The State of Uttar Pradesh and Others

Vs

Raja Syed Mohammad Saadat Ali Khan

Civil Appeal No. 306 of 1957

(S.K. Das, M. Hidayatullah, J.C. Shah JJ)

28.07.1960

JUDGEMENT

SHAH J. -

Raja Syed Mohammad Saadat Ali Khan, who will hereinafter be referred to as "the assessee"' is the owner of Taluqa Nanpura in district Bahraich and Taluqa Mohammadi in district Kheri, in the State of Uttar Pradesh. The legislature of the United Provinces enacted the United Provinces Agricultural Income-tax Act, Act III of 1949 authorising imposition of a tax on agricultural income within the State. By section 3 of the Act, the liability to pay agricultural income-tax and super-tax at rates specified in the schedule in the schedule therein was charged on the total agricultural income of the previous year of every person. By section 14, the Collector and the Assistant Collector were for the purposes of the Act declared to be the assessing authorities within their respective revenue jurisdictions. As originally enacted, by section 2(4), the expression "Collector" was to have the same meaning as in the United Provinces Land Revenue Act, 1901. By section 44, the Provincial Government was empowered to make rules for carrying out the purposes of the Act, and, in particular, amongst others, "to prescribe the authority by whom and the place at which assessment shall be made in the case of assessee having agricultural income in the jurisdiction of more than one assessing authority". By rule 18, clause 1(a), framed by the Government, in exercise of the powers under section 44, it was provided, in so far as it is material, that subject to sub-section (2) of section 14, an assessee shall ordinarily be assessed by ... the Collector of the district in which he permanently resides.

The State Government of Uttar Pradesh (the former United Provinces) by Notification dated June 8, 1953, appointed one K. C. Chaudhry under sub-section (1) of section 14A of the United Provinces Land Revenue Act III of 1901 to be the Additional Collector in district Bahraich and authorised him to exercise all the powers and perform all the duties of a Collector "in all classes of cases". Claiming to exercise the authority of the Collector under section 14 of Act III of 1949, the Additional Collector by order dated February 25, 1954, assessed the assessee's net agricultural income at Rs. 2,81,100-10-3 and ordered him to pay Rs. 1,36,390-2-0 as agricultural income-tax and super-tax.

The validity of this order was challenged by the assessee by an application under Article 226 of the Constitution presented before the High Court of Judicature at Allahabad. The contention of the assessee that the Additional Collector of Bahraich was not an authority competent by law to assess the agricultural income-tax under Act III of 1949 was upheld by the High Court. The High Court issued a writ of certiorari quashing the order of the Additional Collector, because, in its opinion, where property of an assessee is situate in several districts, the Collector, as the assessing authority under Act III of 1949, exercises "extra-territorial" jurisdiction, but as K. C. Chaudury, the

Additional Collector was not invested with that extra-territorial jurisdiction, the impugned proceeding assessing agricultural income-tax was unauthorised. The State of Uttar Pradesh obtained from the High Court leave to appeal to this court against the order quashing the assessment.

On behalf of the State of Uttar Pradesh, it is urged that an Additional Collector by virtue of section 14(A) of the United Provinces Land Revenue Act III of 1901, is competent to exercise all such powers and perform all such duties of the Collector in cases or classes of cases as the State Government may direct, and the State Government having invested Mr. Chaudhri the Additional Collector with authority to exercise all the powers and to perform all the duties of a Collector "in all classes of cases", that officer could exercise the powers of the Collector under Act III of 1901, including, what the High Court called the "extra-territorial" powers. It is unnecessary to express any opinion on this argument, because the Legislature of the State of Uttar Pradesh, has, since the judgment delivered by the High Court in this group of cases, amended the United Provinces Agricultural Income-tax Act (U.P. Act III of 1949) by Act XIV of 1956 giving retrospective operation to the amending provisions. By the amendment, clause 4 of section 2 of the original Act has been substituted by two clauses, clause 4 and clause 4-a, and clause 4-a enacts that the expression "Collector" shall have and shall be deemed always to have the meaning as in the U.P. Land Revenue Act, 1901 and will include an Additional Collector appointed under the said Act. By section 10(1)(b), all orders made, actions or proceedings taken, directions issued or jurisdictions exercised under or in accordance with the provisions of the Principal Act or of any rule framed thereunder prior to the amendment of that Act are to be deemed always to be as good and valid in law as if the amending Act had been in force at all material dates. By section 10, sub-section 1(a), of the amending Act, it is provided that in rule 18 of the U.P. Agricultural Income-tax Rules, 1949, the expression "Collector" shall be deemed to have included an Additional Collector : and it is enacted by sub-section (2) of that section that where any question arose as to the validity or legality or any assessment made by an Additional collector in purported exercise of the powers under section 14 or of the rules framed under clause (0) of sub-section (2) of section 44 of Act III of 1949, the same shall be determined as if the provisions of this amending Act had been in force at all material dates. By the amending Act, the legislature has enacted in language which is clear and explicit that assessment proceedings held by an Additional Collector who is invested with the powers of a Collector under Act III of 1901 shall be deemed always to have properly taken.

This court is seized of an appeal from the order of the High Court quashing the assessment on the ground that the Additional Collector had no extra-territorial authority to assess agricultural income-tax. It is true that Act III of 1949 was amended after the High Court delivered its judgment; but in dealing with this appeal, we are bound to consider the amended law as it stands today (and which must be deemed to have so stood at all material times) and to give effect to it, having regard to the clearly expressed intention of the legislature in the amended provisions. Accordingly we hold that the Additional Collector was competent to assess the liability of the assessee to pay agricultural income-tax and super-tax under the United Provinces Agricultural Income-tax Act III of 1949.

For the assessee, it is contended that before the High Court an application for review of the judgment was submitted by the state Government under section 11 of the amending Act, and the High Court having rejected that application and no further proceeding having been initiated in this court challenging the correctness of that decisions, it is not open to us to set aside the judgment under appeal. In support of this plea, it is urged that an application for review of judgment is the only remedy available to a person aggrieved by a decision of a court or authority for rectification of an order inconsistent with the provisions of the amending Act, and if, for any reason, that application for review is not filed or is filed and rejected, it is not open to a court or authority

exercising appellate powers against that decisions to adjudicate the dispute in the light of the amending Act.

Section 11, in so far as it is material, provides :

> "Where before the commencement of this Act, any court or authority has, in any proceedings under the Principal Act, set aside any assessment made by an Additional Collector merely on the ground that the assessing authority had no jurisdiction to make the assessing authority had no jurisdiction to make the assessment, any party to the proceedings may, at any time, within ninety days from the commencement of the Act apply to the court or authority for a review of the proceedings in the light of the provisions of this Act, and the court or authority to which the application is made, shall review the proceeding accordingly".

Relying on s. 11, the State of Uttar Pradesh, it is true did submit an application for review of the judgment of the High Court and the High Court rejected that application observing,

> "That section (section 11) applies however only to cases in which the assessment has been set aside in any proceedings under the Principal Act. In the cases before us, the assessment has not been set aside in any proceedings under the Principal Act but in exercise of the jurisdiction vested in this court under Article 226 of the Constitution. These three petitions are therefore not maintainable ....."

We need express no opinion on the correctness of this view, because, in our judgment, the contention of the assessee that for setting aside an adverse order inconsistent with the provisions of the amending Act of 1956, a proceeding for review under section 11 is the only remedy which is open to an aggrieved party, is without force. A court of appeal, in an appeal properly before it, must give effect to the law as it stands if the law has at some stage anterior to the hearing of the appeal been amended retrospectively with the object of conferring upon the authority or tribunal of first instance, from the order whereof the appeal is filed jurisdiction which it originally lacked; and a provision for review like the one contained in section 11 of the amending Act does not affect the power of the appellate court to deal with the appeal in the light of the amended law.

In the view expressed by us, this appeal must be allowed. As the appellant succeeds relying on a statute which was enacted after the date of the judgment of the High Court, we direct that there shall be no order as to costs.

Appeal allowed

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