

Bareilly Corporation Bank Ltd. vs Commr. Of Income-Tax, United ... on 9 September, 1952

Equivalent citations: AIR1953ALL198, [1952]22ITR528(ALL), AIR 1953 ALLAHABAD 198

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Bench: V. Bhargava

JUDGMENT

V. Bhargava, J.

1. In this reference under Section 21 of the Excess Profits Tax Act read with Section 66(1) of the Income-tax Act, the following question has been referred to us for decision :

"Whether in the circumstances on the construction of the Articles of Association of the applicant company and in view of the provisions of Section 2(5) of the E.P.T. Act and Sub-rule 2 of Rule 4 of Schedule 1 of the E.P.T. Rules the income from investment in shades, securities and immovable property could be legally assessed to E.P.T. ?"

2. The statement of the case sent by the Income-tax Appellate Tribunal shows that the assessee, Bareilly Corporation Bank Ltd., Bareilly is carrying on banking business as its main business. It also made investments in shares and securities and happened to acquire certain immovable property. The question arises whether the income from the investments in shares and securities and immovable property could be legally assessed to excess profit tax and the Tribunal held that it could be taxed as these investments were only expansion of the banking business and were the assets of such business. On this finding the Tribunal was of the view that the business activities of the company were covered by that part of the definition of the word 'business' as given in Section 2(5) of the E.P.T. Act, which defined 'business' as including any trade, commerce or manufacture or any adventure in the nature of trade, commerce or manufacture and held that under Clause 2 of Rule 4 of the E. P. T. Rules incorporated in Schedule 1 to E. P. T. Act, the income of the appellant arising from investments made in the course of the banking business and the income derived from the rentals of the immovable properties was chargeable to E. P. T. In coming to this view the Tribunal did not accept the contention of the assessee that the function of the assessee company did not consist wholly and mainly in the holding of investments in the other property.

3. In our view, the question as to whether the business of the assessee consists wholly or mainly in

dealing in or holding of investments does not at all arise in this case. It is the admitted case of the parties that the assessee is carrying on banking business. Rule 4(2) of Schedule 1 of the E. P. T. Rules is as follows: --

"In the case of the business of a building society, or of a moneylending business, banking business insurance business or business consisting wholly or mainly in the dealing in or holding of investments, the profits shall include all income received from investments, whether or not such income is included in the profits charged under Section 10 of the Income-tax Act, 1922, or is charged under any other section of that Act, or has been subjected to deduction of tax at source or is free of or exempt from income-tax."

4. The rule makes it clear that in the case of (1) a business of building society, (2) a moneylending business, (3) a banking business and (4) an insurance business income received from investments must be included in the profits for the purpose of assessment of excess profit tax and no question arises in such cases whether the business consists wholly or mainly in dealing in or holding of investments. It is only when the business of the assessee does not fall within any of these classes that the Act requires that the business should consist wholly or mainly in dealing in or holding of investments in order to make the income from the investments liable to be included in profits for the purposes of Assessment Act. Since the assessee is carrying on banking business, the profits for the assessment of excess profit tax must in its case include all income received from investments whether the investments are in shares, securities or immovable property.

5. Consequently our answer to the question referred is in the affirmative. The assessee must pay the costs of the Department which we fix at Rs. 300/-.