

R. S. A. C. Kasi Iyer

Vs

Commissioner of Income-Tax, Mysore, Travancore-Cochin and Coorg.

Civil Appeal No. 304 of 1956,

(S.K. Das, M. Hidayatullah, K.C. Das Gupta, J.C. Shah, N. Rajgopala Ayyangar JJ)

01.09.1960

JUDGMENT

SHAH, J. -

The Commissioner of Income-tax for Mysore, Travancore Cochin and Coorg at Bangalore referred under section 8(5) of the Travancore Taxation of Income (Investigation Commission) Act, 1124 (Malayalam Era) (hereinafter referred to as the Investigation Act), read with section 113 of the Travancore Income-tax Act, 1906 (Malayalam Era) (hereinafter referred to as the Income-tax Act), the following questions to the High Court of Travancore-Cochin :

(1) Whether on the facts and in the circumstances of the case, there was any evidence before the Commission to come to the conclusion to which it came in its report ?

(2) On the facts and in the circumstances of the case, was the order C. No. 76(1) I.T./51 dated October 25, 1951, of the Government of India Passed under the provisions of section 8(2) of the Travancore Taxation on Income (Investigation Commission) Act read with section 3 of the Opium and Revenue Laws (Extension of Application) Act of 1950, a legal and valid order ?

(3) Whether on the facts and in the circumstances of the case, the order passed by the Income-tax Officer in pursuance of the directions of the Government under section 8(2) of the Travancore Taxation on Income (Investigation Commission) Act, 1124, was a legal and valid order ?

The High Court answered the three questions in the affirmative. Against the order of the High Court answering the reference, this appeal has been preferred with special leave.

The facts which gave rise to the reference are briefly these. The appellants are a firm of merchants carrying on business in yarn in the Districts of Trivandrum and Nagercoil in the Travancore-Cochin State. For the accounting year 1118 M.E. (August 17, 1942, to August 16, 1943), the appellants submitted a return under the Income-tax Act showing a net return of Rs. 4,78,594-5-0 as assessable income, and they were assessed to income-tax and super-tax by the Income-tax Officer on that return. In 1124 M.E., the legislature of Travancore enacted the Investigation Commission to investigate and report on all matters relating to taxation on income, with particular reference to the extent to which the existing law relating to taxation of income, with particular reference to the extent to which the existing law relating to, and procedure for, the assessment and collection of such taxation was inadequate to prevent evasion thereof and to investigate in accordance with the

provisions of the Act in cases referred, on or

The State of Travancore-Cochin merged with the Indian Union on March 7, 1949, but the income-tax Act and the Investigation Act continued to apply to that area notwithstanding the merger. On August 6, 1949, the Government of Travancore-Cochin passed an order referring the case of the appellants to the Commission for investigation and report under section 5 of the Investigation Act. On the evidence led before it, the Commission held by its report dated February 1, 1950, that the appellants had in the accounting year 1118 M.E. made a secret profit Rs. 1,31,750 which was not included in the earlier assessment. The Commission then proceeded to compute the tax payable by the appellants and found that the amount of tax payable by the appellant on their true income was Rs. 1,35,736-8-0 and that they were liable to pay that amount subject to credit for the tax already paid. The Government of Travancore-Cochin by order dated February 14, 1950, accepted the report of the Commission and directed that immediate steps to

"If immediately before the commencement of this Act there is in force in any Part B State other than Jammu and Kashmir any law corresponding to the Taxation on Income (Investigation Commission) Act, 1947 (XXX of 1947), that law, shall continue to remain in force with the following modifications namely :

(a) all cases referred to or pending before the State Commission (by whatever name called) in respect of matters relating to taxation on income other than agricultural income, shall stand transferred to the Central Commission for disposal :

Provided.....

(c) Any reference in the State law, by whatever form of words, to the State Government or the State Commission shall, in relation to income other than agricultural income, be construed as a reference to the Central Government or the Central Commission, as the case may be."

Purporting to exercise authority under section 8(2) of the Investigation Act read with section 3, clause (c), of the Opium and Revenue Laws (Extension of Application) Act, 1950, the Government of India, on October 25, 1951, directed that appropriate assessment proceedings under the Income-tax Act be taken against the appellants with a view to assess or reassess the concealed income of Rs. 1,31,750 which had escaped assessment. On January 1, 1952, the Commissioner of Income-tax withdrew the notice of demand dated March 15, 1950, and thereafter the Income-tax Officer commenced reassessment proceedings against the appellants and by his order dated March 29, 1952, directed the appellants to pay income-tax and super-tax on the concealed income.

At the instance of the appellants, a reference was made to the High Court of Travancore-Cochin under section 8(5) of the Investigation Act and the three questions set out hereinbefore were referred to that court. In the view of the High Court, there was evidence on which the Commission could arrive at the conclusion recorded by it. Evidently, the High court was incompetent, in answering the question, to enter upon a review of the evidence in exercise of its advisory jurisdiction; and Mr. Viswanatha Sastri on behalf of the appellants has fairly not attempted to challenge the answer recorded by the High court on the first question.

The Government of India had, on a consideration of the report of the Commission, directed on October 25, 1951, that assessment proceedings be started against the appellants. Section 8(2) of the

Investigation Act, in so far as it is material, reads as follows :

"After considering the report, our Government shall by order in writing direct that such proceedings as they think fit under the Travancore Income-tax Act, VIII of 1096..... shall be taken against the person to whose case the report relates in respect of the income of any period commencing after the last day of Karkadagom, 1124 (August 16, 1939), and, upon such a direction being given, such proceedings may be taken and completed under the appropriate law notwithstanding the restrictions contained in section 25 of the Travancore Income-tax Act, VIII of 1096..... and notwithstanding any lapse of time or any decision to a different effect given in the case by any income-tax authority or Income-tax Appellate Tribunal.

By section 3 of the Opium and Revenue Laws (Extension of Application) Act (XXXIII of 1950) the Investigation Act continued to remain in force with the modification that reference in the State law to the State Government was in relation to income other than agricultural income, to be construed as a reference to the Central Government. Whatever authority could be exercised by the Travancore-Cochin Government before the enactment of the Opium and Revenue Laws (Extension of Application) Act, 1950, could, therefore, since the application of that Act, be exercised by the Central Government, and the latter Government could be direct in respect of a case that proceedings for re-assessment be commenced against a taxpayer. The case of the appellants were referred to the Investigation Commission by the Travancore-Cochin Government and report was made to that Government by the Commission, and the authority of the Government of Travancore-Cochin to take action on the report having been conferred upon the Central Governme

(1) that the Central Government may direct proceedings to be taken under the Income-tax Act only if the report was made by a Commission appointed under the Taxation on Income (Investigation Commission) Act, XXX of 1947, and not on a report made by a commission appointed by the Travancore-Cochin State under the Investigation Act, and

(2) that the Travancore-Cochin Government having once taken action directing recovery of the tax due, it was not competent to the Central Government under section 8(2) of the Investigation Act again to take any action on the report.

In our view, there is no force in either of these contentions. The expression "the report" in section 8(2) refers to the report made under section 8(1) by the members of the Commission appointed by the Travancore-Cochin Government under the Investigation Act and on a consideration of that report, the Government under the Investigation Act and on a consideration of that report, the Government of India has, since the enactment of the Opium and Revenue Laws (Extension of Application) Act, 1950, power to direct that proceedings for assessment or reassessment be taken under the Income-tax act. On the plain language used by the Legislature in section 3(c) of the Opium and Revenue Laws (Extension of Application) Act, 1950, the contention raised on behalf of the appellant is unsustainable.

By order dated February 14, 1950, the Government of Travancore-Cochin had accepted the report of the Commission and had directed the Board Revenue to take necessary action for recovery of the amount of tax due from the appellants, and pursuant to that direction, without holding proceedings for assessment or reassessment, a demand notice was issued by the Income-tax Officer. The order

passed by the Government of India on October 25, 1951, is not in any way inconsistent with the order dated February 14, 1950. Both the orders direct that steps be taken for recovery of the amount of income-tax due from the appellants. But, if as appears evident from section 8(4) of the Investigation Act, liability to pay income-tax Officer not having assessed the income before the demand notice was issued, the Government of India, was in our judgment, competent to direct that proceedings be taken for assessing the liability of the appellants to pay tax consistently with the provisions of the Income-tax Act. The order passed by t

By sub-section (4) of section 8 of the Investigation Act, the findings recorded by the Commission in cases or points referred to them are made final in all assessments or reassessment proceedings. The Act has, by sub-section (2) of section 8, removed the bar of limitation which arose by section 25 of the Income-tax act. It was competent, therefore, to the Income-tax Officer to reopen the assessment proceedings notwithstanding any lapse of time and the previous order of assessment did not operate as a bar to such reassessment. The High court was, therefore, in our judgment right in recording its answers on the three questions submitted by the Commissioner of Income-tax. In that view, the appeal fails and is dismissed with costs.

Appeal dismissed.

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