is pointed out, is that he can meet his fellow members in the Members' Enclosure without having to rub his shoulders with the members of the public who have no right of entry in the Members' Enclosure and he can also have the various other amenities provided exclusively for members which are listed in the supplementary statement of the case. Reference is made by learned counsel to several club cases, English and Indian, and other cases in support of his contentions. *Styles'* case and other cases of mutual dealing have already been dealt with and need not be referred to again. It will suffice now to examine the club cases.

The earliest club case cited before us is that of *Carlisle and Silloth Golf Club* v. *Smith* (1). In that case the club was an unincorporated association of members who paid subscriptions and became entitled to play on the golf links of the club. There was no question of division of profits. Under the lease between the club and its lessors the club was bound to admit visitors on payment of "green fees". The only question was whether the profits arising out of the "green fees" collected from outsiders were taxable. In course of his judgment Buckley L. J. referred to *Styles'* case and said that a man could not make a profit or loss out of himself and that that was the ground of decision in *Styles'* case. It should not, however, be overlooked that the question whether the profits arising out of the members' subscription were assessable or not was not in issue in that case at all. That decision, therefore, does not help the company in this case.

In the *Royal Calcutta Turf Club* v. *Secretary of State* (2) the assessee was an unincorporated club. It was held

(1) [1913] 3 K.B. 75; 6 Tax Cas. 198.

(2) (1921) I.L.R. 48 Cal. 844; A.I.R. (1921) Cal. 633; (1921) 1 I.T.C 108.

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that the club carried on business within the meaning of the Excess Profits Duty Act (X of 1919) and was liable to pay tax in respect of money received from the public by way of entrance fees to the stand, entry fees for race horses, book makers' license fees and percentages of the totalisator. There, as in the *Carlisle and Silloth Golf Club* case (supra), no question was raised as to the taxability of moneys paid by the members of the clubs.

The case of the *United Services Club, Simla* v. *The Crown*(1) has been strongly relied on by learned counsel for the company. There the club was an incorporated company. It had no dealings with outsiders and derived no profit from outsiders. The question was directly raised as to whether the income derived from its members was taxable profit. It was held, on the authority of *Styles*' case and the *Carlisle & Silloth Golf Club* case, that under the English law the income derived by a society or club from its members was not liable to tax and that the same principle should be followed in India. The proposition so broadly stated overlooks the real grounds of the decision in *Styles*' case as explained in later cases and cannot be accepted as an accurate statement of the English law. In *Carlisle & Silloth Golf Club* case as in the *Royal Calcutta Turf Club* case, as already stated, the question of the moneys received from members was not in issue at all. In this case, namely, in the *United Services Club* case, there was no dealing between the company and the outside public at all and the surplus was derived by the club only out of its dealings with its members. There was no mutual dealing between the members *inter se* and there was no question of distribution of any surplus amongst the members and, therefore, there could be no question of identity of contributors and participators and as such the company could not claim exemption from tax under the principles of either of the two cases relied on by Martineau J. His decision can only be supported on the ground that the

(1) (1921) I.L.R. 2 Lah. 109; A.I.R. 1921 Lah. 208; 1 I.T.C. 113.

club did not really carry on any business with its members with a view to earning profits and, therefore, the surplus of receipts from the members over the expenditure could not be said to be profit of any business which could be assessed to tax.

The next case is what is known as the *Eccentric Club* case(1). In that case a company limited by guarantee carried on a social club, its objects being to promote social intercourse amongst gentlemen connected (directly or indirectly) with literature, art, music, the drama, the scientific and liberal professions, sports and commerce, to establish a club and generally to afford to members the usual privileges and advantages of a club, to sell and deal in or arrange for supply of all kinds of provisions and refreshments. By its memorandum of association the profits made by it were not distributable among its members either before or even after its winding up.. Payments were made by the members for services they received at the club premises, *e.g.*, the provision of meals etc. The company's account showed a surplus of income over expenditure. There was no receipt in the nature of trade from non-members. It was held by the Court of Appeal that the company was not carrying on any undertaking of a similar character to that of a trade or business within the meaning of section 53(2)(h) of the Finance Act, 1920. Warrington L.J. observed at pages 421-422 of the report in the Law Reports series:—

"The club proprietor, whether an individual or a company, carries on a business with a view to profit as an ordinary commercial concern. This the present company certainly does not do. I think the proper mode of regarding the company in the present case is as a convenient instrument for enabling the members to conduct a social club, the objects of which are immune from every taint of commerciality, the transactions of sale and purchase being purely incidental to the attainment of the main object. What is in fact being carried on, putting technicalities aside, is a members' club and not a proprietary club nor any undertaking of a similar character."

(1) [1924] 1 K.B. 390; 12 Tax Cas. 658.

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There was in that case no carrying on of any business with any outsider. The dealings with members were really not in the way of any trade or business and it is only on that basis that the profits were held not to fall within the Finance Act. The position of the company in the *United Services Club* case (supra) was similar and; as already stated, that decision can be supported only on this principle.

The case of *Dibrugarh District Club Ltd.* v. *Commissioner of Income-tax, Assam*(1), is, if anything, against the company. There an incorporated company carried on a club for the benefit of such persons as might become members. Under the articles of association no shareholder was entitled to the benefits and privileges of the club unless he was elected as a member. All shareholders were not members and all members were not shareholders. Profits were distributable only amongst the shareholders every year. It was held that the company was assessable on the full amount of its profits derived from shareholder members as well as from non-shareholder members as the company was not a mutual trading society making *quasi* profits by trading with its own members and returning such profits to its members. The absence of identity between the contributors and participators was quite obvious. The case of *The Maharaj Bag Club Ltd.* v. *Commissioner of Income-tax, C.P. & Berar* (2) follows the *Dibrugarh Club* case and carries the matter no further.

In *Commissioners of Inland Revenue* v. *Stonehaven Recreation Ground Trustees*(3) a recreation ground with facilities for tennis, bowls etc. was held on lease and managed by 9 trustees. Admission to the ground was by daily, fortnightly, monthly or season tickets issued to any applicant. Of the 9 trustees 6 were elected by the season ticket holders and the remaining by the Local Town Council. The trustees were held assessable as carrying on a trade. The position of the trustees was akin to that of the owner of a proprietary club who carried on the club with a view to earning profits.

(1) (1927) I.L.R. 55 Cal. 971; A.I.R. 1928 Cal. 577; 2 I.T.C. 521.
(2) (1931) 5 I.T.C. 201.
(3) (1929) 15 Tax Cas. 419; 8 Ann. Tax Cas. 523.

National Association of Local Government Officers v. *Watkins* (1) was concerned with an unregistered trade union having for its object the protection of the interests of employees in Local Governments and the promotion of the physical and social welfare of its members. The Association purchased an existing holiday camp to provide cheap holiday facilities for its members. Bookings were, however, for a short time accepted from non-members who had previously used the camp. By its rules the property of the Association belonged to the members and its profits enured for all members as a whole and not only for those members who used the camp. The Association contended that its liability should be confined to the profits made from non-members. The Crown claimed, on the other hand, that as the users of the camp were not identifiable with the whole membership there was no mutual trading and the whole of the profits had been properly assessed. Finlay J. gave effect to the contentions of the Association. The learned Judge laid emphasis on the fact that the Association was not a registered body and that, therefore, the property was the property, not of the Association but of the members themselves and that as the members owned the whole they had a right to participate in the whole and, therefore, there could not be any trade between the Association and a member or any sale to a member. The two decisions of the Judicial Commissioners' Court, namely, *Commissioner of Income-tax, Bombay* v. *Karachi Chamber of Commerce*(2) and *Commissioner of Income-tax, Bombay* v. *Karachi Indian Merchants Association*(3) were concerned with mutual dealings between members who had put up money for their mutual benefit. The surplus went to them not as shareholders but as persons who had contributed in excess and was in no sense a profit and could not, therefore, be brought to charge.

(1) (1934) 18 Tax Cas. 499.
(2) I.L.R. (1940) Kar. 140; [1939] 7 I.T.R. 575.
(3) A.I.R. 1939 Sind 56; [1939] 7 I.T.R. 595.

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As already stated, in the instant case there is no mutual dealing between the members *inter se* and no putting up of a common fund for discharging the common obligations to each other undertaken by the contributors for their mutual benefit. On the contrary, we have here an incorporated company authorised to carry on an ordinary business of a race course company and that of licensed victuallers and refreshment purveyors and in fact carrying on such a business. There is no dispute that the dealings of the company with non-members take place in the ordinary course of business carried on with a view to earning profits as in any other commercial concern. It is further admitted that some of the dealings of the company with its members take place in the ordinary course of business and the profits arising out of those dealings, *e.g.*, the fourth item of receipt of Rs. 82,490, are taxable. The company gives to its members the same or similar amenities as it gives to non-members, namely, the use of an unreserved seat in a stand, the facility to watch the races and to bet on the horses in the races, use of the totalisator in that stand and the facility for refreshment. In fact the daily ticket fee for admission into the Members' Enclosure is exactly the same as that for admission into the First Enclosure to which the public have access. The only difference is that a separate enclosure with a separate totalisator is provided for the members where they can meet their fellow members and not be disturbed by the intrusion of non-members. This privilege is referable to their membership of the company for which they pay an entrance fee on their election as members and for which they pay the periodical subscriptions both of which are not sought to be brought to charge. The rest of the facilities mentioned above which the members get are in substance the same as those enjoyed by the public. Those facilities are given to members and non-members alike for a price. The character of the charges made on members is precisely the same as or is similar to that of the charges made on non-members, for the company receives moneys from both members and non-members in return for the same or similar facilities given to

both in the course of one and the same business. The dealings in both cases disclose the same profit earning motive and are alike tainted with commerciality. In the circumstances, all the four items of receipts from members must be taken into account in computing the total income of the company. The fact that the company has so long enjoyed exemption from taxation is neither here nor there, for there can be no question of acquiring any prescriptive right to exemption from taxation.

The second question need not detain us long. The answer to that question depends on a true construction of section 10(6) of the Act. What is the meaning of " a trade or professional or similar association ? Does this company come within any of those descriptions ? It is certainly not a professional association. Learned counsel for the company contends that a "trade association" is not the same thing as a "trading association". According to Webster's New International Dictionary, 2nd Edn., page 264 the meaning of a "trade association" is an association of tradesmen, businessmen or manufacturers for the protection and advancement of their common interest. In our view the company before us is not a "trade association" in this sense although it carries on a business. In this view of the matter it is unnecessary to discuss the further question whether the facilities or amenities given by the company to its members may be regarded as "services" within the meaning of section 10(6). We are of opinion that section 10(6) has no application, for the company is not a trade or professional or similar association within the meaning of that sub-section.

The result, therefore, is that we hold that all the items of receipts from members referred to in the questions were received by the company from business with its members within the meaning of section 10(1) and that none of them was received by the company as a trade, professional or similar association within the meaning of section 10(6). In our judgment the High Court should have answered question No. 1 in the affirmative and question No. 2 in the negative. The

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appeal is allowed and we award to the Commissioner of Income-tax the costs of this appeal and those of the proceedings in the High Court.

Appeal allowed.

Agent for the appellant: *G. H. Rajadhyaksha.*

Agent for the respondent: *Rajinder Narain.*