

In Re: Doraiswami Iyer and Co.

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Court : Mumbai

Decided On : Oct-12-1920

Reported in : (1921)23BOMLR609

Judge : Norman Macleod, Kt., C.J. and ;Fawcett, J.

Appellant : In Re: Doraiswami Iyer and Co.

Judgement :

Norman Macleod, Kt., C.J.

1. This is a rule granted to the petitioners whereby it was ordered that the Chief Revenue Authority of Bombay should show cause, if any, why it should not, under Section 45 of the Specific Relief Act, draw up a statement of the case showing why the petitioners have not been exempt from payment of excess profit under Clause 2 of Schedule I of the Excess Profits Duty Act X of 1919 and refer it with its own opinion to the High Court, or, in the alternative, why the Chief Revenue Authority under the said section of the said Specific Relief Act should not hear and determine according to the law the petitioners' application to refer the said question to this Honourable Court.

2. Under Section 15 of the Excess Profits Duty Act Sections 49-52 of the Indian Income Tax Act of 1918 are applicable. Section 51 of the Income Tax Act says:-

If in the course of any assessment under this Act or any proceeding in connection therewith other than a proceeding under Chapter VII, a question has arisen with

reference to the interpretation of any of the provisions of this Act or of any rule thereunder, the Chief Revenue Authority may, either on its own motion or on reference from any Revenue officer subordinate to it, draw up a statement of the case, and refer it, with its own opinion, thereon, to the High Court, and shall so refer any such question on the application of the assessee unless it is satisfied that the application is frivolous or that a reference is unnecessary.

3. The Collector and the Chief Revenue Authority decided that the petitioners were liable to be assessed under the Excess Profits Duty Act, as under Section 3, the Act was applied to every business other than the business specified in Schedule I, The petitioners contend that, they come within one of the exceptions in Schedule I. The Chief Revenue Authority in its decision states :-

The appellants are really a separate, firm carrying on under a contract a commission business for the Mills Firm. This does not seem to me to be at all an 'Office or employment' which under Schedule I would be exempted. The appellants really constitute a separate business technically from that of the Mills Co., of which they act as agents. The point is, I think, clear and it seems to me not necessary to refer it to the High Court as asked by appellants.

4. Therefore the Chief Revenue Authority was satisfied that a reference was unnecessary, and under Section 51 of the Indian Income Tax Act, the Chief Revenue Authority was authorized to come to that decision. We are asked under Section 45 of the Specific Relief Act to hold that the making of the reference was clearly incumbent on the Chief Revenue Authority in its public character; but it is clearly not incumbent to make a reference whenever an application for a reference is made, although it may be stated that Section 51 is rather too wide in its terms. There certainly might be Cases in which, if the application for a reference were refused, the Court might consider that it was a case in which it was incumbent for the Chief Revenue Authority to make the reference. However it may be as well to consider the petition on its merits and to see whether the Chief Revenue Authority exercised wise discretion in coming to the conclusion that a reference was unnecessary.

5. The petitioners contend that all offices or employments without any exception come within the term 'excepted business' in Schedule I. Now the proviso which comes after No. 8 in Schedule I is obviously taken from Section 39, Chap. 89, of the English Finance Act (No. 2) of 1915. That section provided that the trades and businesses to which that part of the Act applied were all trades or businesses (whether continuously carried on or not) of any description carried on in the United Kingdom or owned or carried on in any other place by persons ordinarily resident in the United Kingdom excepting those described in (a), (b) and (c), but included the business of any person taking commissions in respect of any transactions or services rendered, or any agent of any description not being a whole-time officer or servant of the business or a commercial traveller or an agent whose remuneration consists wholly of a fixed and definite sum not depending on the amount of business done or any other contingency.

6. The draftsman of Schedule I evidently took that section for his model, but did not exercise sufficient care in the transposition of its terms which became necessary owing to the businesses which were excepted being entered in a Schedule instead of in the body of the Act. The last paragraph of Section 39 of the English Finance Act made it clear that certain businesses were included in the term 'all trades and businesses' and did not come within any of the exceptions. The proviso in Schedule I can, strictly speaking, only be appropriately attached to Exception 2 and possibly to Exception 1, but I think the only way in which the proviso can be given any meaning is to read it as governing generally the three kinds of businesses which were enumerated under headings 1, 2 and 3 or put in another way as including the businesses mentioned therein as within the terms of a. 3 of the Act. Any other construction given to the proviso would result in absurdity. If attached to heading No. 3 only it becomes meaningless. Obviously it was never intended that persons in the position of the petitioners acting as agents, secretaries and treasurers, or agents of a mill company under the usual form of agreement and remunerated by a commission which would depend either on the out-turn or on the amount of profits, were to be considered as carrying on a business excepted under Schedule I. Nor can it be said that the petitioners are whole-time officers or servants of the business, because all that the agreement provides for is, that subject to the control of the Directors the said firm shall have

the general conduct and management of the business and affairs of the company. They are not officers of the company in the strict sense of the word, nor are they servants. They are a firm which for a certain agreed remuneration has consented to do the work which is detailed under clause III of the agreement. There is nothing whatever in the agreement which would prevent the petitioners in carrying on any other business so long as they carried on the work under the agreement in the proper manner.

7. I think, therefore, on every ground the rule must be discharged with costs.

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