

## CIVIL REFERENCE

Before Bhandari C.J. and Dulat J

THE HOSHIARPUR ELECTRIC SUPPLY CO., HOSHIARPUR,—Petitioner.

versus

THE COMMISSIONER OF INCOME-TAX, SIMLA,—  
Respondent

*Indian Income Tax Act (XI of 1922)—Section 10—  
Electric Supply Company—Laying of Service Lines—Dif-  
ference between cost of and charges received therefor from  
the consumers—Whether trading receipts and taxable in-  
come.*

1958

March. 4th

*Held, that the Company's receipts from the consumers for laying the service lines are trading receipts and the profit element therein being the difference between the service connection receipts and the service connection costs is taxable income in the hands of the Company. What the company was receiving from the consumers was not merely what the Company had spent as capital expenditure but something over and above that in the form of profit, and the activity of the Company in that connection was not any casual or isolated venture but a part of its business.*

*Case referred under section 66(1) of Indian Income-tax Act 1922 (Act XI of 1922) as amended by section 92 of the Income-tax (Amendment) Act 1939 (Act VII of 1939) by the Income-tax Appellate Tribunal, Delhi Branch, for decision of the question.*

*“Whether the assessee's receipts from consumers for laying service lines (that is not distributing mains) were*

*trading receipts and whether the profit element therein, viz., service connection receipts minus service connection cost, was taxable income in the assessee's hands."*

D. K. MAHAJAN, GANGA PARSHAD JAIN and A. C. HOSHIARPURI, for Petitioner.

S. M. SIKRI, ADVOCATE-GENERAL AND HEM RAJ MAHAJAN, for Respondent.

### ORDER

Dulat, J.

DULAT, J. This is a reference under section 66(1) of the Indian Income-tax Act and the facts giving rise to it are these. The Hoshiarpur Electric Supply Company holds a licence under the Indian Electricity Act for the generation and supply of electricity in certain areas. For the transmission of electricity the Company of course has its distributing mains; but before electricity can reach the consumers it becomes necessary to lay what are called service lines from some point on the mains to the consumers' premises. The Company has been laying these service lines each year and charging the consumers concerned the cost of laying the service lines and also something over and above that cost. Thus, during the accounting year ending the 31st March, 1948, which is relevant to this reference, the Company received in all Rs. 12,530 from the consumers, while the actual cost of laying the service lines amounted only to Rs. 5,669. The question that arose during the assessment proceedings was whether the difference between the cost of laying the service lines and the charges received from the consumers on this account was taxable income. The Income-tax Appellate Tribunal has taken the view that these receipts are ordinary trading receipts and, therefore, assessable to income-tax, while the assessee's case is that these receipts are capital receipts and not ordinary business income and consequently not assessable to tax.

Mr. Daya Kishan Mahajan appearing for the assessee proceeded with his argument on the assumption that these service lines are and remain the property of the assessee Company, and the erection of these service lines is in the nature of an addition to the Company's capital. Mr. Sikri for the respondent did not, however, accept this assumption and contended that these service lines are the property of the individual consumers who pay for them which view seems to have been accepted by the Income-tax Appellate Tribunal also.

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No evidence was actually called by either party in this case in support of their respective pleas, and we have been asked to come to a conclusion on a reading of the Indian Electricity Act and the ordinary rule that a person paying for any property is the owner of it. There is nothing clear in the Electricity Act, although one commentator, (J. W. Meeres), in his Law relating to Electrical Energy in India and Burma says that, according to the legal opinion available, service lines are the property of the consumers who pay for it. The only time this matter was agitated in a Court of law was in *The Akola Electric Supply Co., Ltd., and another v. Mrs. Gulbai* (1), and in that case the Nagpur High Court came to the conclusion that the ownership of service lines vested in the consumers and not in the licensee. This decision followed the general rule that a person paying for a property is normally the owner of that. There is in the present case no particular evidence or indication to the contrary, and if we are to decide this question on the material as it is before us, I would be inclined to hold that these service lines as distinguished from the main lines are not the property of the Company. If this view is correct,

(1) A.I.R. 1950 Nag. 246

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then Mr. Mahajan's argument that the Company by laying these service lines was adding something to their capital at once breaks down.

Assuming, however, that Mr. Mahajan is right in maintaining that the service lines are the Company's property, it is necessary to see how far this argument takes the assessee's case for exemption from tax in respect of the profits made by the Company by laying the service-lines. Mr. Mahajan's argument is that what the Company receives from the consumers is a contribution towards capital expenditure and the receipts in this connection should, therefore, be treated as capital receipts; or, in other words, that the Company is here merely adding something to their capital and is then reimbursing themselves. This argument ignores the fact that the Company is actually and admittedly receiving from the consumers not merely the cost of laying the service-lines but something over and above that cost, and it is this profit which the department seeks to treat as the Company's business income. It has to be remembered that in the present case the act of laying service lines is not an isolated casual act but has become a part of the regular business of the Company which business the company obviously finds profitable. It is, in my opinion, impossible to distinguish this activity of the Company from its other ordinary business, or to say that the gain made from this particular activity of the Company is not ordinary business income.

During the course of arguments before us, reference was made to a number of decided cases, mostly by the English Courts, in order to illustrate the principles on which trading business receipts are distinguished from capital receipts. There is, however, no dispute between the parties as to those principles, and it is admitted that the ultimate

distinction must in each case turn on the actual facts concerning that case. It is in the circumstances unnecessary to enter into a discussion of those cases. It is, however, useful to remember that section 10 of the Indian Income-tax Act makes all profits and gains of 'any business, profession or vocation taxable', and the only other provision in section 10 is that, while computing such profits, certain deductions can be made. It is not suggested that the present case would fall in the category of any of the permissible deductions under section 10, so that the real question before us merely is whether the receipts in question do or do not arise in the course of the Company's business activities. When the question is viewed directly in this manner, there remains in my mind no doubt that the profit made by the Company by undertaking to lay the service lines is ordinary business profit.

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Mr. Mahajan's entire argument rests on a decision of the Patna High Court in *Monghyr Electric Supply Co., Ltd., Monghyr v. Commissioner of Income-tax* (1), in which case the facts were similar to the facts of the present case, and the Patna High Court concluded that what the Company received from the consumers in connection with the laying of the service lines was a capital receipt. Ramaswami, J., who delivered the main judgment, observed—

"The argument was that the money paid towards the recoupment of the expenditure of capital asset must be treated as a capital receipt. In my opinion the argument must be accepted as correct."

The decision thus wholly supports Mr. Mahajan's contention ; but, with great respect

(1) A.I.R. 1954 Pat. 471

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to the learned Judges who decided that case, I cannot help thinking that the important fact was overlooked that what the Company was receiving from the consumers was not merely what the Company had spent as capital expenditure but something over and above that in the form of profit, and that the activity of the Company in that connection was not any casual or isolated venture but a part of its business. In the Patna case much reliance was placed on a decision of the Bombay High Court reported as *Commissioner of Income-tax v. Poona Electric Supply Co., Ltd.* (1). A reference to the report of that case, however, shows that the facts were entirely different. In that case the Electric Supply Company was not willing to supply electric energy to a particular area unless Government agreed to contribute towards the Company's capital expenditure, which it was necessary to incur before electricity could be supplied. Government agreed to make the necessary contribution and the question arose whether that contribution represented ordinary business income or was a capital receipt. The Court took the view that this payment was not ordinary business revenue. The important fact in the case was that the amount actually paid by Government was merely a part of the cost incurred by the Company and no question of any profit represented by any difference in the actual cost and the total receipts even arose there. Another important fact in that Bombay case was that this was an isolated act done by the Company in the particular circumstances, and no suggestion could, therefore, be made that this was a part of the Company's regular business activity. The present case, in my opinion, is very different for here the Company regularly engages itself in laying the service lines and, as I have already observed, the Company

(1) A.I.R. 1947 Bom. 263

finds it profitable to engage in this activity, and this has for all purposes become a part of the regular business of the Company. I am, therefore, persuaded that the Company's receipts from the consumers for laying the service lines are trading receipts and the profit element therein being the difference between the service connection receipts and the service connection costs is taxable income in the hands of the Company. I would, therefore, answer the reference accordingly, but in the circumstances of the case leave the parties to bear their own costs in this Court.

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BHANDARI, C.J.—I agree.

R.S.

Bhandari, C. J.

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