STANTON v. BALTIC MINING CO, 240 U.S. 103 (1916)

240 U.S. 103

JOHN R. STANTON, Appt.,
v.
BALTIC MINING COMPANY et al.
No. 359.

Argued October 14 and 15, 1915.
Decided February 21, 1916.

Mr. Charles A. Snow for appellant.

No appearance for appellees.

Mr. John R. Van Derlip filed a brief as amicus curioe.[Stanton v. Baltic Mining Co 240 U.S. 103 (1916)]

[240 U.S. 103, 107]

Mr. Chief Justice White delivered the opinion of the court:

As in Brushaber v. Union P. R. Co. 240 U.S. 1 , 60 L. ed. --, 36 Sup. Ct. Rep. 236, this case was commenced by the appellant as a stockholder of the Baltic Mining Company, the appellee, to enjoin the voluntary payment by the corporation and its officers of the tax assessed against it under the income tax section of the tariff act of October 3, 1913 (38 Stat. at L. 166, 181, chap. 16). As to the grounds for the equitable relief [240 U.S. 103, 108] sought in this case so far as the question of jurisdiction is concerned are substantially the same as those which were relied upon in the Brushaber Case, it follows that the ruling in that case upholding the power to dispose of that controversy is controlling here, and we put that subject out of view.

Further, also, like the Brushaber Case, this is before us on a direct appeal prosecuted for the purpose of reviewing the action of the court below in dismissing on motion the bill for want of equity.

The bill averred: 'That, under and by virtue of the alleged authority contained in said income tax law, if valid and constitutional, the respondent company is taxable at the rate of 1 per cent upon its gross receipts from all sources, during the calendar year ending December 31, 1914, after deducting (1) its ordinary and necessary expenses paid within the year in the maintenance and operation of its business and properties, and (2) all losses actually sustained within the year, and not compensated by insurance or otherwise, including depreciation arising from depletion of its ore deposits to the limited extent of 5 per cent of the 'gross value at the mine of the output' during

said year.' It was further alleged that the company would, if not restrained, make a return for taxation conformably to the statute, and would pay the tax upon the basis stated without protest, and that to do so would result in depriving the complainant as a stockholder of rights secured by the Constitution of the United States, as the tax which it was proposed to pay without protest was void for repugnancy to that Constitution. The bill contained many averments on the following subjects, which may be divided into two generic classes: (A) Those concerning the operation of the law in question upon individuals generally and upon other than mining corporations, and the discrimination against mining corporations which arose in favor of such other corporations and individuals [240 U.S. 103, 109] by the legislation, as well as discrimination which the provisions of the act operated against mining corporations because of the separate and more unfavorable burden cast upon them by the statute than was placed upon other corporations and individuals,-averments all of which were obviously made to support the subsequent charges which the bill contained as to the repugnancy of the law imposing the tax to the equal protection, due process, and uniformity clauses of the Constitution. And (B) those dealing with the practical results on the company of the operation of the tax in question, evidently alleged for the purpose of sustaining the charge which the bill made that the tax levied was not what was deemed to be the peculiar direct tax which the 16th Amendment exceptionally authorized to be levied without apportionment, and of the resulting repugnancy of the tax to the Constitution as a direct tax on property because of its ownership, levied without conforming to the regulation of apportionment generally required by the Constitution as to such taxation.

We need not more particularly state the averments as to the various contentions in class (a), as their character will necessarily be made manifest by the statement of the legal propositions based on them which we shall hereafter have occasion to make. As to the averments concerning class (B), it suffices to say that it resulted from copious allegations in the bill as to the value of the ore body contained in the mine which the company worked, and the total output for the year of the product of the mine after deducting the expenses as previously stated; that the 5 per cent deduction permitted by the statute was inadequate to allow for the depletion of the ore body, and therefore the law to a large extent taxed not the mere profit arising from the operation of the mine, but taxed as income the yearly product which represented to a large extent the yearly depletion or exhaustion of [240 U.S. 103, 110] the ore body from which, during the year, ore was taken. Indeed, the following alleged facts concerning the relation which the annual production bore to the exhaustion or diminution of the property in the ore bed must be taken as true for the purpose of reviewing the judgment sustaining the motion to dimiss the bill.

'That the real or actual yearly income derived by the respondent company from its business or property does not exceed $550,000. That, under the income tax, the said company is held taxable, in an average year, to the amount of approximately $1,150,000, the same being ascertained by deducting from its net receipts of $1,400,000 only a depreciation of $100,000 on its plant and a depletion of its ore supply limited by law to 5 per cent of the value of its annual gross receipts, and amounting to $150,000; whereas, in order properly to ascertain its actual income, $750,000 per annum should be allowed to be deducted for such depletion, or five times the amount actually allowed.'

Without attempting minutely to state every possible ground of attack which might be deduced from the averments of the bill, but in substance embracing every material grievance therein asserted and pressed in argument upon our attention in the elaborate briefs which have been submitted, we come to separately dispose of the legal propositions advanced in the bill and arguments concerning the two classes.

Class A. Under this the bill charged that the provisions of the statute 'are unconstitutional and void under the 5th Amendment, in that they deny to mining companies and their stockholders equal protection of the laws and deprive them of their property without due process of law,' for the following reasons:

(1) Because all other individuals or corporations were given a right to deduct a fair and reasonable percentage for losses and depreciation of their capital, and they were [240 U.S. 103, 111] therefore not confined to the arbitrary 5 per cent fixed as the basis for deductions by mining corporations.

(2) Because by reason of the differences in the allowances which the statute permitted, the tax levied was virtually a net income tax on other corporations and individuals, and a gross income tax on mining corporations.

(3) Because the statute established a discriminating rule as to individuals and other corporations as against mining corporations on the subject of the method of the allowance for depreciations.

(4) Because the law permitted all individuals to deduct from their net income dividends received from corporations which had paid the tax on their incomes, and did not give the right to corporations to make such deductions from their income of dividends received from other corporations which had paid their income tax. This was illustrated by the averment that 99 per cent of the stock of the defendant company was owned by a holding company, and that under the statute not only was the corporation obliged to pay the tax on its income, but so also was the holding company obliged to pay on the dividends paid it by the defendant company.

(5) Because of the discrimination resulting from the provision of the statute providing for a progressive increase of taxation or surtax as to individuals, and not as to corporations.

(6) Because of the exemptions which the statute made of individual incomes below $4,000, and of incomes of labor organizations and various other exemptions which were set forth.

But it is apparent from the mere statement of these contentions that each and all of them were adversely disposed of by the decision in the Brushaber Case, and they all therefore may be put out of view.

Class B. Under this class these propositions are relied upon: [240 U.S. 103, 112] (1) That as the 16th Amendment authorizes only an exceptional direct income tax without apportionment, to

which the tax in question does not conform, it is therefore not within the authority of that Amendment.

(2) Not being within the authority of the 16th Amendment, the tax is therefore, within the ruling of Pollock v. Farmers' Loan & T. Co. 157 U.S. 429 , 39 L. ed. 759, 15 Sup. Ct. Rep. 673; 158 U.S. 601 , 39 L. ed. 1108, 15 Sup. Ct. Rep. 912, a direct tax and void for want of compliance with the regulation of apportionment.

As the first proposition is plainly in conflict with the meaning of the 16th Amendment as interpreted in the Brushaber Case, it may also be put out of view. As to the second, while indeed it is distinct from the subjects considered in the Brushaber Case to the extent that the particular tax which the statute levies on mining corporations here under consideration is distinct from the tax on corporations other than mining and on individuals, which was disposed of in the Brushaber Case, a brief analysis will serve to demonstrate that the distinction is one without a difference, and therefore that the proposition is also foreclosed by the previous ruling. The contention is that as the tax here imposed is not on the net product, but in a sense somewhat equivalent to a tax on the gross product of the working of the mine by the corporation, therefore the tax is not within the purview of the 16th Amendment, and consequently it must be treated as a direct tax on property because of its ownership, and as such void for want of apportionment. But, aside from the obvious error of the proposition, intrinsically considered, it manifestly disregards the fact that by the previous ruling it was settled that the provisions of the 16th Amendment conferred no new power of taxation, but simply prohibited the previous complete and plenary power of income taxation possessed by Congress from the beginning from being taken out of the category of indirect taxation to which it inherently belonged, and being placed [240 U.S. 103, 113] in the category of direct taxation subject to apportionment by a consideration of the sources from which the income was derived,-that is, by testing the tax not by what it was, a tax on income, but by a mistaken theory deduced from the origin or source of the income taxed. Mark, of course, in saying this we are not here considering a tax not within the provisions of the 16th Amendment, that is, one in which the regulation of apportionment or the rule of uniformity is wholly negligible because the tax is one entirely beyond the scope of the taxing power of Congress, and where consequently sequently no authority to impose a burden, either direct or indirect, exists. In other words, we are here dealing solely with the restriction imposed by the 16th Amendment on the right to resort to the source whence an income is derived in a case where there is power to tax for the purpose of taking the income tax out of the class of indirect, to which it generically belongs, and putting it in the class of direct, to which it would not otherwise belong, in order to subject it to the regulation of apportionment. But it is said that although this be undoubtedly true as a general rule, the peculiarity of mining property and the exhaustion of the ore body which must result from working the mine cause the tax in a case like this, where an inadequate allowance by way of deduction is made for the exhaustion of the ore body, to be in the nature of things a tax on property because of its ownership, and therefore subject to apportionment. Not to so hold, it is urged, is as to mining property but to say that mere form controls, thus rendering in substance the command of the Constitution that taxation directly on property because of its ownership be apportioned, wholly illusory or futile. But this merely

asserts a right to take the taxation of mining corporations out of the rule established by the 16th Amendment when there is no authority for so doing. It moreover rests upon the wholly fallacious [240 U.S. 103, 114] assumption that, looked at from the point of view of substance, a tax on the product of a mine is necessarily in its essence and nature in every case a direct tax on property because of its ownership, unless adequate allowance be made for the exhaustion of the ore body to result from working the mine. We say wholly fallacious assumption because, independently of the effect of the operation of the 16th Amendment, it was settled in Stratton's Independence v. Howbert, 231 U.S. 399 , 58 L. ed. 285, 34 Sup. Ct. Rep. 136, that such tax is not a tax upon property as such because of its ownership, but a true excise levied on the results of the business of carrying on mining operations. (pp. 413 et seq.)

As it follows from what we have said that the contentions are in substance and effect controlled by the Brushaber Case, and, in so for as this may not be the case, are without merit, it results that, for the reasons stated in the opinion in that case and those expressed in this, the judgment must be and it is affirmed.

Mr. Justice McReynolds took no part in the consideration and decision of this case.