# JAIPURIA SAMLA AMALGAMATED COLLIERIES LTD. ETC.

*v.*

# COMMISSIONER OF INCOME TAX, WEST BENGAL

*August* 31, 1971

[K. S. HEGDE AND A. N. GROVER, JJ.]

*Income Tax Act,* 1922, *s.* 10(4)—*Cesses imposed under—Bengal Cess Act,* 1880 *and Bengal (Rural) Primary Education Act,* 1930 *whether fall within mischief of section—Whether based on profits and gains of business profession or vocation.*

The appellant was a public limited company. It carried on the business of raising coal from coal mines and selling the same. It had taken on lease several mines from the owners of the coal bearing lands. As lessee of the mines the appellant incurred liability for payment of (i) Road and Public Works cess under the Bengal Cess Act of 1880; (ii) Education Cess levied under the Bengal (Rural) Primary Education Act, 1930. The amounts payable by the assessee on account of the aforesaid cesses were claimed by it as a deduction under s. 10 of the Income-tax Act, 1922. The Income-tax authorities disallowed that claim relying on s. 10(4) of the Act. The Tribunal and the High Court decided against the appellant. In appeal to this Court by special leave, the question for determination was whether the cesses levied under the aforesaid Bengal Acts fell within the mischief of s. 10(4) of the Act. It was common ground that these cesses were not levied on the profits or gains of any business, profession, or vocation but it was claimed on behalf of the Revenue that the cesses were assessed on the *basis* of such profits and gains and therefore they would be covered by the said provision.

HELD : (i) The words 'profits and gains of any business, profession, or vocation which are employed in s. 10(4) can, in the context, have reference only to profits or gains as determined under s. 10 and cannot cover the net profits or gains arrived at or determined in a manner other than that provided by s. 10. The whole purpose of enacting sub-s. (4) of s. 10 appears to be to exclude from the permissible deduction under cls. (ix) and (xv) of sub-s. (2) such cess, rate or tax which is levied on the profits or gains of any business profession or vocation or is assessed at a proportion of or on the basis of such profits or gains. In other words sub-s. (4) was meant to exclude a tax or a cess or a rate the assessment of which would follow the determination or assessment of profits or gains of any business, profession or vocation in accordance with s. 10 of the Act. [514 D—E]

(iii) The road cess and public works cess are to be assessed on the annual net profits under ss. 72 and 76 of the Cess Act 1880. The net annual profits have to be calculated on the average of the net profits for the last three years of the mine or the quarry and if the annual net profits of the property cannot be ascertained in the aforesaid manner then it is left to the Collector to determine the value of the property first in such manner as he considers expedient and determine 6 per cent on that value which would be deemed to be the annual net profits. The Cess Act of 1930 follows the same pattern so far as the ascertainment of annual net profits is concerned. These profits arrived at according to the provisions of the two Cess Acts can by no stretch of reasoning be equated to the profits which are determined under s. 10 of the Act. It is not possible to see, therefore, how s. 10(4) could be applicable at all in the

A present case. Thus on the language of the provisions both of the Act and the two Cess Acts the applicability of s. 10(4) cannot be attracted. [514 F—H]

*Commissioner of Income-tax, Bengal* v. *Gurupada Datta* 14 I.T.R. 100, applied.

B *Simbholi Sugar Mills Ltd.* v. *Commissioner of Income-tax, U.P. & V.P.* 45 I.T.R. 125 and *Commissioner of Income-tax, Delhi & Rajasthan* v. *Banarsi Dass & Sons,* 61 I.T.R. 414, approved.

*Commissioner of Income-tax, West Bengal* v. *West Bengal Mining Co.* 67 I.T.R. 292, disapproved.

C CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1910 to 1912 and 2112 of 1968, and 1102 to 1105 of 1971.

Appeals by certificate/special leave from the judgments and orders dated July 28, 1967, March 29, 1968, May 24, 1968 of the Calcutta High Court in Income-tax References Nos. 170 of 1963, 40 of 1965 and 4 of 1967.

D *V. S. Desai, N. R. Khaitan, B. P. Maheshwari* and *Krishna Sen,* for the appellants (in all the appeals).

*B. Sen, K. S. Suri, R. N. Sachthey* and *B. D. Sharma,* for the respondent (in C.As. Nos. 1910 to 1912 of 1968, and 1102 to 1104 of 1971).

E *B. D. Sharma,* for the respondent (in C.As. Nos. 2112 of 1968 and 1105 of 1971).

The Judgment of the Court was delivered by

F **Grover, J.** These appeals from judgments of the Calcutta High Court in Income-tax References involve a common question. We shall refer to the facts in the batch of appeals of Jaipuria Samla Amalgamated Collieries Ltd.

The assessee is a public limited company incorporated under the Indian Companies Act 1913. It carried on the business of raising coal from coal mines and selling the same to its constituents. It had taken on lease several coal mines from the owners of the coal bearing lands. As lessee of the mines the assessee incurred liability for payment of (i) Road and Public Works cess under the Bengal Cess Act of 1880; (ii) Education cess levied under the Bengal (Rural) Primary Education Act, 1930. The amounts payable by the assessee on account of the aforesaid cesses were claimed by it as deduction under s. 10 of the Income-tax Act, 1922, hereinafter referred to as the "Act", in the computation of its profits. The income tax authorities disallowed that claim relying on s. 10(4) of the Act. The assessee went up in appeal to the

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Appellate Tribunal which agreed with the orders of the departmental authorities. The questions which were submitted by the Tribunal with the statement of the case relating to the assessment years 1954-55, 1955-56 were as follows :—

> "(1) Whether, on the facts and in the circumstances of the case, the Road, the Public Works and the Education Cesses were levied either on the profits or gains of the business or were assessed at a proportion of or otherwise on the basis of any such profits within the meaning of s. 10(4) of the Income tax Act, 1922 ?
>
> (2) Whether, on the facts and in the circumstances of the case, the amounts provided for or paid by the assessee company, as Road and Public Works Cess and the Education Cess was allowable as a deduction under s. 10(2)(ix) or 10(2)(xv) of the Indian Income tax Act, 1922, read with s. 10(4) of the said Act ?"

The High Court answered the questions against the assessee. The assessee filed appeals to this Court after obtaining a certificate of fitness but the same was found defective owing to want of any reasons or grounds in the order granting the certificate. Instead of getting the matters remitted to the High Court for giving reasons petitions for special leave were filed before us and leave was granted. We have heard the appeals by special leave on the printed record of the appeals by certificate. It may be mentioned that this position obtains in all the appeals by certificate before us.

Section 10(1) of the Act provides that tax shall be payable by an assessee under the head "profits and gains of business, profession or vocation" in respect of the profits and gains of any business profession or vocation carried on by him. Sub-section (2) says that such profits or gains shall be computed after making the allowances set out therein. Clauses (ix) and (xv) of this sub-section are as follows :—

> "(ix) any sums paid on account of land revenue, local rates or municipal taxes in respect of such part of the premises as is used for the purpose of the business, profession or vocation."
>
> "(xv) any expenditure not being an allowance of the nature described in any of the clauses (i) to (xiv) inclusive, and not being in the nature of capital expenditure or personal expenses of the assessee laid out or expended wholly and exclusively for the purpose of such business, profession or vocation."

Sub-section (4) of s. 10 to the extent it is material is in the following terms :

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> (4) Nothing in clause (ix) or clause (xv) of sub-section (2) shall be deemed to authorise the allowance of any sum paid on account of any cess, rate or tax levied on the profits or gains of any business, profession or vocation or assessed at a proportion of or otherwise on the basis of any such profits or gains....."

B The essential question that has to be determined is whether the cesses levied under the aforesaid Bengal Acts fell within the mischief of s. 10(4) of the Act. It is common ground that these cesses are not levied on the profits or gains of any business, profession or vocation but it has been claimed on behalf of the Revenue and that contention was accepted throughout that the C cesses are assessed on the basis of such profits or gains and therefore they would be covered by the said provision.

According to the preamble to the Bengal Cess Act 1880, the road and works cesses were levied on immovable property *inter-alia* to provide for the construction and maintenance of roads and D other works of public utility. Under s. 5 all immovable property with certain exceptions was to be liable to the payment of road cess and public works cess. Section 6 laid down that these cesses were to be assessed on the annual value of lands and until provision to the contrary was made by the Parliament on the annual net profits from mines, quarries, tramways, railways and other immovable property on such rates as were to be determined in E the manner prescribed. Under s. 72 the Collector of the district had to serve a notice upon the owner etc. of every mine, quarry..... and immovable property requiring him to lodge a return of the net annual profits of such property calculated on the average of the annual net profits thereof for the last three years for which accounts had been made up. Section 75 F provided for a contingency where a return was not furnished within the prescribed period. The Collector in that case or if he found that the return made was untrue or incorrect was to proceed to ascertain and determine by such ways or means as seemed expedient the annual net profits of such property calculated as aforesaid. If the Collector was unable to ascertain the annual net profits he could ascertain and determine the value of the property G and thereupon determine 6% of such value to be the annual net profits thereon (s. 76). The scheme of the Bengal (Rural) Primary Education Act 1930 may next be referred to. The preamble to that Act was as follows :—

> H "Whereas it is expedient to make better provision for the progressive expansion and for the management and control of primary education in rural areas in Bengal so as to make it available to all children and with a view to make it compulsory within ten years.....

According to s. 29 all immovable property on which the road and public works cesses were assessed were to be liable to the payment of primary education cess. The rates on which the education cess was to be levied varied according as the property consisted of mines and quarries or of tramways, railways and other immovable property. As regards mines and quarries it was to be levied at the rate of three and a half pice on each rupee of annual net profits.

Now it is quite clear that the aforesaid cesses would be allowable deductions either under clause (ix) or clause (xv) of sub-s. (2) of s. 10 unless they fell within s. 10(4). We have already referred to the provisions of both Acts under which the cesses are levied which show that their assessment is not made at a proportion of the profits of the assessee's business. What has to be determined is whether the assessment of the cesses is made on the basis of any such profits. The words "profits and gains of any business, profession or vocation" which are employed in s. 10(4) can, in the context, have reference only to profits or gains as determined under s. 10 and cannot cover the net profits or gains arrived at or determined in a manner other than that provided by s. 10. The whole purpose of enacting sub-s. (4) of s. 10 appears to be to exclude from the permissible deductions under clauses (ix) and (xv) of sub-s. (2) such cess, rate or tax which is levied on the profits or gains of any business, profession or vocation or is assessed at a proportion of or on the basis of such profits or gains. In other words sub-s. (4) was meant to exclude a tax or a cess or rate the assessment of which would follow the determination or assessment of profits or gains of any business, profession or vocation in accordance with the provisions of s. 10 of the Act.

The road cess and public works cess are to be assessed on the annual net profits under ss. 72 to 76 of the Cess Act 1880. The net annual profits have to be calculated on the average of the net profits for the last three years of the mine or the quarry and if the annual net profits of the property cannot be ascertained in the aforesaid manner then it is left to the Collector to determine the value of the property first in such maner as he considers expedient and determine 6 per cent on that value which would be deemed to be the annual net profits. The Cess Act of 1930 follows the same pattern so far as the ascertainment of annual net profits is concerned. These profits arrived at according to the provisions of the two Cess Acts can by no stretch of reasoning be equated to the profits which are determined under s. 10 of the Act. It is not possible to see, therefore, how s. 10(4) could be applicable at all in the present case. Thus on the language of the provisions both of the Act and the two Cess Acts the applicability of s. 10(4) cannot be attracted. But even according to the decided cases

A such cesses cannot fall within s. 10(4). The Privy Council in *Commissioner of Income tax, Bengal* v. *Gurupada Dutta & Others*(1) had to consider whether the rate imposed under the provisions of the Bengal Village Self Government Act 1919 on a person occupying a building and using the same for the purpose of business was an allowable deduction in computing the profits of the B business under s. 10 of the Act. Their Lordships laid down the law in the following words :

> "It will be noted that, in the absence of the necessary powers and machinery, which are not provided by the Act, the estimate of the annual income from business C can only proceed on a rough guess, which is in no way comparable with the ascertainment of profits and gains under the Income-tax Act, and, in the opinion of their Lordships, the inclusion of this element of business income as part of the "circumstances" of the assessee with a view to the imposition of the union rate does not fall within sub-section (4) of Section 10 of the Income D tax Act. It is conceded that the union rate is not "levied on the profits or gains", which clearly implies an ascertainment of such profits and gains, and the words "assessed..... on the basis of any such profits or gains" in the later part of the sub-section must also be so limited. No such ascertainment of the profits and E gains of the business can be undertaken for the purposes of the union rate. The main argument for the Crown, therefore fails."

In our judgment this decision is quite apposite and fully covers the points under consideration. It has been followed by the Allahabad High Court in *Simbholi Sugar Mills Ltd.* v. *Commis-* F *sioner of Income tax, U.P. & V.P.*(2) in which the question related to the deductibility of tax payable under the U.P. District Boards Act 1922 which was imposed on persons assessed according to their circumstances and property. Similarly in *Commissioner of Income tax, Delhi and Rajasthan* v. *Banarsi Dass & Sons*(3), the Punjab High Court held that a tax imposed under G the U.P. District Boards Act on circumstances and property could be legitimately claimed as an allowance and the above decision of the Privy Council was followed. In the Income tax Act 1961, s. 28 relates to the income which shall be chargeable to income tax under the head "profits and gains of business or profession". Section 30(b)(ii) is equivalent to cl. (ix) of s. 10(2) of the Act. Section 40(a)(ii) corresponds to s. 10(4) of the Act. It is H significant that in spite of the decision of the Privy Council in

(1) 14 I.T.R. 100. (2) 45 I.T.R. 125.

(3) 61 I.T.R. 414.

*Gurupada Dutta's* case(1) the Parliament did not make any change in the language of the provisions corresponding to s. 10(4). It can, therefore, legitimately be said that the view of the Privy Council with regard to the true scope and ambit of s. 10(4) of the Act was accepted. We are unable to concur in the reasoning or the conclusion of the Calcutta High Court in *Commissioner of Income tax, West Bengal,* v. *West Bengal Mining Co.*(2) in which it was held that the two cesses being related to profits would attract s. 10(4) of the Act.

In the result Civil Appeals Nos. 1102 to 1105 of 1971 which are by special leave are allowed and the answers returned by the High Court are discharged. The questions referred shall stand answered in favour of the assessees and against the Revenue. The assessee shall be entitled to their costs in this Court.

Civil Appeals Nos. 1910 to 1912 of 1968 and 2112 of 1968 in which the certificates are defective and have to be revoked shall stand dismissed.

G.C. *Ordered accordingly.*

(1) 14 I. T. R. 100. (2) 67 I.T.R. 292.