Kalawati Devi Harlalka

Vs

Commissioner of Income-Tax, West Bengal & Ors

Civil Appeal No. 1421 of 1966

(J. C. Shah, S. M. Sikri, V. Ramaswami - I JJ)

01.05.1967

JUDGMENT

SIKRI, J.

On January 24, 1963, the Commissioner of Income-tax, West Bengal, sent the following notice to Smt. Kalawati Harlalka, appellant before us, hereinafter referred to as the assessee :

> "Sub : Income-tax assessment of 1952-53 to 1960-61. Assessments erroneous and prejudicial to the interests of revenue-Revision of assessments under Section 33B of the Indian Income-tax Act 1922 proposal for-Notice regarding.
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> On calling for and examining the records of your case for the assessment years 1952-53, 1953-54, 1954-55, 1956-57, 1957-58, 1958-59, 1959-60 and 1960-61 and other connected records, I consider that the orders of assessment passed by the Income-tax Officer 'D' Ward, Howrah, on 7th February, 1961, are erroneous in so far as they are prejudicial to the interests of revenue for the following reasons amongst others.
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> 2. Enquiries made have revealed that no business as alleged was carried on from the address declared in the returns. Also the said Income-tax Officer was not justified in accepting the initial capital, the acquisition and sale of the jewellery, the income from business, gift made by you etc., without any enquiry or evidence whatsoever.
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> 3. I, therefore, propose to pass such orders thereon as the circumstances of the cases justify after giving you an opportunity of being heard under the powers vested in me under Section 33B of the Income-tax Act, 1922. The cases will be heard at 11 a.m. on 1st February, 1963 at my above office when you are requested to produce the necessary evidence in support of your contentions. Objections in writing accompanied by necessary evidence, if any, received on or before the appointment for personal hearing will also be duly considered.
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> Please note that no adjournment of the hearing will be granted".

The assessee on February 1, 1963, protested to the Commissioner against the issue of the notice and stated that the said notice was absolutely bad in law, illegal and void. On the same date the assessee filed an application under Art. 226 of the Constitution in the High Court at Calcutta, inter alia praying that the said notice, dated January 24, 1963, be quashed or set aside and the Commissioner of Income-tax be restrained from giving affect to the said notice. The petition was heard by

Banerjee, J., and three points were urged before him :

> (1) That the Income-tax Act, 1922-hereinafter referred to as the 1922 Act-having been repealed by Income-tax Act, 1961 hereinafter referred to as the 1961 Act-which came into force on April 1 1962, the Commissioner of Income-tax had no power. authority or jurisdiction to initiate the proceedings under s. 33B of the 1922 Act;
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> (2) Section 6 of the General Clauses Act in no way authories the initiation of the said proceedings inasmuch as no steps were taken in respect thereof when the 1922 Act was in force and/or prior to its repeal; and
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> (3) The powers under s. 298 of the 1961 Act can only be exercised in respect of the matters dealt with by s. 297 of the 1961 Act which does not deal with proceedings under s. 33B of the 1922 Act.

In order to appreciate the grounds and the findings of the learned judge, it is necessary to set out the relevant statutory provisions.

> "S. 33B (1922 Act). Power of Commissioner to revise Income-tax Officer's orders- (1) The commissioner may call for and examine the record of any proceeding under this Act and if he considers that any order passed therein by the Income-tax Officer is erroneous in so far as it is prejudical to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such enquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.
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> (2) No order shall be made under sub-section (1)
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> (a) to revise an order of re-assessment made under the provisions of section 34; or
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> (b) after the expiry of two years from the date of the order sought to be revised....."
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> "S. 297 (1961 Act) Repeals and savings (1) The Indian Income-tax Act 11 of 1922, is hereby repealed.
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> (2) Notwithstanding the repeal of the Indian Income-tax Act, 11 of 1922 (hereinafter referred to as the repealed Act), -
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> (a) where a return of income has been filed before the commencement of this Act by any person for any assessment year proceedings for the assessment of that person for that year may be taken and continued as if this Act had not been passed;
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> (b) where a return of income is filed after the commencement of this Act otherwise than in pursuance of a notice under section 34 of the repealed Act by any person for the assessment year ending on the 31st day of March, 1962, or any earlier year, the assessment of that person for that year shall be made in accordance with the procedure specified in this Act;
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> (c) any proceeding pending on the commencement of this Act before any income-tax

authority, the appellate tribunal or any court, by way of appeal, reference or revision shall be continued and disposed of as if this Act had not been passed;

(d) where in respect of any assessment year after the year ending on the 31st day of March, 1940, -

(i) a notice under section 34 of the repealed Act had been issued before the commencement of this Act the proceedings in pursuance of such notice may be continued and disposed of as if this Act had not been passed;

(ii) any income chargeable to tax had escaped assessment within the meaning of that expression in section 147 and no proceedings under section 34 of the repealed Act in respect of any such income are pending at the commencement of this Act, a notice under section 148 may, subject to the provisions contained in section 149, or section 150, be issued with respect to that assessment year and all the provisions of this Act shall apply accordingly;

(e) section 23A of the repealed Act shall continue to have effect in relation to the assessment of any company or its shareholders for the assessment year ending on the 31st day of March, 1962, or any earlier year, and the provisions of the repealed Act shall apply to all matters arising out of such assessment as fully and effectually as if this Act had not been passed;

(f) any proceeding for the imposition of a penalty in respect of any assessment completed before the 1st day of April, 1962, any be initiated and any such penalty may be imposed as if this Act had not been passed;

(g) any proceeding for the imposition of a penalty in respect of any assessment for the year ending on the 31st day of March, 1962, or any earlier year, which is completed on or after the 1st day of April, 1962, may be initiated and any such penalty may be imposed under this Act;

(h) any election or declaration made or option exercise by an assessee under any provision of the repealed Act and in force immediately before the commencement of this Act shall be deemed to have been an election or declaration made or option exercised under the corresponding provision of this Act;

(i) where, in respect of any assessment completed before the commencement of this Act, a refund falls due after such commencement or default is made after such commencement in the payment of any sum due under such completed assessment, the provisions, of this Act relating to interest payable by the Central Government on refunds and interest payable by the assessment for default shall apply;

(j) any sum payable by way of income-tax, super-tax, interest, penalty or otherwise under the repealed Act may be recovered under this Act, but without prejudice to any action already taken for the recovery of such sum under the repealed Act;

(k) any agreement entered into, appointment made, approval given, recognition granted, direction, instruction, notification, order or rule issued under any provision of the repealed Act shall, so far as it is not inconsistent with the corresponding

provision of this Act, be deemed to have been entered into, made, granted, given or issued under the corresponding provision aforesaid and shall continue in force accordingly;

(l) any notification issued under sub-section (1) of section 60 of the repealed Act and in force immediately before the commencement of this Act shall, to the extent to which provision has not been made under this Acti, continue in force until rescinded by the Central Government;

(m) where the period prescribed for any application, appeal, reference or revision under the repealed Act had expired on or before the commencement of this Act, nothing in the Act shall be construed as enabling any such application, appeal, reference or revision to be made under this Act by reason only of the fact that a longer period therefore is prescribed or provision is made for extension of time in suitable cases by the appropriate authority."

"S. 298 (1961 Act). Power to remove difficulties.

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by general or special order, do anything not inconsistent with such provisions which appears to it to be necessary or expeditious for the purpose of removing the difficulty.

(2) In particular, and without prejudice to the generality of the foregoing power, any such order may provide for the adaptations or modifications subject to which the repealed Act shall apply in relation to the assessment for the assessment year ending on the 31st day of March, 1962, or any earlier year."

"S. 6. (The General-Clauses Act).

Where this Act, or any (Central Act) or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not....."

In exercise of the powers conferred under s. 298, the Central Government issued the Income-tax (Removal of Difficulties) Order, 1962, which was published in the Gazette of India on August 8, 1962. Clauses 2,3 and 4 of the said order read as follows :

"2. Registration and refund proceedings to be regarded as part of Assessment Proceedings :-

For the purposes of clauses (a) and (b) of sub-section (2) of section 297 of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the repealing Act), proceedings relating to registration of a firm or a claim for refund of tax shall be regarded as a part of the proceedings for the assessment of the person concerned for the relevant assessment year.

3. Completion of assessments in cases covered by section 297(2) (b) of the repealing Act :- In case covered by clause (b) of sub-section (2) of section 297 of the repealing

> Act, the assessments shall be made, inter alia, in accordance with the procedure specified in the following sections of the repealing Act, in so far as they may be relevant for this purpose;
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> Sections 131 to 136, 140 to 146, 153 [except sub-section(2) and clause (3)], 156 to 158, 185, 187 to 189, 282 to 284 and 288.
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> 4. Appeal, reference or revision proceedings in respect of orders passed under the repealed Act.-(1) Proceedings by way of the first or subsequent appeals, reference or revision in respect of any order made under the Indian Income-tax Act, 1922 (11 of 1922) (hereinafter referred to as the repealed Act) shall be instituted and disposed of as if the repealing Act had not been passed.
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> (2) Any such proceedings instituted under the repealing Act after the 31st day of March, 1962, and before the date of this Order shall be deemed to have been instituted under the repealed Act and shall be disposed of as if the repealing Act had not been passed;
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> Provided that if any such proceeding has been disposed of before the date of this Order under any provision of the repealing Act, it shall be deemed to have been disposed of under the corresponding provision of the repealed Act and any appeal, reference or revision in respect of the proceeding so disposed of shall be instituted and disposed of as if the repealing Act had not been passed".

The learned Judge held that the expression "proceedings for the assessment" in 8. 297 (2) (a) of the 1961 Act must be deemed to have been enacted by way of abundant caution. In view of his findings, he did not consider it necessary to determine whether s. 6 of the General Clauses Act saved the power under s. 33B of the 1922 Act, but he observed :

> "If it had been necessary so to do, I would have no hesitation in holding that such power would be saved under Section 6 clauses (c) and (e) of the General Clauses Act, there being no indication to the contrary in the repealing Act of 1961".

He accordingly dismissed the petition.

The assessee appealed and the Division bench dismissed the appeal. The Division Bench came to the conclusion that "the provision for assessment are contained in Chapter IV of the Act of 1922 and section 33B finds place in this Chapter and the expression "proceedings for the assessment" indicates that any of proceedings relating to assessment as contemplated in Chapter IV can be initiated and continued under clause (a) of sub-section (2) of section 297 including the proceeding by way of Revision under section 33B of the Act". The Division Bench repelled the contention of the assessee that cl. (c) and (f) had been inserted by way of abundant caution. It also repelled the contention that cl. (4) of the Income-tax (Removal of Difficulties) Order, 1962, was bad, and observed that "what clause (4) was introduced in the Removal of Difficulties Order". In view of these conclusions the Division Bench felt that "it is not necessary to express any definite opinion on the point whether section 6 of the General Clauses Act 1897, is available for the purpose of interpreting the provisions of the Act of 1961. " In the result the appeal before the Division Bench failed and was dismissed. the assessee having obtained a certificate of fitness under Art. 133 of the Constitution, the appeal is now before us.

The learned counsel for the assessee contends that the express "proceedings for the assessment" in s. 297 (2) (A) of the 1961 Act meant original proceedings for the assessment of a person and not appellate or revisional proceedings. He says that Parliament has left the question of appeal and revision to be determined by the application of s. 6 of the General Clauses Act. He further says that the word "assessment" has not been used in its wide same because Parliament has provided for the imposition of penalty in cls. (f) and (g), which ordinarily falls within the wide same of "assessment".

It has also provided for what is to happen to pending proceeding in cl. (c). He urges that the High Court erred in holding that these sub-clauses had been added by way of abundant caution.

The learned counsel for the respondent, Mr. S. T. Desai, contends that s. 297 (2) (a) is comprehensive in its scope and amplitude to include any proceedings under s. 33B of the 1922 Act. He further says that s. 6 of the General Clauses Act will apply to the extent there is no country intention in s. 297 (2) of the 1961 Act. He finally contends that even if there is any doubt regarding the scope of cl. (a) it is removed by the Removal of Difficulties Order issued under s. 298.

It seems to us that the High Court is right in holding that s. 297 (2) (a) of the 1961 Act includes with its scope a proceeding under s. 33B of the 1922 Act. there is no doubt that the word "assessment" does have subject to the context a very wide meaning. The Privy Council in Commissioner of Income Tax, Bombay v. Khemchand Ramdas observed :

> "In order to the answer them, it is essential to bear in mind the method prescribed by the Act making an assessment to tax, using the word assessment in its comprehensive sense as including the whole procedure for imposing liability upon the tax payer."

In A. N. Lakshman Shenoy v. Income-tax Officer, Ernakulam this Court held :

> "Now the question is in what sence has the work "assessment" been used in section 13(1) of the Finance Act, 1950. Two circumstances may be noticed at once. The long title says that the Finance Act, 1950, is an Act to give effect the financial proposals of the Central Government for the year beginning on April 1, 1950, and in section 13(1) the collocation of the words is "levy, assessment and collection of income-tax". In our opinion, both these circumstances point towards a comprehensive meaning; for it could not have been intended, as part of the proposal of the Central Government, that those whose income had totally escaped assessment should be liable but those who had been under-assessed should go scot free. We can see nothing in the words of the section which would justify such a distinction; we say this quite apart from the argument that section 13(1) should be interpreted in consonance with the financial agreement entered into between the Rajpramukh and the President, an argument to which we shall presently advert. Moreover, the collection of the words, "levy, assessment and collection" indicates that what is meant is the entire process by which the tax is ascertained, demanded and realised."

In C. A. Abraham v. Income-tax officer Kottayam(1) this Court Observed :

> "A review of the provision of chapter IV of the Act sufficiently discloses that the word "assessment" has been used in its widest connotation in that Chapter. The title of the chapter is "Deductions and Assessment". The section which deals with

> assessment merely as computation of income is section 23; but several sections deal not with computation of income, but determination of liability, machinery for imposing liability and the procedure in that behalf. Section 18A deals with advance payment of tax and imposition of penalties for failure to carry out the provisions therein Section 23A deals with power to assess individual members of certain companies on the income deemed to have been distributed as dividend, section 23B deals with assessment in case of departure from taxable territories, section 23B deals with collection of tax out of the estate of deceased persons, section 25 deals with assessment in case of discontinued business, section 25A with assessment after partition of Hindu undivided families and section 29,31,33 and 35 deals with assessment of incomes which have escaped assessment. The expression "assessment" used in these sections is not used merely in the sense of computation of income and there is in our judgment no ground for holding that when by section 44, it is declared that the partners or members of the association shall be jointly and severally liable to assessment, it is only intended to declare the liability to computation of income under section 23 and not to the application of the procedure for declaration and imposition of tax liability and the machinery for enforcement thereof."

In commissioner of Income-tax v. Bhikaji Dadabhai & Co. (1) this Court quoted with approval the observations regarding the word "assessment" in Abraham v. Income-tax officer.

In Commissioner of Income-tax v. Patiala Cement Co. Ltd. (2) a similar question arose. The question was whether under s. 13 of the Finance Act, 1950, the appeals in respect of assessment for 1949-50 would be governed by the Patiala Income-tax Act, 2001, or by the Indian Income-tax Act, We may here set our 13 of the Finance Act, 1950 :

> "If immediately before the 1st day of April, 1950, there is in force in any Part B State other than Jammu and Kashmir or Manipur, Tripura or Vindhy Pradesh or in the merged territory of Cooch-Behar any law relating to income-tax or super-tax or tax on profits of business, that law shall cease to have effect except for the purpose of the levy, assessment and collection of income- tax and super-tax in respect of any period not included in the previous year for the purpose of assessment under the Indian Income-tax Act, 1922 (XI of 1922) for the year ending on 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 March, 1949".

This Court held that it is the provisions of the Patiala Act 2001 that applied. No point was raised that in any event the Patiala Act having ceased to have effect, the provisions dealing with appeals were not concerned with the levy, assessment and collection of income-tax.

In Bhailal Amin & Sons Ltd. v. R. P. Dalal(4) the Bombay High Court (Chagla, C.J., & Shah J.), interpreting s. 7 of the Taxation Laws (Extension to Merged States and Amendment) Act (LXVII of 1949) the relevant portion of which is in the following terms :

> "7. (1) If immediately before the 26th day of August, 1949, there was in force in any of the merged States any law relating to income-tax, super-tax, or business profits tax that law shall cease to have effect except for the purposes of the levy, assessment and collection of 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, as extended to that State by Section 3, or, as the case may be, the levy, assessment and collection of business profits tax for any chargeable accounting period ending on or before the 31st day of March, 1948, and for any purposes connected with such levy assessment or collection....."

Observed :

"It is urged by Mr. Palkiwalla for the petitioners that the words "levy, assessment and collection" do not include a right of appeal against the assessment order and the Baroda law did not continue to apply to any rights of appeal that the petitioners might have had in respect of the order of assessment. In the first instance this argument appears to me to be a perfectly futile argument, because, if I were induced to take such a view of the section it would leave the petitioners without any right of appeal at all ". If the Baroda Act ceases to apply and obviously the Indian Act does not apply to the assessment of accounting years prior to the accounting year 1948-49, there is no right of appeal; and the petitioners could not have gone to the Tribunal at all, for there is no other section or section which confer any right of appeal under the Indian Income-tax Act, in respect of assessment made under the Baroda Act. But, apart from this, in my opinion the words "for the purposes of levy, assessment and collection of income-tax" include all procedure for the levy, assessment and collection of income-tax, for without the procedure there can be no levy, assessment or collection; and taking in particular "assessment" with which we are concerned on this petition the assessment is not final until all remedies by way of appeals which are given by the Act are exhausted. This view is emphasized by the concluding words of sub-section(1) which are "for any purpose in connection with such levy, assessment and collection. " There can in any event be no doubt that the procedure for assessment including rights of appeal are included in the words "purposes connected with assessment". In my opinion. therefore the true construction of sub-section(1) of section 7 is that the Baroda Act continues to apply to the assessments of the petitioners even as regards the right of appeal which was given under that Act to the Hazur Adalat".

It is quite clear from the authorities cited above that the word "assessment" can bear a very comprehensive meaning; it can comprehend the whole procedure for ascertaining and imposing liability upon the tax-payer. Is there then any thing in the context of s. 297 which compels us to give to the expression "procedure for the assessment" the narrower meaning suggested by the learned counsel for the appellant ? In our view, the answer to this question must be in the negative. It seems to us that s. 297 is meant to provide as far as possible for all contingencies which may arise out of the repeal of the 1922 Act. It deals with pending appeals, revision etc. It deals with non-completed assessments pending at the commencement of the 1961 Act and assessments to be made after the commencement of the 1961 Act. Then in cl. (d) it deals with assessments in respect of escaped income; cl (h) continues the effect of elections or declarations made under the 1922 Act; cl. (i) deals with refunds; cl. (j) deals with recovery; cl. (k) deals generally with all aggreements, notifications issued under s. 60(1) of the 1922 Act and cl (m) guards against the application of a longer period of limitation prescribed under the 1961 Act to certain applications, appeals, etc. It is hardly believable in this context that Parliament did not think of appeals and revisions in respect of assessment orders already made or which it had authorised to be made under cl. (a) of s. 297 (2).

The learned counsel for the appellant submits that Parliament had s. 6 of the General Clauses Act in view, and therefore no express provision was made dealing with appeals and revisions, etc. In our view, s. 6 of the General Clauses Act would not apply because s. 297 (2) evidences an intention to the contrary. In Union of India v. Madan Gopal Kabra(1) while interpreting s. 13 of the Finance Act, 1950, already extracted above, this Court observed at p. 68 :

> "Nor can Section 6 of the General clauses Act, 1897, Serve to keep alive the liability to pay tax on the income of the year 1949-50 assuming it to have accrued under the repealed State law, for a "different intention" clearly appears in Section 2 and 13 of the Finance Act read together as indicated above".

It is true that whether a different intention appears or not must depend on the language and content of s. 297(2). It is seems to as, however, that by providing for so many matters mentioned above, some in accord with what would have been the result under s. 6 of the General Clauses Act and some contrary to what would have been the result under s. 6, Parliament has clearly evidenced an intention to the contrary.

If s. 6 of the General Clauses Act is out of the way, there is no doubt that Parliament should not be credited with the intention of not providing for appeals and revisions etc., against the assessment orders made under the 1922 Act. In this context, we must give the expression "proceedings for the assessment of that person" in cl. (a) of s. 297 (2) a very comprehensive meaning.

At any rate, if the Income Tax (Removal of Difficulties) Order, 1962, is valid, para 4 of the said order clearly covers the present case and would give jurisdiction to the Commissioner to issue the impugned notice.

Relying on Jalan Trading Company (Private) Ltd. v. Mill Mazdoor Union(1) the learned counsel for the appellant urges that s. 298 is void. In our view, the present case is covered by the decision of this Court in Commissioner of Income-tax v. Dewan Bahadur Ramgopal Mills(2) where a similar order called the Taxation Laws (Part B States) (Removal of Difficulties) Order, 1950, made under s. 12 of the Finance Act, 1950, was upheld. Section 12 read as follows :

> "If any difficulty arises in giving effect to the provisions of any of the Acts, rules or orders extended by section 3 or section 11 to any State or merged territory, the Central Government may, by order, make such provision, or give such direction, as appears to it to be necessary for removing the difficulty."

S. K. Das, J., speaking for the Court observed at p. 288 :

> "Furthermore, the true scope and effect of section 12 seems to be that it is for the Central Government to determine if any difficulty of the nature indicated in the section has arisen and then to make such order, or given such direction, as appears to it to be necessary to remove the difficulty. Parliament has left the matter to executive, but that does not make the notification of 1956 bad. In Pandit Banarsi Das Bhanot v. State of Madhya Pradesh (3) we said at p. 435 : "Now, the authorities are clear that it is not unconstitutional for the legislature to leave it to the executive to determine details relating to the working of taxation law, such as the selection of persons on whom the tax is to be laid, the rates at which it is to be charged in respect of different classes of goods and the like". We are, therefore, of the view that the notification of

> 1956 was validity made under section 12 and is not ultra vires the powers conferred on the Central Government by that section".

It is true that in the case the attack was on the notification and not on the section itself, but it seems to us that the ratio given by the Court is appropriate to cover the validity of the section itself. Furthermore, the terms of s. 37 of the Payment of Bonus Act, 1965 are different and the Bonus Act is not a taxing law.

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

R. K. P. S. Appeal dismissed.

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