

The Commissioner of Income Tax, Kerala

Vs

K. Srinivasan

Civil Appeals Nos. 1111 of 1969 & 1415 of 1971

(K.S. Hegde, A.N. Grover, H.R. Khanna JJ)

05.11.1971

JUDGMENT

GROVER, J. -

1. This is an appeal by special leave from a judgment of the Kerala High Court in an Income-tax Reference. Originally C.A. 1111/69 had been brought by certificate but the same has been found to be defective for want of reasons and has, therefore, to be revoked. Special leave was sought and has been granted.

2. The facts may be succinctly stated. The assessee's main source of income was salary from a limited company (A. V. Thomas & Co., Ltd.). In the previous year ending on March 30, 1964 his total income from salary amounted to Rs. 42,900. In making the assessment the Income Tax Officer levied surcharge and additional surcharge in accordance with the rates prescribed by the Finance Act, 1963. The assessee preferred an appeal to the Appellate Assistant Commissioner. It was contended before him on behalf of the assessee that the provisions of the Finance Act, 1964 did not permit the Income Tax Officer to levy surcharge and additional surcharge in accordance with the provisions of Finance Act of 1963. In other words it was contended that under sub-section (2) of Section 2 of the Finance Act of 1964 only income-tax was payable in the proportion in which the salary stood to the total income, the income-tax being worked out at the rates applicable under the Finance Act, 1963. There being no mention of any surcharge in the sub-section income-tax alone was leviable which did not include surcharge. The Appellate Assistant Commissioner did not accede to these contentions. He was of the view that surcharge was only another form of income-tax. The matter was taken to the Appellate Tribunal which upheld the levy of the surcharge and the additional surcharge. On a reference being sought the following question of law was referred to the High Court :-

"Whether the words 'Income-tax' in the Finance Act of 1964 in sub-section (2)(a) and sub-section (2)(b) of Section 2 would include surcharge and additional surcharge".

The High Court answered the question in the negative and in favour of the assessee.

3. Section 2 of the Finance Act, 1964 which is headed as "Income-tax and Super-tax" provided in sub-section (1) that income-tax and super-tax shall be charged at the rates specified in Parts I and II of the First Schedule respectively and that in cases to which certain paragraphs of those parts apply these taxes shall be increased by a surcharge for the purpose of the Union. According to sub-section (2) where the total income of an assessee not being a company includes any income chargeable

under the head "salaries" income-tax and super-tax payable by the assessee on the salary portion of the total income shall be the proportionate amount payable according to the rates provided in the Finance Act, 1963. Under Section 2 of the Finance Act, 1963 income-tax was to be charged at the rates specified in Part I of the First Schedule and super-tax at the rates specified in Part II of that Schedule. The income-tax was to be increased in the cases mentioned by a surcharge and additional surcharge for the purpose of the Union and a special surcharge. The super-tax was, however, to be increased by a surcharge for the purpose of the Union and a special surcharge. It will be noticed that Section 2(2) of the Finance Act, 1964 did not contain mention of any of the surcharges. This led to the controversy which resulted in the reference.

4. Before the High Court the assessee relied on Sections 4 and 95 of the Income Tax Act, 1961, hereinafter called the 'Act'. These sections provide for charge of income-tax and super-tax. It was pointed out that surcharge was treated in the Finance Acts as a tax different from the Income-tax and super-tax and that surcharge was levied by the Finance Act while the income and super taxes were levied by the Act. Reference was made in this connection to the First Schedule to the Finance Act, 1963. Part I of that Schedule dealt with "Income-tax and surcharge on Income-tax". Under that heading were given the rates of income-tax as also the rates of surcharge. Similarly Part II of the Schedule dealt with super-tax and that heading the rates of surcharge on Super-tax were given. Among the surcharges in case of income-tax were mentioned : (a) a surcharge for the purpose of the Union (b) a special surcharge and (c) an additional surcharge. As regards the surcharge on super-tax there was mention of (a) a surcharge for the purpose of the Union and (b) a special surcharge. The High Court examined the aforesaid provisions of the Finance Acts of 1963 and 1964 and Articles 270 and 271 of the Constitution apart from the legislative Entry 82 in List I of the Seventh Schedule. It came to the conclusion that income-tax and super-tax did not include surcharge and that these were called by different nomenclature in all the statutory provisions.

5. In order to determine the point before us, which is of considerable complexity, it is necessary to trace the concept of surcharge in taxation laws in our country. The power to increase federal tax by surcharge by the Federal Legislature was recommended for the first time in the report of the committee on Indian Constitutional Reforms, Vol. I, Part I. From para 141 of the proposals it appears that the word "surcharge" was used compendiously for the special addition to taxes on income imposed in September 1931. The Government of India Act, 1935, Part VII, contained provisions relating to finance, property, contracts and suits. Sections 137 and 138 in Chapter I headed "finance" provided for levy and collection of certain succession duties, stamp duties, terminal tax, taxes on fares and freights and taxes on income respectively. In the proviso to Section 137 the Federal Legislature was empowered to increase at any time any of the duties or taxes leviable under that section by a surcharge for federal purposes and the whole proceeds of any such surcharge were to form part of the revenues of the federation. Sub-section (3) of Section 138 which dealt with taxes on income related to imposition of a surcharge. Under the Government of India Act, 1935 the surcharge was levied for the first time by the Indian Finance Act 1940. Section 3(1) of that Act read :

"Subject to the provisions of this section the rates of income-tax and rates of super-tax imposed by sub-section (1) of Section 7 of the Indian Finance Act, 1940 shall, in respect of the year beginning on the first day of April 1940 be increased by a surcharge for the purpose of that Central Government" Similar phraseology was employed in respect of surcharge on super-tax. The provisions relating to surcharge were omitted in the Finance Acts of 1946 to 1950. It was reintroduced in the Finance Act of 1951 and the same has been continued in the Finance Acts of subsequent

years. Special surcharge came to be levied in the Finance Acts of 1958 to 1964 and 1966 to 1971 and the additional surcharge was levied only by the Finance Act of 1963.

6. In the Finance Act of 1951, Section 2 relating to income-tax and super-tax provided that these taxes would be levied at the rates specified in Parts I and II of the First Schedule increased in each case by a surcharge for the purpose of the Union. The Finance Act of 1952 was a short document and Section 2 thereof simply provide :

"the provisions of Section 2 of and the First Schedule to, the Finance Act 1951, shall apply in relation to income-tax and super-tax for the financial year 1952-53 as they apply in relation to income-tax and super-tax for the financial year 1951-52"

There was no specific mention whatsoever of surcharge in Section 2 nor was there any modification of the First Schedule to the Finance Act of 1951 which contained the rates etc., relating to the surcharge. Similar state of affairs existed with regard to Finance Acts of 1953, 1954, 1957. Section 2 of the Finance Act, 1971 is to the effect that the provisions of Section 2 and of the First Schedule to the Finance Act, 1970 shall apply in relation to income-tax for the assessment year or as the case may be the financial year commencing on the first day of April, 1971 as they apply in relation to income-tax for the assessment year commencing on the first day of April, 1970 with certain modifications set out in the section. The First Schedule to the Finance Act of 1970 was modified and the Schedule so modified contains provisions for a surcharge on income-tax. It is significant that Section 2 of the Finance Act of 1971 speaks only of income-tax and not of any surcharge. It is only in the modifications made in the Schedule to the Finance Act of 1970 that there is provision for a surcharge.

7. The above legislative history of the Finance Acts, as also the practice, would appear to indicate that the term "Income-tax" as employed in Section 2 includes surcharge as also the special and the additional surcharge whenever provided which are also surcharges within the meaning of Article 271 of the Constitution. The phraseology employed in the Finance Acts of 1940 and 1941 showed that only the rates of income-tax and super-tax were to be increased by a surcharge for the purpose of the Central Government. In the Finance Act of 1958 the language used showed that income-tax which was to be charged was to be increased by a surcharge for the purpose of the Union. The word "surcharge" has thus been used to either increase the rates of income-tax and super-tax or to increase these taxes. The scheme of the Finance Act of 1971 appears to leave no room for doubt that the term "Income-tax" as used in Section 2 includes surcharge.

8. According to Article 271 notwithstanding anything in Articles 269 and 270 Parliament may at any time increase any of the duties or taxes referred to in those Articles by a surcharge for the purpose of the Union and the whole proceeds of any such surcharge shall form part of the Consolidated Fund of India. Article 270 provides for taxes levied and collected by the Union and distributed between the Union and the States. Clause (1) says that tax on income other than agricultural income shall be levied and collected by the Government of India and distributed between the Union and the States in the manner provided in clause (2). Article 269 deals with taxes levied and collected by the Union but assigned to the States. The provisions of Article 268 which is the first one under the heading "distribution of revenue between the Union and the States" relate to duties levied by the Union but collected and appropriated by the States. Thus these Articles deal with the levy, collection and distribution of the proceeds of the taxes and duties mentioned therein between the Union and the States. The legislative power of Parliament to levy taxes and duties is

contained in Articles 245 and 246(1) read with the relevant entries in List I of the Seventh Schedule.

9. As mentioned before the legislative Entry 82 in List I relates to taxes on income other than agricultural income-tax, super-tax and surcharge would all fall under this entry. It is in exercise of the legislative power conferred by that entry that the Union Parliament enacts the provision in the Finance Act each year relating to them. It is that Act which authorises these taxes to be charged and prescribes the rates at which they can be charged. Section 4 of the Act simply provides that where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates income-tax at that rate or those rates shall be charged in accordance thereto and subject to the provisions of the Act. Section 95 which was omitted by the Finance Act of 1965 contained similar provision with regard to super-tax. Although under the Act Section 4 is the charging section but income-tax can be charged only where the Central Act which, in the present case, will be the Finance Act enacts that income shall be charged for any assessment year at the rate or rates specified therein. The distinction made by the High Court that the surcharges are levied only under the Finance Act and income-tax under the Act may not hold good if the above view which has been pressed on behalf of the Revenue were to be accepted. In our judgment it is unnecessary to express any opinion in the matter because the essential point for determination is whether surcharge is an additional mode or rate for charging income-tax.

10. The meaning of the word "surcharge" as given in the Webster's New International Dictionary includes among others "to charge (one) too much or in addition" also "additional tax". Thus the meaning of surcharge is to charge in addition or to subject to an additional or extra charge. If that meaning is applied to Section 2 of the Finance Act 1963 it would lead to the result that income-tax and super-tax were to be charged in four different ways or at four different rates which may be described as (i) the basic charge or rate (In Part I of the First Schedule); (ii) surcharge; (iii) special surcharge, and (iv) additional surcharge calculated in the manner provided in the Schedule. Read in this way the additional charges form a part of the income-tax and super-tax. It is possible to argue and that argument has been commended on behalf of the Revenue that the word "surcharge" has been used in Article 271 for the purpose of separating it from the basic charge of a tax or duty for the purpose of distributing the proceeds of the same between the Union and the States. The proceeds of the surcharge are exclusively assigned to the Union. Even in the Finance Act itself it is expressly stated that the surcharge is meant for the purpose of the Union.

11. It would appear that since the Finance Act 1943 upto the Finance Act 1967 a provision was made for taxing the income under the head "salaries" according to the provisions of the Finance Act of the preceding year rather than of the current year if the assessee had any income in addition to his income by way of salary. According to the Tribunal this was done because if the income under the "salaries" was to be assessed at the rates fixed by the Finance Act enacted for the current year it would entail considerable administrative work in the form of refund or collection in the final assessment. Since by the Finance Act of 1967 this method or procedure was dropped we do not consider that much significance can be attached to this aspect.

12. In the result we are unable to sustain the view of the High Court. The question that was referred must be answered in the affirmative and in favour of the Revenue. In view of the nature of the point involved the parties are left to bear their own costs in this Court. The appeal by certificate is dismissed.

13. We wish to acknowledge with thankfulness the valuable assistance rendered as amicus curiae at our request by Mr. S. T. Desai, Sr. Advocate, and Mr. Balakrishnan, Advocate as the respondent was

unrepresented.

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