

Abdullahai M. Bhagat

Vs

Income-Tax Officer, Special Circle, Madras

Petitions Nos. 140 and 177 to 191 of 1959

(J. L. Kapur, T. L. Venkatarama Ayyar, S. K. Das, M. Hidayatullah, J. C. Shah JJ)

22.03.1961

JUDGMENT

KAPUR, J. –

These are sixteen petitions under article 32 of the Constitution challenging the legality of the imposition of surcharge imposed on the income of the assesseees under the Finance Acts of 1942, 1943, 1944 and 1945. The assessment relates to four assessment years 1942-43, 1943-44, 1944-45 and 1945-46.

The petitioners are four partners of a firm named Mohammedaly Sarafaly & Co., Madras, which was carrying on business in hardware, stocks, shares, etc. For the assessment years 1942-43 to 1945-46 this firm was treated as a registered firm under the Indian Income-tax Act and, therefore, the partners were assessed on their respective shares of the profits from the business of the firm. All assessments were completed before 1949 and the total income for the purpose of assessment for those four years was about Rs. 29,00,000. In 1955 the petitioners under a "Voluntary Disclosure Scheme" with regard to profits which had escaped assessment made a disclosure of their income and proceedings were taken under section 34 of the Income-tax Act. In the month of April 1959, there was a reassessment on all the four partners and the total income for the four assessment years thus came to about Rs. 35 lakhs which included Rs. 29 lakhs already assessed. On that income, income-tax, super-tax and surcharge were levied. The surcha

Provision for surcharge was made under section 8(1) of the Finance Act, 1942 (XII of 1942). This section may now be quoted:

"8. (1) Subject to the provisions of sub-sections (2) and (3), -

(a) income-tax for the year beginning on the 1<sup>st</sup> day of April, 1942, shall be charged at the rates specified in Part I of Schedule II increased in the cases to which subparagraph (b) of paragraph A and paragraph B of that Part apply by a surcharge for the purposes of the Central Government at the rate specified therein in respect of each such rate of income-tax, and

(b) rates of super-tax for the year beginning on the 1<sup>st</sup> day of April, 1942, shall, for the purpose of section 55 of the Indian Income-tax Act, 1922, be those specified in Part II of Schedule II increased in the cases to which paragraphs A, B, and C, of that Part apply by a surcharge for the purposes of the Central Government at the rate specified therein in respect of each such rate of super-tax."

It was contended that the Federal Legislature had no power under the Government of India Act, 1935 (25 and 26 Geo. V, ch. 42), to impose a surcharge "for the purposes of the Central Government." The legislative power of the Federal Legislature was given in section 100 of the Government of India Act, 1935, and the power to tax income was contained in item 54 of List I of the Seventh Schedule which was as follows :

"Taxes on income other than agricultural income."

Part VII of the Government of India Act, 1935, deals with Finance, Property and Suits and the first chapter deals with Finance. The relevant section which has been relied upon by the petitioners, i.e., section 138(1) of that Act, is in that Part which deals with Distribution of Revenues between the Federation and the Federal Units. That section reads :

"138(1) Taxes on income other than agricultural income shall be levied and collected by the Federation,...

Provided that - ...

(b) the Federal Legislature may at any time increase the said taxes by a surcharge for Federal purposes and the whole proceeds of any such surcharge shall form part of the revenues of the Federation."

It was submitted that according to this section the power of the Federal Legislature to impose a surcharge was only for Federal purposes; that by section 8(1) of the Finance Act, 1942, and similar provisions in the other Finance Acts of the three following years, the surcharge had been levied "for the purposes of the Central Government" and that the terms "the purposes of the Central Government" and "for Federal purposes" were not the same but were two different concepts. Section 311 of the Government of Indian Act, 1935, deals with Interpretation but "Federal purposes" is not defined in that section. In sub-section (3) of section 313 which is in Part XIII, dealing with Transitional Provisions, it is provided :

"313. (3) References in the provisions of this Act for the time being in force to the Governor-General and the Federal Government shall, except as respects matters with respect to which the Governor-General is required by the said provisions to act in his discretion be construed as references to the Governor-General in Council, and any reference to the Federation, except where the reference is to the establishment of the Federation, shall be construed as a reference to British India, the Governor-General in Council, or the Governor- General, as the circumstances and the context may require."

On the basis of this section it was argued that the term "Federal purposes" in section 138(1)(b) of the Government of Indian Act, 1935, means the purposes of the Federal Government, i.e., of the Governor- General in Council or the Governor-General as the case may be and that in the context it is a term of lesser amplitude than the term "purposes of the Central Government". "Central Government" in section 3(8ab)(a) of the General Clauses Act, 1897, was defined as follows :

"3. (8ab) 'Central Government' shall -

(a) in relation to anything done or to be done after the commencement of Part III of the Government of Indian Act, 1935, mean the Federal Government;...."

"Federal Government" was defined in the General Clauses Act in sub-section (18a) as follows :

"(18a) 'Federal Government' shall -

(a) in relating to anything done or to be done after the commencement of Part III of the Government of India Act, 1935, but before the establishment of the Federation, mean, as respects matters with respect to which the Governor-General is by and under the provisions of the said Act for the time being in force required to act in his discretion, the Governor-General, and as respects other matters, the Governor-General in Council.....

and shall include -

(i) in relation to functions entrusted under section 124(1) of the said Act to the Government of a Province, the Provincial Government acting within the scope of the authority given to it under that sub-section; and

(ii) in relation to the administration of a Chief Commissioner's Province, the Chief Commissioner acting within the scope of the authority given to him under section 94(3) of the said Act."

From these sections it was argued that the term "Federal Government" in the Government of India Act, 1935, only meant the Governor-General or the Governor-General in Council as the case may be but under the definition in the General Clauses Act the term "Central Government" did not only denote the Governor-General or the Governor-General in Council as the case may be but also included for certain purposes the Provincial Governments acting within the scope of the authority given to them under section 124(1) of the Government of India Act, 1935. This argument, in our opinion, is wholly fallacious.

The power of the Federal Legislature to legislate was conferred by section 100, sub-sections (1) and (2). The first sub-section deals with the power of the Federal Legislature to legislate in regard to items contained in the First List which was exclusively within the power of the Federal Legislature. The Federal Legislature therefore had the power to legislate in regard to any subject contained in List I and item 54 relating to taxes on income was in that list. It has been held that the items have to be given the widest possible amplitude. But it was submitted that the power under item 54, howsoever wide it may be, is subject to the limitation contained in section 138(1), proviso (b). Now "Federal purposes" is not defined in the Government of Indian Act, 1935, nor is it defined in the General Clauses Act. But there is sufficient indication in section 138 itself that the amounts recovered as surcharge were to form part of the revenues of the Federation and such revenues were to be expended for the purposes t

These petitions, therefore, fail and are dismissed with costs. One hearing fee.

Petitions dismissed.

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