Col. H. H. Raja Sir Harindar Singh

Vs

Commissioner of Income-Tax, Punjab, Haryana, Jammu and Kashmir and Himachal Pradesh

Civil Appeal Nos. 34 and 35 of 1969

(C.A. Vaidialingam, P. Jagmohan Reddy, K.K. Mathew JJ)

15.10.1971

JUDGMENT

JAGANMOHAN REDDY J. -

1. These two appeals are by special leave against the judgment of the the Punjab & Haryana High Court answering the references under section 66(1) of the Indian Income-tax Act, 1922 (herein after referred to as "the Act"), against the assessee - the appellant. The appellant who was admittedly a ruler of the erstwhile Faridkot State challenged the assessments made against him for the years 1946-47 and 1947-48 with respect to which the accounting years were Vikram years 2002 and 2003, corresponding to the period 13th April, 1945, to 12th April, 1946, and 13th April, 1946, to 12th April, 1947, respectively. The assessment in each of these years was made under section 34 read with section 23 of the Act, as the assessee's income from dividends and interest and capital gains earned by the assessee during the relevant accounting years in what was then British India had not been brought to tax. The assessee objected to these proceedings and contended before the Income-tax Officer that he being a Ruler of the Faridkot State was immune from taxation on every source of income. He could not, therefore, by virtue of his sovereignty, be treated as an assessee for any purpose under the Act. It was also contended that the notice under section 34 were time-barred. The Income-tax Officer, however, rejected these objectives and held that, though under the international law the Rulers of Indian States were sovereigns and immune from municipal laws of other countries, there was no exemption as far as the personal income of the Rulers are concerned from being taxed under the Act. In that view he held that notice under section 34 were valid and accordingly made an assessment. The appeal to the Appellate Assistant Commissioner was without success, through similar contention were raised before him with particular reference to the privileges which the Rulers enjoyed under international law both in respect of civil and criminal maters. The assessee appealed against this order to the Income-tax Appellate Tribunal where, however, there was a divergence of view between the two Members and, therefore, the matter was referred to the President of the Tribunal. After considering the decisions in regard to the exemption of the sovereign from all civil and criminal laws of another State, the Judicial Member held that no assessment could be made on the assessee under Act as he was the Ruler of a sovereign State during the assessment years under consideration. In this view he did not express any opinion on the question of the legality of the proceedings under section 34 of the Act. The Accountant Member, however, after considering the various provisions in the Act whereby exemption was granted to the Rulers in regard to certain types of income and the various decisions, held that the assessee was liable to assessment in respect of his personal income arising or accruing to him from British India from his private properties. He also helds that the proceedings under section 34 of the Act were perfectly legal and valid. In view of the difference of opinion, the matters was referred to the President of the Tribunal under section 5A(7) of the Act on the following question :

> "Whether, on the facts and in the circumstance of the case, the assessee was immune from tax under the Indian Income-tax Act on his private income, viz., dividends and interest income as also the capital gains earned in British India ?"

The President of the Tribunal held in favour of the assessee by relying on a decision of the Andhra Pradesh High Court in the cease of H. E. H. Mir Osman Ali Khan Bahadur v. Commissioner of Income-tax, where it was stated thus :

> "Indisputably, a sovereign Ruler enjoys immunity from taxation under international law and it is only in case where this is superseded by express words that this should be denied to him. If a legislature wants to depart from these principles and bring such Ruler to tax, there must be clear indication in the enactment itself. In the absence of such express words, the statute must be interpreted in conformity with international law. Simply because the municipal law did not provide for such an exemption, the principles of international law should not be regarded as having been superseded."

In the aforesaid view the Andhra Pradesh High Court had held that notwithstanding the fact that His Exalted Highness the Nizam had lost the character of a sovereign Ruler after October 26, 1950, he is still immune from taxation in respect of the income derived by him prior to that date.

Following this decision the President held that the assessee was immune from taxation under the Act on his private income. In view of this decision, on an application by the revenue under section 66(1) of the Act, the following question was referred to the High Court :

> "Whether, on the facts and circumstance of the case, the assessee was not liable to tax under Indian Income-tax Act, 1922, in respect of his personal income accruing or arising to him in British India in the two assessment years 1946-47 and 1947-48 ?"

The High Court relying up[on the decision of this court in Commissioner of Income-tax v. H. E. H. Mir Osman Ali Bahadur, which reversed the decision of the Andhra Pradesh High Court referred to and relied upon by the President on the Tribunal, held against the assessee. It is contended before us that the facts and circumstances in the Nizam's case are totally different and the decision of this court is clearly distinguishable. The learned advocate contends that in that case the assessments related to the assessment years 1950-51 and 1051-52, the corresponding accounting year for which was the paid between 1st April, 1949, and 31st March, 1959, and 1st April, 1950, and 31st March, 1951, respectively, which years being after the inauguration of the Constitution on 26th January, 1950, clearly make the Act which was made applicable from 1st April, 1950 to all the Part B States, applicable to the assessee. But it is submitted that in the case before us there would be no question of the Act being made applicable to the Faridkot State as the assessment years and the accounting years are prior to the inauguration of the Constitution and the application of the Act. The learned advocated cited a large number of decision in support of his contention that the Natives States in India had international personalities and their Rulers had immunity similar to those that were accorded to any other head of a State under international law. It was also argued that though these princely States in India may have been "protected States" it was not necessary for the recognition of the privileges and immunities of the Rules of such States to possess all the attribution of sovereignty and complete independence in support of which the decisions of Mighell v. Sultan of Johore, Duff Development Co. Ltd. v. Govt. of Kelantan, Stathjam v. Statham & H. H. The Gaekwar of Baroda, were referred it. It was therefore contended that in this country also the position was the same as that recongnised by the common law of England onwards. A references was also made to several

cases pertaining more specifically to the immunity enjoyed by the Rulers from payment of Income-tax on the basis of their status under international law. There are : Patiala State Bank v. Commissioner of Income-tax, Rani Amrit Kunwar v. Commissioner of Income-tax, Accountant-General, Baroda State v. Commissioner of Income-tax, A. H. Wadia as Agent of Gwalier Durbar v. Commissioner of Income-tax, and Maharaja Bikram Kishore of Tripura v. Province of Assam.

On behalf of the revenue reliances is placed on Commissioner of Income-tax v. H. E. H. Mir Osman Ali Bahadur, to sustain the judgment under appeal and it is conceded that if this decision was not applicable to the assessee would be that the Indian Rulers prior to the Constitution were granted immunity from taxation, and in any case this was so in respect of personal property of the Ruler though there were observation in some of the cases that it was difficult to distinguish public or private property owned by a Ruler.

At this stage we think it necessary to advert to one argument adduced on behalf of the assessee, namely, that the income-tax authorities - particularly the Income-tax Officer - had accepted the international status of the but only rejected the claim for such immunity in respect of income from private or personal property. It is therefore contended that the status of the assessee as an international personality is not in issue before us; what is in issue is whether his income from private property is exempt from taxation. We do not think this contention has validity, because the High Court has specifically while rejecting the second contention addressed on behalf of the assessee, ruled that the status of the assessee as a Ruler of the Indian State could not be equated with that of a sovereign in international law. Even the reference to the High Court does not limit or circumscribe the matter fop consideration as contended for but on the other hand enables us to deal with the question whether as an erstwhile ruling prince the assessee can at all be entitled to the immunity for taxation.

In considering the question referred to by the Tribunal it may be useful to examine briefly the basis and extent of the privilege and immunity enjoyed by the head of a State in international law, particularly having regard to the lengthy arguments addressed before us. In international law the head of a State represents the State as such and not as on individual representing his own rights. In that capacity he enjoys certain extra-territorial privileges in other States which are friendly and in peace, known as the receiving States, with the State he represents. These are, ceremonial honours for himself, the members of his family and his retinue; special protection to his person, and exemption from criminal jurisdiction; the grant of extra-territoriality, on the basis that one sovereign does not have any power over the other, such as immunity from filing of suits against him except where he is himself a plaintiff and from other civil processes; exemption from taxation rating and other fiscal enactments and the inviolability of immovable property in which he or the representatives of the State accorded diplomatic immunity reside, etc. Some of these privileges and immunities are political and are generally the subject of executive and administrative instructions such as ceremonial honours, police protection exemption from customs, inaccessibility of their residence to officers of justice, police or revenue officials unless consented to by them. There are yet others in relation to the applicability of the municipal laws, the immunity from which are either recognised by the common law and which courts will not enforce as in England or are dealt with by those laws themselves by affording the necessary exemption. There are yet others which may be regulated by treaties or international covenants. What ever may be the various aspects of the immunity and privileges enjoyed by the heads of the State under the laws of the country where questions relating to them arise, what we are concerned with at the very threshold of this argument dealing with the immunity is whether the Rulers of the erstwhile Native States as they were called enjoyed the same or similar privileges as those of the heads of States recognised as members of the

family of nations in international law. It is clear from the very nature of the Native States in India that they were subject to the sovereignty and protection of the British Crown. While their relations with the Crown were governed by treaties, though initially on terms of equality, as time want by and the British Crown in India became paramount, the relationship between it and the Rulers became unequal with the result the these treaties became subject to the reservation that they could be disregarded where the interests of the British Empire or those of the subjects of the native States were involved.

When the Nizam claimed equality with the British Crown, the then Viceroy Lord Reading informed him on 27th March, 1926, that "the sovereignty of the British Crown is supreme in India and, therefore, no Ruler of an Indian State can justifiably claim to negotiate with the British Government on an equal footing." After giving a few illustrations to negative the claim of the Nizam, the Viceroy proceeded to observe "other illustrations that..... the Government of your Exalted Highneses and the British Government stand on a plane of equality". This paramountcy was described by Shah J., as he then was, as "brazen faced autocracy" in H. H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior v. Union of India. What then becomes of the claim of these States or their Rulers to recognition as international personality. The answer to this specific question is furnished even towards the end of the 19th century. The status of these Native States as international personalities was negatived in the notification of the Government published in Gazette of India, Part 1 dated 21st August, 1891, at page 485, which was a resolution containing a proclamation regarding the trial of accused persons in Manipur and the regrant of the Manipur State. In this regard the following passage at page 488 is of interest :

> "The principles of international law have no bearing upon the relations between the Government of India as representing the Queen Empress on the one hand, and the Native States under the suzerainty of Her Majesty on the other. The paramount supremacy of the former presupposes and implies the subordination of the latter. In the exercise of their high prerogative, the Government of India have, in Manipur as in other protected States, the unquestioned right to remove by administrative under any person whose presence in the State may seen objectionable. They also have the right to summon a Darbar through their political representative for the purpose of declaring their decision upon matters connected with the expulsion of the ex-Maharaja.... through their officer.."

After stating that may one resisting the decision and not complying with orders will be liable to arrest, the declaration went on to say :

> "In the opinion of the Governor-General in Council any armed and violent resistance to such arrest was an act of rebellion, and can no more he justified by a plea of self-defence then could resistance to a police officer armed with a Magistrate's warrant in British India."

In the recent case of this court in H. H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior, referred to above, the majority expressed the view that "the States had no international personality." Nonetheless the status of these Rulers in England was recognised as being on part with other Rulers in the matter of personal immunity from being sued in their courts. In so far as British India was concerned, these were governed partly by Acts of the legislatures, particularly the provisions contained in the Civil Procedure Code and by notifications of the executive under taxation laws as well as by executive or administrative instructions relating to their privileges.

It is, therefore, apparent that in so far as this country is concerned the immunity from legal proceedings which is recognised in the common law has been the subject-matter of legislation under which the ruling princes of India, notwithstanding that they were not recognised as international personalities were however accorded this immunity. Section 433 of the Code of Civil Procedure of 1882 and subsequently section 84 to 87 of the Civil Procedure Code of 1908 deal with these matters. Gajendragadkar C. J. in Mirza Ali Akbar Kashani v. United Arab Republic, cited with approval the observations of Strachey J. in Chandulal Khushalji v. Awad Bin Umar Sultan Nawaz Jung Bahadur, as correctly representing the result of the provisions of section 433 as much as of those contained in section 86(1). It may be mentioned that Strachey J., after pointing out that in India before the enactment of section 433 of the Code, the privilege of independent sovereign princes stood on exactly the same footing as in England, observed :

> "No doubt the question of privilege now depends on the construction of section 433, and I am alive to the danger of pressing to far an analogy between a rule of international law and a specific enactment of the legislature."

It is apparent from a perusal of section 86 of the Civil Procedure Code that there is no absolute prohibition against a ruler of a foreign State being sued in India. A Ruler can be used with the consent of the Central Government certified in writing by a Secretary to that Government. It is also provided that such consent should not be given unless it appears to the Central Government that the Ruler has instituted a suit in the court against the person desiring to sue him or by himself or another, trades within the local limits of the jurisdiction of the court, or is in possession of immovable property situate within these limits and is to be sued with reference to such property or for money charged thereon, or has expressly or impliedly waived the privilege accorded to him by this section.

In view of these provisions the several cases cited by the learned advocate for the assessee which deal with immunity from suits against ruling princes under the English law have no application.

In so far as the question whether there exists a rule of international law exempting a State or the property which it owns, from taxation by am foreign State, is concerned, there seems to be no uniform practice followed by the various States. It is, however, suggested that immunity from taxation "appears as a logical accompaniment of the principle of immunity of foreign State owned property from judicial process" and on this basis it is sought to be contended that even personal, private property of the head of a State is exempt. It is unnecessary for us to examine this position because even if there was such an immunity the rulers of an Indian State could only avail of it, if they are recognised as international personalities which, as we have seen, they are not. Any exemptions which they may be given must, in our view, be under the relevant taxing Acts. The learned advocate for the assessee, however, points out that if the Rulers of Indian States were not exempted from tax apart from the Statute there was no need to make a provision in section 3 of the Bengal Agricultural Income-tax Act, IV of 1944, specifically making every Ruler of an Indian State liable to agricultural income-tax. On the other hand, it would appear to us that this provision would itself militate against the assumption of immunity from taxation of the property of the Rulers and at any rate the legislature may have been acting ex abundanti cautela. It may, however, be noticed that in so far as the Income-tax Act is concerned exemption of the income of the rulers derived from Central Government securities was specifically given under section 60 of the Act which implies that the rulers were not exempt from other provisions of law. This position also find support from a case cited by the learned author on the "immunity from taxation on foreign owned property" in the American journal of international law XLI, at page 239, where the Supreme Court of Ceylon in

Superintendent of the Government Soap Factory, Bangalore v. Commissioner of Income-tax held that the profits made in Ceylon by the Mysore Government Soap Factory could be taxed by Ceylon without violation of international law. The Ceylon court held that the State of Mysore had no position in international law and could not invoke any immunity arising by virtue of international law.

In any case so far as immunity from taxation of the income from personal property of the Rulers of the Native States is concerned this is now concluded by a decision of this court in Commissioner of Income-tax v. H. E. H. Mir Osman Ali Bahadur. In that case the question directly arose as to whether the ruler of the Hyderabad State Prior to 26th January, 1950, could claim immunity from taxation under international law, namely, whether the assessee enjoyed immunity from taxation under the Act in respect of income which accrued or arose to him, and which was received by him up to 26th January, 1950. The learned advocate for the revenue had contended that under the international law, a foreign sovereign was not immune from taxation in respect of his private properties situated in the taxing State; even if there was such an immunity under the international law, the assessee being under the suzerainty or the paramountcy of the British Crown, had never enjoyed the status of a sovereign as understood in the international law and, therefore, was not governed by that law; and that, in any event, as on January 26, 1950, the date when he became liable to tax, he was no longer a sovereign and therefore, he could not claim exemption under the international law. Respondent's advocate claimed that the assessee was not liable to income-tax on the ground that, under the Act, income-tax was charged on the assessee's income received during the accounting year and that as during the accounting year the assessee was a ruling chief, he was exempt from taxation under the international law. He argued that under the international law, as understood by English courts, a foreign sovereign was exempt from taxation, that the said interpretation of the law had becomes the common law of England and that the said common law was the law of India before the Constitution and it continued to have force, thereafter, by reason of article 372.

We have noticed these contentions to show that there is no validity is the submission of the learned advocate for the assessee that that question did not directly arise in that case because the Nizam was being assessed in respect of assessment year 1950-51 and 1951-52, when he was not a ruling prince. This court specifically dealt with this matter as can be seen from the observations of Subba Rao., as he then was, at page 671 :

> "International law vis-a-vis the liability of a sovereign to taxation in respect of his private property is in a process of evolution. It has not yet become crystallized."

After referring to Halsbury's Law, of England, 3rd edition, volume 20, page 589, and Oppenheim's International Law, 8th edition, volume I, page 759, and the article on immunity from taxation of foreign State- owned property in the American Journal of International Law, to which we have already adverted, he observed 'that the question is not free from difficulty and that it requires serious consideration when it directly arises for decision". Assuming for the purposes of these appeals that a foreign sovereign who has acquired an international personality has such an immunity from taxation, he proceeded to examine the question whether His Exalted Highness the Nizam had ever acquired international personality. After examining the position, he concluded at page 675 :

> "..... that Hyderabad State did not acquire international personality under the international law and so its Ruler could not rely upon international law for claiming immunity from taxation of his personal properties."

We are not here concerned with the alternative argument in the case that the Act having applied to the State of Hyderabad after the inauguration of the Constitution on 26th January, 1950, the charge as well as the manner of computation of income did not depend on the pre- existing law but only upon the provisions of the Act because in these appeals that question does not arise.

In view of this legal position we do not propose to burden this judgment with any detailed examination of the several decisions of the High Courts, which were prior to the decision of this court, cited by the learned advocate in support of the proposition that the ruling chief of an Indian State has the same immunity from taxation as enjoyed by other foreign sovereigns. Two of those cases arose under the Government Trading Taxation Act, 1926, where different considerations were applicable (Patiala State Bank v. Commissioner of Income-tax and A. H. Wadia, as agent of the Gwalior Durbar v. Commissioner of Income-tax). At any rate in one other case, i.e., in Maharaja Bikram Kishore of Tripura v. Province of Assam, a distinction was sought to be drawn between the property of the State and the private property of the Ruler. In that case the question was whether the income derived from Chakala Roshanabad Estate was liable to tax under the Assam Agricultural Income-tax Act, by assessment upon the State of Tripura or by assessment on the Ruler of Tripura. It was held that the Chakla Roshanabad was the State property and not personal property of the then ruling Raja who held it in his capacity as a Ruler. No doubt in the other two cases refunds were not given for tax deducted at source on the assumption that the Rulers were not assessees.

In the view we have taken the answer of the High Court of the reference was clearly right and the appeals are accordingly dismissed with costs - one set.

Appeal dismissed.

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