

In Re: Ram Prasad

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Court : Allahabad

Decided On : Nov-21-1929

Reported in : AIR1930All389

Appellant : In Re: Ram Prasad

Judgement :

Mukerji, J.

1. This is a reference by the Commissioner of Income-tax under Section 66(2), Income-tax Act of 1922.
2. The assessee is the Tehri State. It appears that the State has grown timber within its territory, and annually, it arranges to sell the timber at two places in British India, namely, Hardwar in the United Provinces and Abdullahpur in the Punjab. The method of business is this: Annual auctions are held at Dehra Dun and certain prices are offered. These offers are communicated to the State capital, and there, on their acceptance, money is deposited by the purchasers, in the Imperial Bank of India, in its Dehra Dun branch. It also appears that, later on, the State appointed a certain gentleman, by the name of Pandit Ghananand, to carry on the sale of timber. He having died shortly after, a State official was appointed to carry on the business. This was Pandit Sadanand.
3. The year on the basis of the income of which, income-tax is to be calculated is 1925-26. The tax is to be paid in the year 1926-27. An assessment having been

proposed, the State opposed it on several grounds. There was an appeal to the Commissioner of Income-tax, and he considerably reduced the proposed tax. Being, however, dissatisfied with the ultimate assessment, the Tehri State asked for a reference, and four points have been put before us for our opinion. These are:

(1) Whether the Government Trading Taxation Act and the Income-tax Act are applicable to the Tehri State?

(2) Whether, since the Government Trading Taxation Act only came into force on 1st April 1926, there is any liability for assessment with reference to transactions which took place before that date?

(3) Whether the royalty is nothing but the price of the forest produce as it stands on the ground and, therefore, not assessable?

(4) Whether the acts of the State in arranging for the sale of timber and in receiving the proceeds of the contracts in British India constitute trading in British India?

4. The case for the assessee has been very ably and at some length argued by Sir Tej Bahadur Sapru, and we are greatly indebted to him for his illuminative arguments.

5. The first point is that the Tehri State is not amenable to the jurisdiction of the Indian legislature, and neither the Income-tax Act nor the Government Trading Taxation Act can apply to the State. To start with, we have to see whether the Government Trading Taxation Act (3 of 1926) is applicable, for that Act has, to some extent, amended and explained certain provisions of the Income-tax Act of 1892. By the preamble of the Government Trading Taxation Act we are told that this Act was meant:

to determine the liability of certain Governments to taxation in British India in respect of trading operations.

6. The object, therefore, of the Act is to tax Governments who may be trading in British India. The legislature, deliberately, has set out on taxing Governments. Section 2 of the Act reads as follows:

(1) Whether a trade or business of any kind is carried on by or on behalf of the Government of any part of His Majesty's Dominions, exclusive of British India, that Government shall, in respect of the trade or business and of all operations connected therewith, all property occupied in British India and all goods owned in British India for the purposes thereof, and all income arising in connexion therewith, be liable:

(a) to taxation under the Income-tax Act, 1922,....

7. By sub-S. 3 of the same Section 2, we are furnished with the meaning of the expression 'His Majesty's Dominions.' The expression is defined to include any territory which is under His Majesty's protection....' Now, the question is whether the Tehri State is part of His Majesty's Dominions. If it is, the Government Trading Taxation Act of 1926 would be applicable, by virtue of sub-S. 1, Section 2. The treaty between the Tehri State and the British Government has been read out to us. It will be found at p. 34, Vol. 1, 'Treaties, Engagements and Sanads' by Aitchison. The sanad granted to the Rajah of Garhwal concludes with the following sentence:

While these conditions shall be faithfully observed, the British Government will guarantee the Rajah and his posterity in the secure possession of the country now conferred upon him and will defend him against his enemies.

8. The sentence quoted above, in our opinion, furnishes to us an answer as to what is meant by the phrase: 'His Majesty's protection,' to be found in Section 2(3), Government Trading Taxation Act. In our opinion the Tehri State is included in a territory which is under His Majesty's protection. It would follow, as we have already mentioned that the Government Trading Taxation Act of 1926 is applicable to the Tehri State.

9. Now, let us see what is the significance of the passing of the Act 3 of 1926. By sub-S. 2, Section 2:

For the purposes of the levy and collection of income-tax under the Income tax Act. 1922... any Government to which that subsection applies shall be deemed to be a 'company' within the meaning of that Act and the provisions of that Act shall apply accordingly.

10. The result is that within the meaning of Section 3, Income-tax Act of 1922, a Government, which carries on trade in British India, is to be treated as a company. The trading 'company' is liable to pay income-tax under Section 3 of the Act of 1922. The relevant portion of that section is as follows:

Where any Act of the Indian legislature enacts that income-tax shall be charged for any year..., tax shall be charged... in respect of all income, profits and gains... of every individual, Hindu undivided family, company, firm and other associations of individuals.

11. The trading Government as a 'company' becomes liable to pay income-tax under Section 3.

12. The learned counsel for the assessee has argued that under Section 65, Government of India Act, the Indian legislature has power to make laws only for persons within British India and that the Tehri State being not a person within British India is not subject to the Indian legislature. In this view, the learned counsel went on to argue, the whole Act 3 of 1926 was ultra vires of the Indian legislature. We do not think that this argument is quite sound. The English Interpretation Act of 1889, by Section 19, defines the word 'person.' S.19 runs as follows:

In this Act, and in every Act passed after the commencement of this Act, the expression 'person' shall, unless contrary intention appears, include any body of persons, corporate or incorporate.

13. It may be that the person who governs the State is a single individual or a body of persons. In either case, the governing authority, single or several in number, will

come within the definition of the 'person' in Section 65, the Government of India Act and those persons, carrying on business within British India would be subject to any law that the Indian legislature should frame and promulgate. The object of the Income-tax Act is to charge income acquired in British India and it is not in the contemplation of the Act to claim anything in respect of something done in the territory of a Government which may have sovereign rights within its own territories. In our opinion Act 3 of 1926 was intra vires of the Indian legislature.

14. Now we come to question 2. The argument is that the income that is being taken into consideration for taxation accrued to the State in 1925-26, that the Government Trading Taxation Act came into force on 1st April 1926 and that therefore, it could have no application to the income which was earned in the previous year (1925-26). On the face of it this argument is very attractive but in view of the language employed in Section 3, Taxation Act, we do not think that it has much force. The Tehri State we have been told has continued this business in years subsequent to 1925-26 and the Income-tax Department has sought to assess it for the year 1926-27. The tax is to be paid in and for that year. The Income-tax Department is armed with powers to tax the Tehri State any time after 1st April 1926. That being so, let us read Section 3, Act 3 of 1926. We have already read it once before. Now substituting the years with which we have to deal the section would read as follows:

Where any Act of the Indian legislature enacts that income-tax shall be charged for the year 1926-27... tax... shall be charged for the year 1926-27... in respect of all the income profits and gains of the previous year (1925-26.)....

15. This is the natural reading of Section 3, in view of the facts before us. It seems to be quite clear to us that the tax which has to be paid by the Tehri State for the year 1926-27 is to be paid on the amount of profits earned by it in the year 1925-26. If the State decided to stop its business say in the year 1930-31, the tax paid by it in 1930-31 on the basis of the income of the year 1930-31 would be liable to be refunded in so far as the income of the year 1930-31 fell short of the income earned in 1929-30.

16. Now we come to the third point. The argument of the learned counsel for the assessee is that the money received is really the value of the capital which has changed its shape and there are no profits. This really in our view at any rate is a question of fact. How the Income-tax Department has looked upon the matter is this. By sale of timber the State is supposed to have made profits. For growing timber a certain amount of capital expenditure is necessary. The British Indian Government has also extensive forests. It employs officers, spends money, sells timber and makes a profit. The Income-tax Department assumed in the absence of any evidence to the contrary that the Tehri State does the same. The net profits made by the British Indian Government amount to about 44 per cent. The Commissioner of Income-tax reduced the profits which the Tehri State presumably made to 35 per cent. Now, to go back to the argument of royalty as we have already stated it is virtually a question of fact. The question is whether what has been received by the Tehri State is the value of its capital or whether it includes capital and profits. We have already mentioned that the State carries on this business of growing timber and selling it. This presumably is done for profit. We have already stated that the British Indian Government does the same thing and makes a profit. It is, therefore, reasonable to expect that all the money that was sunk in the business brought back not only itself but something more in the shape of profit. If it were the case that what were the receipts were only the capital which had changed its shape the argument of the learned counsel would have been very good. We find that the amount on which the tax has been assessed represents no capital but only the estimated profit. In this view the answer that we should return is that only the income has been taxed and not the capital.

17. Coming to the fourth point here again is a question of fact although the learned Commissioner was doubtful whether it was purely a question of fact or partly a question of law. The question is whether the acts of the State in arranging for the sale of timber and in receiving the proceeds of the contracts in British India constitute 'trading in British India,' We are of opinion that the answer must be in the affirmative. The sales were arranged in British India and the money was received in British India. What remained to be done in the capital of the State itself was the acceptance of the offer made by the purchaser. We do not think that the matter requires much discussion. The money was received by the Imperial Bank at

Dehra Dun as the agent of the Tehri State. The receipt by the Bank was a receipt on behalf of the State. As already stated we answer the question in the affirmative.

18. The result is that none of the grounds taken by the Tehri State appear to be tenable.

19. Let a copy of this judgment be sent to the Commissioner of Income-tax as the answer to his reference to this Court.

20. The learned Government Advocate is entitled to a fee of Rs. 250 if he files a certificate of fee within a month.

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