

## **City Board, Mussoorie vs Commissioner Of Income-Tax, U.P., ... on 19 August, 1952**

**Equivalent citations: AIR1953ALL43, [1952]22ITR259(ALL), AIR 1953  
ALLAHABAD 43**

**Author: V. Bhargava**

**Bench: V. Bhargava**

### **JUDGMENT**

Malik, C.J.

1. The City Board, Mussoorie, which is a Municipal Board, constituted under the U. P. Municipalities Act (NO. 2 of 1916) supplies electric energy and water outside its municipal limits at a profit. The Excess Profits Tax Officer held that on such profits derived from business carried outside its territorial limits the City Board, Mussoorie, is liable to pay excess profits tax. The City Board contested this position and mainly relied on the definition of the word 'person' in Section 2(17), Excess Profits Tax Act. The Income Tax Appellate Tribunal held against the City Board and on an application made by the Board the following questions have been referred to us under Section 66 (1), Income-tax Act read with Section 25, Excess Profits Tax Act:

"(i) Whether the applicant's income arising from the supplies of electric energy and water outside its own jurisdictional area, is chargeable to excess profits tax under the first proviso to Section 4, E. P. T. Act, 1940, read with Clause (III) of Sub-section (3) of Section 4, Income-tax Act, 1922 ?

(ii) Whether the provisions of Section 2 (17), E. P. T. Act, 1940, can be construed to mean that 'person' includes a local authority ?

(iii) Whether the scheme of the machinery sections of these E. P. T. Act provides no method of the recovery of excess profits tax from a local authority ?"

Though the Tribunal has framed three questions the point for decision is whether the City Board, Mussoorie, is liable to excess profits tax on the profits made from supply of electric energy and water outside its jurisdictional areas.

2. Learned counsel for the assessee has urged that as a local authority is not included in the definition of the word 'person' in the Excess Profits Tax Act excess profits tax cannot be levied against the Municipal Board, Mussoorie. He has further relied on the provisions of Section 4, Excess Profits Tax Act and has urged that that section gives a total exemption and, therefore, the City Board cannot be made liable for payment of excess profits tax even as regards income derived from its business carried on outside its territorial jurisdiction.

3. Under Section 4 (3) (iii), Income-tax Act, before its amendment in 1939, the income of local authorities was totally exempt. After amendment the exemption was limited to income from trade or business carried on within its own jurisdictional area. At the same time when this amendment was made, the definition of the 'person' in Section 2 (9) was also amended so as to include a local authority. The old section read as follows : " 'Person' includes a Hindu undivided family;" After the amendment it reads :

" 'Person' includes a Hindu undivided family and a local authority;"

The Excess Profits Tax Act (Act 15 of 1940) was enacted in the year 1940 and in Section 2 (17) of this Act the old definition was maintained. It is as follows :

" 'Person' includes a Hindu undivided family;"

As regards exemptions the proviso to Section 4 is as follows :

"Provided that any profits which are, under the provisions of Sub-section (3) of Section 4, Income-tax Act, 1922, exempt from Income-tax, and all profits from any business of life insurance shall be totally exempt from excess profits tax under this Act."

It will be noticed that under this proviso exemptions are only granted from payment of excess profits tax in cases where exemption has been granted under Sub-section (3) of Section 4, Income-tax Act, 1922, except in the case of business of life insurance of which special mention is made.

4. Learned counsel had to admit that profits derived from supply of water and electricity beyond the jurisdictional area of the City Board of Mussoorie was liable to income-tax. The exemption from payment of excess profits tax could, under the proviso to Section 4, Excess Profits Tax Act, therefore, be claimed only if there was exemption from payment of income-tax under Sub-section (3) of Section 4, Income-tax Act. Learned counsel has, however, relied on the word 'totally' and has urged that the word 'totally' in the proviso was intended to make a change and while under Sub-section (3) of Section 4 there was a partial exemption granted in case of income-tax to local authorities, there was a total exemption granted from payment of excess profits tax. We do not think the word 'totally' in the proviso to Section 4, Excess Profits Tax Act can be interpreted in that way. All that it means is that if income-tax is not payable under Sub-section (3) of Section 4, Income-tax Act, no excess profits tax would be payable on that income.

5. Learned counsel has urged that excess profits tax was imposed to tax abnormal profits made due to the war conditions as it was felt that profits made in excess due to such a calamity as war should be handed back in the shape of excess profits tax to meet the abnormal expenses caused by the war. The same reasoning, it is suggested, would not apply to a local authority which was not likely to take advantage of the war conditions and make large additional profits. It is not for us to go into the policy, nor is it correct to suggest that it was not possible for a local authority to make abnormally high profits due to conditions prevailing during the war. There would be no reason to grant an exemption on the ground suggested by learned counsel and the case will have to be decided on the interpretation of the relevant sections of the Act.

6. As regards the definition of the word 'person' no doubt in the Amending Act of 1939 the word 'person' was defined to include a local authority, but in the very next year, when the Excess Profits Tax Act was passed, the amendment already made in the Indian Income-tax Act was not reproduced and the old definition of the word 'person' was retained. It must, however, be borne in mind, that the Amending Act of 1939 did not really make a change in the definition of the word 'person'. The amendment was made merely to clarify the position and to remove all doubts. When a definition is said to include something it might be with the object of giving it an extended meaning or it might be with the object of clarification or removal of doubts. A study of the relevant provisions of Section 4 (3) (iii), Income-tax Act itself, before the amendment, would show that the amendment of 1939 was merely for purposes of clarification. If the word 'person' could not before the amendment; made in 1939 include a local authority, it was not necessary to provide in Section 4 (3) (iii) that the income of a local authority was not liable for payment of income-tax.

7. The word 'person' also is defined in the General Clauses Act (NO. x of 1897) as including any company or association or body of individuals whether incorporated or not. A Municipal Board or a City Board consists of a body of individuals and is a body corporate (see Sections 6 and 9, U. P. Municipalities Act (NO. II of 1916). In the General Clauses Act, the Indian Income-tax Act or the Excess Profits Tax Act a complete definition of the word 'person' has not been attempted and there is nothing repugnant in the subject or context of the Income-tax Act or the Excess Profits Tax Act which would make the definition in the General Clauses Act inapplicable.

8. We are, therefore, of the opinion that the City Board, Mussoorie, is liable to pay excess profits tax on the profits made from supply of electric energy and water outside its jurisdictional areas.

9. Learned counsel for the assessee has not attempted to point out why the machinery sections of the Excess Profits Tax Act could not be applied for recovery of excess profits tax from a local authority. As a matter of fact, no arguments have been addressed to us at all on the point.

10. Our answer to the first two questions is in the affirmative while our answer to the third question is in the negative.

11. The Department is entitled to its costs which we assess at a sum of RS. 300.