

State of Madhya Pradesh and Others

Vs

Sirajuddin Khan

Civil Appeal No. 510 of 1963

(K. Subba Rao, J. C. Shah, S.M. Sikri JJ)

22.04.1964

JUDGMENT

SUBBA RAO J. -

This appeal by special leave raises the question whether the expression "income-tax" in clause (c) of sub-rule (2) of rule 2 of Schedule I to the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (M.P. Act No. 1 of 1951), hereinafter called the Act, includes super-tax.

The facts are as follows : The respondent was the zamindar of Bhadra Estate in Balaghat District of Madhya Pradesh. His estate was known as Bahela Zamindari consisting of 78 villages. The Act came into force on January 26, 1951. Under the Act the proprietary rights of zamindari vested in the State and he became entitled to compensation in respect of the said rights in the said villages under section 8 of the Act. The compensation was to be determined in accordance with the rules contained in Schedule I to the Act. Under rule 8 of Schedule I the zamindar would be entitled to compensation at 10 times the net income. The net income would be calculated by deducting from the gross income, inter alia, the average of the income-tax paid in respect of the income from big forest during 30 agricultural years preceding March 31, 1951. On November 30, 1951, the Compensation Officer determined the compensation payable to the respondent at Rs. 2,21,330-12-6. In arriving at that figure he deducted not only the income-tax p

Mr. Sen, learned counsel for the State, contends that the object of rule 2(2)(c) is to provide a method for ascertaining the net income of an estate, that in that context there cannot be any justifiable distinction between income-tax and super-tax, for both of them have, inter alia, to be deducted from the gross income to arrive at the net income, and that the legislature used the word "income-tax" in its comprehensive sense so as to take in super-tax. He adds that under the Income-tax Act super-tax is only an additional duty of income tax and therefore, a part of it.

Mr. Rajagopal Sastri, learned counsel for the respondent-assessee, argues that in construing a provision of an expropriatory Act the court will have to construe such a provision strictly and if so construed, super-tax cannot be included in the expression "income-tax". He took us through the relevant provisions of the Income-tax Act to support his contention that super-tax is different in its origin, description, scope, incidents and collection from the income-tax.

The question turns upon the correct interpretation of rule 2(2)(c) of the rules of Schedule I to the Act. The relevant provisions of the Act and the rule read :

Section 8(1) of the Act : "The State Government shall pay to every proprietor, who is divested of proprietary rights, compensation determined in accordance with the rules contained in Schedule I."

Rule 2(2) : "The net income of an estate or mahal in the Central Provinces shall be calculated by deducting from the gross income the sums under the following heads, namely : . . . .

(c) the average of the income-tax paid in respect of the income received from big forest during the period of thirty agricultural years preceding the agricultural year in which the relevant date falls; . . . ."

Rule 8(1) : "The amount of compensation in the Central Provinces and in Berar shall be ten times the net income determined in accordance with the rules herein contained."

The combined effect of the said provisions is that for the purpose of ascertaining the net income of an estate one of the deductible items is the average of the income-tax paid in respect of the income received from the big forest. That average is ascertained on the basis of the income-tax paid during the 30 agricultural years preceding the agricultural year in which the relevant date falls. The relevant date for the purpose of ascertaining the average is the date specified by notification by the State Government under section 3 of the Act : for instance, if the relevant date falls in the year 1951, the income-tax paid during the years 1921 to 1951 will afford the basis for arriving at the average.

To appreciate the distinction between the concepts of income-tax and super-tax a brief history of their incidents will not be inappropriate. Under the Income-tax Act of 1886 the total income from various sources was not the criterion for assessment but the different sources alone were the basis for it. For the first time the 1918 Act introduced the scheme of total income for the purpose of determining the rate of tax. Under the Act several heads were enumerated, under which the income of an assessee fell to be charged. The 1922 Act went further and enacted that loss under one head of "income" can be set off against the profit under another head. Till the 1922 Act super-tax was separately levied. It was first introduced by the Super-tax Act of 1917 and then it was replaced by the 1920 Act. Only in 1922, for the first time, it was incorporated in the Income-tax Act. Though both the taxes are dealt with by the same Act, their distinctive features are maintained. As regards income-tax, in the words of a learned

With this background let us give a close look to the provisions of rule 2(2)(c) of the Schedule I to the Act. The legislative intention is manifest from the express language used and also by internal evidence. With the knowledge that under the Income-tax Act two separate duties, namely, income-tax and super-tax, are imposed, the legislature has used the expression "income-tax". If the intention was to refer to both the taxes, it would have stated "income-tax and super-tax". The mention of the one and the other is a sure indication of its intention.

The qualification that income-tax paid should have been in respect of the income received from the big forest necessarily excludes super-tax, for under the Income-tax Act no super-tax is payable in respect of the income received from big forest, but only in respect of the total income. As we have pointed out earlier, it is not legally possible to disintegrate and allocate a portion of the super-tax to the income from the big forest, but is paid only in respect of the total income. If the contention of

the appellant prevails, though the income from big forest falls below the taxable income, it will be deducted if, in combination with the income from other sources, the income goes up to the taxable level. In that event super-tax not payable in respect of the income from big forest will have to be deducted. That apart, the rules made under the Act do not provide for any machinery for allocating the super-tax payable on the total income among the different sources. It is said that the same difficulties are prese

The argument of Mr. Rajagopal Sastri, learned counsel for the respondent, that the 30 years mentioned in the rule takes us back to a period when there was no super-tax appears to be not sound, for, as we have stated earlier, super-tax was payable in one form or other from the year 1917. That apart, if the income-tax takes in super-tax, the non-existence of super-tax in a particular year does not make any difference in ascertaining the average. for the income-tax for that year will be the income-tax without the addition of super-tax. This circumstance is not, therefore, of much relevance and we exclude it from our consideration.

The argument that if the legislature intended not to exclude super-tax from the gross income, it would have expressly stated so in the rule is an attempt to put the shoe in the wrong foot. The proper approach, particularly in the case of an expropriatory statute, is to ask the question why the legislature did not expressly mention super-tax, if it intended to do so. The use of one of the two well understood expressions is, on the other hand, an indication that the legislature provided for the deduction of the one used and not of the other omitted. The reason for the rule, if it is legitimate to speculate, appears to be that as is concerned with the calculation of the net income from the estate after making certain deductions, only those deduction which have a direct relation to that income are allowed. If the other construction prevails, speculation would take the place of certainly and super-tax not paid factually in respect of the income from big forest would have to be deducted. Such a construction defeat

Some of the decision cited at the Bar may now be noticed. Lord Summer pithily remarks in Brooks v. Commissioner of Inland Revenue :

"..... for super-tax is another and a new tax none the less, thought it is an additional duty of income-tax."

In Bates, In re : Selmes v. 6 Bates, a testator gave to his wife by his will "such a sum in every year as after deduction of the income- tax for the time being payable in respect thereof will leave a clear sum of 2,000." It was held that the wife was entitled to the 2,000 free of income-tax only and was not entitled to payment of any sum in respect of super-tax. There the trustees were directed to pay the annuity after deducting the income-tax in respect of that annuity. Rejecting the argument advanced on behalf of the wife that the said annuity should be free from super-tax also, Russell J. observed :

"Now super-tax was not a charge in respect of any particular annuity or sum, but was a charge in respect of the recipient's whole income and was not a matter with which the trustees would be charged or concerned at all, and, in his opinion, what the testator had done was to give the widow the yearly sum of 2,500 clear of all deductions for which the trustees were accountable, but that did not include super-tax, which she must pay herself."

The learned judge proceeded to state :

"No super-tax is really payable 'in respect of' this sum."

It is true that the said judgment turned upon the provision of a particular will, but the reasoning is helpful. There, income-tax was deductible in respect of a sum bequeathed, here income-tax is deductible in respect of the income received from big forest. As super-tax is not a charge in respect of the income from big forest, on the parity of reasoning it shall be held that the word "income-tax" used in clause (c) of rule (2) of Schedule I to the Act excludes super-tax. In *Reckitt, In re : Reckitt v. Reckitt*, a fund was bequeathed to trustees upon trust for investment and to pay out of the income of the investment "the annual sum of 5,000 free of income-tax" during the life

of the annuitant. The Court of Appeal held that the annuitant was entitled to have the sum paid to her without deduction on account of super-tax and that the trustees must pay the super-tax payable in respect of that sum of the income of the fund. The conclusion turned upon the provisions of the will. Lord Hanworth M. R. distinguished the decision in *Bates, In re : Selmes v. Bates* on the ground that Russell J. founded his judgment upon the reference to deductions and also upon the direction to the trustees that a specified sum should be paid after deduction of income-tax in respect thereof and proceeded to observe that in the case before them no reference was made to the system, or the power of the trustees to make deductions; and that it was simply that a total sum in each year was to be paid free of income-tax. That decision may be right or wrong on the construction of the will before the Court of Appeal, but the features which distinguished *Bates* 'case from the decision in *Reckitt's* case are also present

In the result, the appeal fails and is dismissed with costs.

Appeal dismissed.

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