Income-Tax Officer Bangalore

Vs

K. N. Guruswamy

Civil Appeals Nos. 165-168 of 1956

(CJI S. R. Dass, Vivian Bose, S. K. Sarkar, T. L. Venkatarama Ayyar, S. K. Das, A. K. Sarkar JJ)

28.04.1958

JUDGMENT

S. K. DAS J. -

These four appeal brought by the Income-tax Officer, Special Circle, Bangalore on a certificate granted by the High Court of Mysore, are from the judgment and order of the said High Court dated March 22, 1955, by which it quashed certain proceedings initiated, and order of assessment made, against the respondent assessee in the matter of re-assessment of income-tax for the year 1945-46, 1946-47, 1947-48, and 1948-1949.

The relevant facts are these : The respondent, K. N. Guruswamy, was carrying on business as an excise contractor in the Civil and Military Station of Bangalore, hereinafter called the retroceded area, in Mysore. He was assessed to income-tax for each of the four years mentioned above under the law then in force in the retroceded area by the Income-tax Officer having jurisdiction therein. For 1945-46 the original assessment was made of February 12, 1946 for 1946-47 on January 21, 1949, for 1947-48 in January 22, 2949 and for 1948-49 also semitone in the year 1949. The tax so assessed was duly paid by the assessee. On January 5, 1954, more than four years after, the Income-tax Officer, Special Circle, Bangalore, served a notice on the assessee under section 34 of the Indian Income-tax Act, 1922, for the purpose of assessing what as described as "escaped" or "under assessed" income chargeable to income-tax for the said years. The assessee appeared through his audiotrs and contested the jurisdiction of the Income-tax Officer to issue to notice or make a re-assessment under section 4 of the Indian Income-tax Act, 1922. On February 19, 1954, the Income-tax Officer overruled the assessee's objection, and made a re-assessment order for the year 1945-46. On February 25, 1954, the assessee filed four writ petitions in the Mysore High Court in which hechallenged the jurisdiction of the Income-tax Officer to take proceedings under section 34 or to make an order of re-assessment in such proceeding; he asked for appropriate orders or writs questing the pending proceedings for the three years and the order of re-assessment for 1945-46. During the pendency of the cases in the High Court, the Income-tax officer was permitted to make an assessment order for 1946- 47, subject to the condition that if the assessee succeeded in establishing that the Income-tax Officer had no jurisdiction, that order would also be quashed. The High Court heard all the four petitions together, and by its judgment and order dated March 22, 2955. allowed the writ petitions and quashed the proceedings in assessment as also the two order of re-assessment, holding that the Income-tax Officer had no judrisdiction. to initiated the proceedings or to the make the orders of re-assessment. The High Court however, granted a certificate that the case were fit for appeal to this court, the these four appeals have been borough on the certificate. Before us, the appeals have been heard together and will be governed by this judgment.

For a clear understanding and appreciation of the issued involved in these appeals, it is necessary to set out, in brief outline, the political and constitutional changes which the retroceded area has from time to time undergone; because those changes had important legal consequence. Under the Instrument of Transfer executed sometime in 1881, when there was installation of the Maharaja of Mysore by what has been called ' the rendititon of the State of Mysore", the Maharahja agreed to grant to the Governor-General in Council such land as might be required for the establishment and maintains of a British cantonment and to renounce all jurisdiction therein. Pursuant to that agreement, the retroceded area was granted to the Governor-General in Council, and Juridiction therein was exerised by virtue of power given by the Indian (Foreign Jusrisdication) Order in Council, 1902 made under the Foreign Jurisdiction Act, 1890. The laws administered in the area included various enactments made applicable thereto from time to time by the promulgation of notification made under the aforesaid Order in Council, and one of the such enactments was the Indian Income-tax Act, 1922.

The year 1947 ushered in great political and constitutional changes in Indian, which affected not merely what was thane called British Indian but also the Indian States, such as Mysore, etc. The Indian Independence Act, 1947, brought into existence two independent Dominions, India and Pakistan, as from August 15, 1947. The Act, however, received Royal sent on July 18, 1947. Section 7 set out the consequences of the setting up of the two new Dominion : one such consequence was that the suzerainty of His Majesty over the Indian States lapsed, and with it lapsed all treaties, agreements, etc., between His Majesty in an Indian State by treaty, grant, usage, suffrage etc.

In view of the aforesaid provision - perhaps in anticipation of it, the retroceded area was given back to the State of Mysore on July 26, 1947, by a notification made by the Crown Representative under the Indian (Foreign Jurisdiction) order in Council, 1937. This did not, however, mean that the Mysore law at once came into force in the retroceded area. On August 4, 1947, the Maharaja of Mysore enacted two laws : the Retrocession (Application of laws) Act, 1947, being Act XXIII of 1947, and the Retrocession (Transitional Provision) Act, 1947, being Act XXIV of 1947. The combined effect of these laws was this : all laws in force retroceded area prior to the date of retrocession, which was July 26, 1947, continued to have effect and be operative in the retroceded area (vide section 3 of Act XXIII of 1947) and the Mysore officers were given jurisdiction to deal with proceedings under the laws in force prior to the date of retrocession (see section 12 of Act XXIV of 1947). This state of aeries continued till June 30, 1948 on which date was promulgated the Mysore Income-tax and Excess Profits Tax (Application to the Retraced Area)(Emergency) Act, 1948 being Act XXXI of 1948. Section 3 of the Act said :

> "Notwithstanding anything to the contrary in section 3 of the Retrocession (Application of Laws) Act, 1947.
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> (i) the Mysore Income-tax Act, 1947.
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> (ii) the Mysore Excess Profit Tax Act, 1946, except sub-section (4) of section 2, and all rules, order and notification made or issue under the aforesaid Acts and for the time being in force shall with effect from the first day of July, 1948, and save as otherwise provide in this Act, take effect in the Retroceded Area to the same extent and in the same manner as in the rest of Mysore."

Section 6 said :

> "Subject to the provision of this Act, the Indian Income-tax Act, 1922, and the Excess Profit Tax Act, 1940 as continued by the Retrocessddion (Application of Laws) Act, 1947, are hereby repealed."

The repeal of the Indian Income-tax Act, 1922 effected by section 6 aforesaid, was subject to other provisions of Act XXXI of 1948, and one such provision which is material for the dispute before us was counted in section 5, the relevant portion whereof was in these terms :

> "5. Notwithstanding anything to the contrary in the Mysore Income-tax Act, 1923, or the Mysore Excess Profits Tax Act, 1946, - .....
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> (b) in respect of the total income or profits chargeable to income-tax or excess profits tax in the Retroceded Area prior to the first day of July., 1948, but which has not been assessed until that date, the provisions of the Indian Income-tax Act, 1922, and the Excess Profit Tax Act, 1940, as in force in the Retroceded Area immediately before that date shall apply to proceedings relating to the assessment of such income or profit until the stage of assessment, and the determination of the income-tax and excess profit tax payable thereon, and the Mysore Income-tax Act, 1923, or the Mysore Excess Profits Tax Act, 1946 as the case may be shall apply to such proceedings after that stage;..."

The effect of section 3, 5 (b) and 6 of Mysore Act XXXI of 1948, inter alia, was that though the Indian Income-tax Act, 1922 stood repealed and the Mysore Income-tax Act, 1923, came into effect from July 1 1948 the former Act as in force in the retroceded area prior to July 1, 1948, continued to apply in the respect of the total income chargeable to income-tax in the retroceded area prior to July 1, 1948 but which had not been assessed until that date, and it further applied to all proceedings relating to the assessment of such income until the stage of assessment and the determination income-tax but the Mysore Act, 1923, applied to such proceedings after the stage. On August 5, 1948, was promulgated the Retroceded Area (Application of Laws) Act,LVII Of 1948, which came into effect from August 15, 1948. Sections 3 and 4 of the Act LVII of 1948 are material for our purpose and may be quoted :

> "3. Except as hereinafter in this Act provided,
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> (3) all law in force in Mysore shall apply to the Retoceded Area; and
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> (b) the laws in force in the Retroceded Area immediately before the appointed day shall not, from that day, have effect or be operative in the Retroceded Area."
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> "4. The enactments in force in Mysore which are set out in the first column of Schedule A to this Act shall apply to the Retroceded Area subject to the modifications and restrictions specified in the second column of the said Schedule and the provision of this Act."

Schedule A, paragraph (2), sub-paragraph (b) repeated in substance what was stated earlier in section 5 (b) of Act XXXI of 1948. It read :

> "2. Notwithstanding anything to the contry in the Mysore Income-tax Act, 1923, or the Mysore Excess Profits Tax Act, 1946 -

(b) in respect of the total income or profits chargeable to income-tax or excess profits tax in the Retroceded Area prior to the first day of July, 1948, but which has not been assessed until that date, the provisions of the Income-tax Act, 1922, and the Excess Profits Tax Act, 1940 as in force in the Retorceded Area immediately before that date shall apply to proceedings relating to the assessment of such income or profits until the stage of assessment, and the determination of the income-tax and excess profits tax payable thereon, and the Mysore Income-tax Act, 1923, or the Mysore, Excess Profits Tax Act, 1946 as the case may be, shall apply to such proceedings after that stage;....."

There were further far-reaching political and constitutional changes in 1949-50. The Maharaja of Mysore had acceded to the Dominion of India in 1947; this, however, did not empower the Dominion Legisture to impose any tax or duty in the State of Mysore or any part thereof. By a proclamation dated November 25 1949, the Maharaja of Mysore, accepted the Constitution of India, as from the fate of its commencement, as the Constitution of Mysore which superseded and abrogated all other constitutional provisions inconsistent therewith and in force in the State. On January 26, 1950, the Constitution of India came into force, and Mysore became a Part B State within the Constitution of India. On February 28, 1950, there was a financial agreement between the Rehjaramukh of Mysore and the President of Indian in respect of certain matters governed by articles 278, 291, 295 and 306 of Constitution. Under article 277 of the Constitution, however, all taxes which immediately before the commencement of the Constitution were being levied by the State continued to be so levied, notwithstanding that those taxes were mentioned in the Union List, until provision to the contrariwise made by parliament by lap. Such law was made by the Finance Act, 1950, by which the whole of Mysore including the retroceded area became "taxable territory" within the meaning of the Indian Income-tax Act, 1922, from April 1, 1950, and the Indian Income-tax Act again came into force in the retroceded area from the aforesaid date. Section 13 of the Finance Act, 1950 dealt with repeals and savings. As the true scope and effect of sub-section (i) of section 13 is one of the question at issued before, us it is necessary to read it :

"If immediately before the 1st day and April, 1950, there is in force in any Part B State other then Jammu and Kashmir or in Manipur Tripura or Vindhya Pradesh or in the merged territoty of Cooch-Behar any law shall cease to have effect except for the purpose of the levy, assessment an d collection of the Income-tax and super-tax in respect of any period not included in the previous year for the purposes of assessment under the Indian Income-tax Act, 1922, for the year ending on the 31st day of March, 1951, or for any subsequent year, or as the case may be, the levy assessment and collection of the tax on profits of business for any chargeable accounting period ending on or before the 31st Day of March, 1949 :

Provides that any reference in any such law to an officer, authority thribunal or court shall be construed as a reference to the corresponding officer, authority, tribunal or court appointed or constituted under the said Act, and if any question arises as to who such corresponding officer authority tribunal, or court is, the decision of the Central Government thereon shall be final."

Now, the legal effect of the constitutional chases referred to above, so far it has a bearing on the present dispute, may be beriftly summersied as follows : the Indian Income-tax Act, 1922 remained in force in the retroceded area till June 30 1948; from July 1, 1948, the Mysore Income-tax Act continued to apply in respect of the total income chargeable to income-tax in the retroceded area prior to July, 1, 1948, and the provisions of the Act as in force in the retroceded area prior to the

date applied to all proceedings relating to the assessment of such income up to the stage of assessment and determination of Income-tax payable thereon. This position continued till April 1, 1950, when the Finanace Act, 1950, came into force and the Indian Income-tax Act, 1922, again came into force in the retroceded area, subject to the saving mentioned in section 13(1) thereof.

The principal question before us, as it was before the High Court is one of jurisdiction. Did the Income-tax Officer concerned have jurisdiction to issue the notice section 34 of the Indian Income-tax Act, 1922, and to make a re-assessment order pursuant to such notice ? The High Court pointed out that though the notice did not clearly say so, the Income-tax Act, 1922, as it was in force in the retroceded area prior to July 1, 1948, and the writ applications were decided on the footing.

The four main lines of argument on which the respondent assess rested his contention the the Income-tax Officer concerned had no jurisdiction were these : firstlty, it was urged that section 34 of the Indian Income-tax Act, 1922 was not saved by section 13(1) of the Finance Act, 1950, because what was saved was the prior law "for the purpose of the levy, assessment and collection of income-tax", which expression did not include re-assessment proceedings; secondly, it was argued that, even otherwise the financial agreement made between the President of Indian and the Rajpramukh of Mysore on February 28 1950, which received constitutional sanctity in article 278 of the Constitution, rendered the impungned proceedings uncomnstitutional and void; thirdly, it was submitted that the Indian Income-tax Act, 1922, as in force in the retroceded area stood repealed on June 30, 1948, by Mysore Act XXXX of 1948, and the saving provisions in section 5(b) thereof or in paragraph (2), sub-paragraph (b), of Schedule A to Mysore Act LVII of 1948 did not save section 34 is so far as it permitted re-assessment proceedings in respect of years in which there had been an assessment already; and lastly., it was contended that after June 30, 1948, and until April 1, 1950, the Income-tax Officer in the retroceded area could re-open the assessment under section 34 of the Indian Income-tax Act.

Following its own decision in City Tobacco Mart and Others, v. Income- tax Officer, Urban, Circle, Banglaore, On certain earlier writ petition (Nos. 52 and 53 of 1953 and 105 of 106 of 1954), the High Court held in favour of the assessee on the construction of section 13(1) of the Finance Act, 1950, and also on the effect of the saving provisions in section 5(b) of Mysore Act XXXI Of 1948, and paragraph (2), sub-paragraph(b) of Schedule A to Mysore Act LVII of 1948. On these finding, it held that the income-tax Officer concerned had no jurisdiction of authority to start the impugned proceedings or to make the impugned order of assessment. It did not not feel called upon to pronounce on the validity of the argument founded on the financial agreement dated February 28, 1950.

In Civil Appeal 143-145 of 1954, Civil Appeals 27 to 30 of 1956 and Civil Appeal 161 to 164 in which judgment has been delivered today we have fully considered the arguments as to the true scope and effect of section 13(1) of the Finance Act, 1950, and of the Financial agreement of February 28, 1950 taken along with the recommendations of the Indian States Finances Enquiry Committee. We have held therein that the expression "levy, assessment and collection of income-tax" in section 13(1) is wide enough to comprehend re-assessment proceeding under section 34 and that the financial agreement aforesaid, on a true construction of the recommendations of the Enquiry Committee, does not render the impugned proceedings unconstitutional and void. That decision disposes of these two arguments in the present appeals.

The two additional points which remain for consideration depend on the interpretation to be out on the put in the saving provisions in section 5(b) of Mysore Act XXXI of 1948 and paragraph(2), sub-

paragraph(b) of Schedule A to Mysore Act LVII of 1948. These provisions are expressed in identical terms, and the question is if they save section 34 of the Indian Income-tax Act with regard to re- assessment proceedings. We think that they do. It is worthy of note that the saving provisions say that the Indian Income-tax Act, 1922, as in force in the retroceded areaprior to July 1, 1948 shall apply in respect of the total income chargeable to income - tax prior to that date it shall apply to proceedings relating to the assessment of such income until the stage of assessment and determination of income-tax payable thereupon. "Total income" means the total amount of income, profits and gains computed in the manner laid down in the Act, and there are no good reason why the word "assessment" occurring in the saving provisions should be restricted in the manner suggested so as to exclude proceedings for assessment of escaped income or under assessed income. On behalf of the assessee out attention has been drawn to the word "in respect of the total income chargeable to income-tax..... but which has not been assessed until that date" occurring in the saving provisions and the argument is that those words show that there was no intention to permit re-opening of assessment which had been made already. We are unable to accept this argument. In its normal sense, "to assess" means "to fix the amount of tax or or determine such amount". The process of re-assessment is to the same purpose and is included in the connotation of the term "assessment". The reasons which led us to give a comprehensive meaning to the word "assessment" in section 13(1) of the Finance Act, 1950, operate equally with regard to the saving provisions under present consideration. We agree with the view expressed in Hirjibhai Tribhauvandas v. Income-tax Officer, Rajnandgaon, and Another, that section 34 of the Income-tax Act contemplates different case in which the power to assessee escaped income has been give; where there has been no assessment at all, the term "assessment" may be appropriate and it may have been necessary to use two different terms to cover with clarity the different cases dealt with in the section : but this does not mean that the two terms should be treated as mutually exclusive or that the word "assessment" in the saving provisions should be given a restricted meaning. The object of the saving provisions was obviously to make the prior law available in all cases in which the income was assessed to was assessable according to that law before July, 1, 1948, and it is difficult to see why only a part of the process of assessment should be saved and other other part repealed.

We, therefore, hold that the saving provision save section 34 of the Indian Income-tax Act, 1922 in its entirety, as it was in force in the retroceded area prior to July 1, 1948, and the contention of the respondent that it stood repealed from that date is not correct. As to the period of limitation it would be the period laid down in the section 34 of the Indian Income-tax Act as it was in force in the retroceded area prior to July 1, 1948.

The result, therefore, is that these appeals, succeed and the judgment and order of the High Court of Mysore dated March 22, 1955, are set aside and the writ, petitions filed by the respondent assessee are dismissed. The appellant will get his costs on this court and the High court.

Appeals allowed.

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