Sashi Prasad Barooah

Vs.

Agricultural Income-Tax Officer, Shillong, and Others.

Civil Appeals Nos. 245 to 251 of 1972

(H.R. Khanna, R.S. Sarkaria JJ)

19.01.1977

JUDGMENT

KHANNA J. -

The short question which arises for consideration in thesa seven appeals filed on certificate against the judgment of Assam and Nagaland High Court is the scope and validity of the following part of rule 23 of the Assam Agricultural Income-tax Rules, 1939(hereinafter referred to as the rules), framed under section 50 of the Assam Agricultural Income-tax Act (Assam Act 9 of 1939)(hereinafter referred to as the Act :

> "Where an order apportioning the liability to the tax on the basis of partition has not been passed in respect of a Hindu family hitherto assessed as undivided or joint, such family shall be deemed for the purposes of the Act, to continue to be a Hindu undivided or joint family."

The High Court held that the facts of this case were covered by the above quoted rule. The High Court also repelled the challenge to the vires of the rule.

The appeals arise out of seven petitions filed under article 226 and 227 of the Constitution of India by the appellant which were dismissed by a common judgment. The matter relates to assessment years 1946-47, 1947-48, 1948-49, 1950-51, 1951-52 and 1956-56. Each writ petition related to one of these years. We may set out the facts relating to the assessment year 1946-47, as it is the common case of the parties that the decision about the writ petition relating to that year would govern the other writ petitions also.

The appellant, Sashi Prasad Barooah, was the karta of a Hindu undivided family styled as S. P. Barooah and others. The family was governed by the Dayabhaga school of Hindu law and consisted of three members. The family owned certain tea estates and carried on the business of tea plantation. It was assessed under the Act in respect of its income derived from manufacture and sale of tea. The case of the appellant is that there was a partition of the family on January 1, 1945, and as a result of that partition, some of the tea estates fell to the share of the appellant and he became exclusive owner thereof the date of the partition.

A general notice dated April 3, 1946, was published in the Assam Gazette and newspapers in terms of sub-section(1) of section 19 of the Act calling upon persons whose agricultural income exceeded the limits of taxable, income to furnish returns within the specified time. On March 24, 1947, the appellant addressed a letter to the agricultural Income-tax Officer praying for extension of time for submission of the return. Another letter dated May 10, 1947, was addressed by the appellant to the

Agricultural Income-tax Officer stating that he was trying to expedite the submission of the return. On February 15, 1951, the Agricultural Income-tax Officer addressed a communication to the appellant asking him to file the return by March 14, 1951, the appellant by letter dated March 16, 1951, informed the said officer that he would meet him at Shillong. In his letter dated July 21, 1951, the appellant informed the Agricultural Income-tax Officer that he would file is return as soon as some matters were settled. On March 25, 1955, the appellant addressed another letter to the Agricultural Income-tax Officer stating that he had not received the relevant assessment orders made by the Income-tax Officer(the Income-tax Officer under the Indian Income-tax Act, 1922) relating to the assessment years 1946-47 onwards. On July 11, 1959, the following two notices were sent by the Agricultural Income-tax Officer to the appellant.

> "I am to inform you that following the dissolution of family business of Sashi Prasad Barua and others in the year 1945, you are liable to furnish a return of agricultural incomes including those from the tea estate under your ownership from the assessment year 1946-47.
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> Please also note that the returns along with certified copies of Central income-tax assessment should reach this office on or before August 15, 1959. In default, you will be liable for summary assessment."
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> "Whereas I have reason to believe that your total agricultural income from sources chargeable to agricultural income-tax in the year ending the March 31, 1947, to 1959
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> (a) has wholly escaped assessment; (b) I therefore propose (i) to assess the said income that has escaped assessment.
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> I hereupon require you to deliver to me not later than August 15, 1959, or within 30 days of the receipt of this notice, a return in the attached form of your total agricultural income during the previous year ending the March 31, 1946 to 1958."

Accompanying the two notices sent by the Agricultural Income-tax Officer was also a notice under section 19(2) and section 30 of the Act. The appellant failed to submit a return or to furnish certified copies of the Central assessment orders. The agricultural Income-tax Officer, as per order dated June 22, 1961, assessed the total agricultural income of the appellant for the year 1946-47 to be Rs. 1,45,994. An amount of Rs. 19,321.44. was held to be recoverable from the appellant. The appellant field an appeal against the order but the same was dismissed by the Assistant Commissioner of Taxes on December 27, 1962. Revision field by the appellant was dismissed by the Commissioner of Taxes as per order dated September 28, 1964. Certificate of public demand showing an amount of Rs. 3,74,087.89 as due from the appellant for the seven years in question was then issued by the Agricultural Income-tax Officer. Proclamation for the sale of property of the appellant was thereafter issued for the recovery of the amount due from the appellant. The appellant thereupon field, as mentioned earlier, sever writ petitions. Prayer made in the writ petitions was to quash the impugned assessment orders dated June 22, 1961, the notice of demand dated July 4, 1961, and the proclamation of sale dated December 31, 1964.

From one of the notices addressed by the taxation authorities to the appellant as well as from the return field on their behalf, it would appear that the taxation authorities were no averse in the event of partition among the members of the Hindu undivided family, to assess the appellant in his individual capacity in respect of the agricultural income arising from those tea estates which had fallen to his share. Such a course, it seems, was also not acceptable to the appellant. His stand at the

same time was that no assessment could be made in the name of the Hindu undivided family as according to him the same had been disrupted as a result of partition. The appellant thus wanted a complete immunity from payment of agricultural income-tax during the years in question even though agricultural income had arisen from tea estates.

Although a number of grounds were taken in the writ petitions, at the hearing before the High Court only two grounds were pressed on behalf of the appellant. The first ground was that after the dissolution of the Hindu undivided family, no assessment order could be made under the Act in respect of such disrupted Hindu undivided family. The second submission advanced on behalf of the appellant was that in case it be held that the matter was covered by rule 23 reproduced above, in that event the said rule was ultra vires the powers of the State Government to frame rules under the Act. The High Court, as already mentioned, decided on both the points in favour of the revenue and against the appellant.

In appeal before us Mr. Sen on behalf of the appellant has contended that the he Hindu undivided family of which the appellant was the karta was disrupted on January 1, 1945. It is urged, as was done before the High court, that after the disruption of that family, it could not be assessed under the Act. Rule 23 reproduced above, according to the learned counsel, is not attracted in the present case. In case, however, it be held that the said rule applies to the present case, the State Government, Mr. Sen submits, had no power to make such a rule.

The above contentions have been controverted by Mr. Chatterjee on behalf of the respondents. The learned counsel has also emphasised the fact that in none of the communications sent by the appellant mentioned above, there was any reference to partition of the Hindu undivided family.

After giving the matter our consideration, we are of the opinion that the two contentions advanced by Mr. Sen on behalf of the appellant are not well-founded. It is consequently not necessary for us to go into the question as to what is the efectof the omission of the appelant to refere to the partition in the communications sent by him to the Agricultural Income-tax Officer.

It may be apposite at this stage to refer to the material provisions, as they stood at the relevant time, of the Act which provides for the imposition of tax on agricultural income arising from lands situated in Assam. According to the definition of "person" as given in section 2(m) of the Act, person includes an undivided or joint Hindu family. Section 3 is the charging section 6 shall be charged for each financial year in accordance with, and subject to, the provisions of the Act on the total agricultural income of the previous year of every individual Hindu undivided or joint family, company, firm and other association of individuals. Section 19 of the Act deals with the return of income and reads as unde :

> "19.(1) The Agricultural Income-tax Officer shall, on or before the first day of May or for the year commencing April 1, 1939, any later day notified by the Government in each year, give notice by publication in the press and otherwise in the manner prescribed by rules, requiring every person whose agricultural income exceeds the limit of taxable income prescribed in section 6 to furnish, within such period not being less than thirty days as may be specified in the notice, a return, in the prescribed form and verified in the prescribed manner, setting forth(along with such other particulars as may be required by the notice) his total agricultural income during the previous yea :
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> Provided that the Agricultural Income-tax Officer may in his discretion extend the date for

the return in the case of any person or class of persons.

(2) In the case of any person whose total agricultural income is, in the opinion of the Agricultural Income-tax Officer, of such amount as to render such person liable to payment of agricultural income-tax for any financial year the Agricultural Income-tax Officer may serve in that financial year a notice in the prescribed form upon him requiring him to furnish, within the prescribed period, a return in the prescribed manner setting forth his total agricultural income during the previous year.

(3) If any person has not furnished a return within the time allowed by or under sub-section(1), or sub-section(2) or, having furnished a return under either of those sub-sections, discovers any omission or wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made, and any return so made shall be deemed to be made in due time under this section."

Section 20 provides for the making of an assessment order. Section 30 deals with income escaping assessment and its material part reads as unde :

"If for any reason any agricultural income chargeable to agricultural income-tax has escaped assessment for any financial year, or has been assessed at too low a rate, the Agricultural Income-tax Officer may, at any time within three years of the end of that financial year, serve on the person liable to pay agricultural income-tax on such agricultural income or, in the case of a company on the principal officer thereof, a notice containing all or any of the requirements which may he included in a notice under sub-section(2) of section 19, and may proceed to assess or reassess such income, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section."

Section 50 empowers the State Government to make rules. The material part of that section reads as unde :

"50.(1) The Provincial Government may, subject to previous publication, make rules for carrying out the purposes of this Act, and such rules may be made for the whole of the Province or such part or parts thereof as may be specified.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may-.....

(j) prescribe the manner in which the tax shall be payable where the assessment is made on the agricultural income of a Hindu undivided or joint family and a partition of the property of such family has been effected after the date of such assessments....."

We have set out above the relevant part of rule 23. The rule clearly states that where an order apportioning the liability to the tax on the basis of partition has not been passed in respect of a Hindu family hitherto assessed as undivided or joint, such family shall be deemed for the purposes of the Act, to continue to be a Hindu undivided or joint family. It would, therefore, follow that unless an order apportioning the liability to the tax on the basis of partition is passed in respect of a Hindu undivided family which was hitherto assessed as such undivided family, the said family shall be deemed for the purpose of the Act to continue to be a Hindu undivided family. Admittedly, no order apportioning the liability to the tax on the basis of the alleged partition has been passed in respect of the Hindu undivided family of which the appellant was the karta. As such, the aforesaid

family shall continue to be treated, for the purposes of the Act, as Hindu undivided family. We are unable to subscribe to the submission of Mr. Sen that the above rule would apply only in those cases where the Hindu undivided family has already been assessed under the Act and the only thing which remains is the recovery of the tax in pursuance of the said assessment order. Such cases, in our view, are covered by the other part of rule 23. We are, however, not concerned with that part. So far as the part of rule 23 which has been reproduced above is concerned, its language is clear and unambiguous. The language clearly warrants the conclusion that in the absence of an order apportioning the liability to the tax on the basis of partition in respect of a Hindu undivided family hitherto assessed as undivided or joint, such family shall be deemed for the purposes of the Act to continue to be a Hindu undivided family.

As regards the second contention, Mr. Sen submits that the power which has been conferred by clause(j) of sub-section(2) of section 50 of the Act is to make rules prescribing the manner in which the tax shall be payable when the assessment is made on the agricultural income of a Hindu undivided or joint and a partition of the property of such family has been effected after the date of such assessment. It is urged that, apart from that, the State Government has no power to make a rule for assessment of a Hindu undivided family after a partition takes place in such family. This contention is devoid of force as we are of the opinion that the State Government was competent to make the part of rule 23 reproduced above in exercise of the powers conferred by sub-section(1) of section 50. According to that sub-section, the State Government may subject to previous publication make rules for carrying out the purposes of this Act. It has not been disputed before us that there was previous publication of the rules in question. The question is whether the part of rule 23 reproduced above can be said to have been made for carrying out the purposes of the Act. The answer to this question, in our opinion, should be in the affirmative. What the rule contemplates in that unless an order was made on the basis of the alleged partition of a Hindu undivided family, such family shall be deemed for the purposes of the Act to continue to be a Hindu undivided family. The rule thus relates to the working of the Act. Section 3 of the Act is the charging section and creates liability for tax in respect of the total agricultural income of every individual, Hindu undivided family, firm and other association of persons. Such a liability having already been created by the above provision, rule 23 reproduced earlier deals with the question as to who should be the person as defined in the Act who should be assessed in respect of the agricultural income arising from property in respect of which the Hindu undivided family was assessed hitherto. The rule provides that such family shall continue to be deemed as Hindu undivided family for the purposes of the Act unless an order is made on the basis of the partition amongst the members of the family. This is a matter of detail to carry out the purposes of the Act and the State Government, in our opinion, was well within its competence to make the impugned rule in exercise of its powers under sub-section(1) of section 50 of the Act.

There is also nothing novel in a Hindu undivided family being taxed as such in spite of a claim of its disruption unless an order on the basis of the partition is made by the taxing authorities. Sub-section(1) of section 171 of the Income-tax Act, 1961, provides that a Hindu undivided family hitherto assessed as undivided shall be deemed for the purposes of the Act to continue to be a Hindu undivided family, except where and in so far as a finding of partition has been given under that section in respect of the Hindu undivided family. The fact that unlike, the Income-tax Act, there is no statutory provision in the Act with which we are concerned and the matter is dealt with by the rules framed under the Act would not make any material difference. The rules would be as much binding as would be the statutory provision in this respect. The only requirement is that the rules should be validly made in exercise of the powers conferred by the Act. So far as this aspect is concerned, we have already held above that the rule in question was validly made as it was within

the competence of the State Government to make such rule.

The proposition is well settled that it is not unconstitutional for the legislature to leave it to the executive to determine details relating to the working of taxation laws, 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 (See Pt. Banarsi Das Bhanot v. State of Madhya Pradesh [1958] 9 STC 388(SC). In that case this court dealt with the provisions of the Central Provinces and Berar Sales Tax Act, 1947. The said Act provided for exemption from taxation in respect of the supply of certain material. Power was also conferred upon the State Government to amend such exemption by notification. This court upheld the validity of that notification.

We may also refer to the case of Powell v. Apollo Candle Company Ltd., [1885] 10 App Cas 282, 291(PC), which dealt with section 133 of the Customs Regulation Act of 1879 of New South Wales. That section conferred a power on the Governor to impose tax on certain articles of import. While repelling the challenge to the constitutional validity of that provision, the Privy Council observe :

> "It is argued that the tax in question has been imposed by the Governor, and not by the Legislature, who alone had power to impose it. But the duties levied under the Order in Council are really levied by the authority of the Act under which the order is issued. The legislature has not parted with its perfect control over the Governor, and has the power, of course, at any moment, of withdrawing or altering the power which they have entrusted to him. Under these circumstances, their Lordships are of opinion that the judgment of the Supreme Court was wrong in declaring section 133 of the Customs Regulations Act of 1879 to be beyond the power of the Legislature."

In V M Syed Mohamed & Co. v. State of Madras [1952] 3 STC 367 (Mad) the question was as to the vires of rules 4 and 16 framed under the Madras General Sales Tax Act. Section 5(vi) of that Act had left it to the rule-making authority to determine at which single point in the series of sales by successive dealers the tax should be levied, and pursuant thereto, rules 4 and 16 had provided that it was the purchaser who was liable to pay the tax in respect of sales of hides and skins. The validity of the rules was attacked on the ground that it was only the legislature that was competent to decide who shall be taxed, and that the determination of that question by the rule-making authorities was ultra vires. The Madras High Court rejected this connection, and held on a review of the authorities that the delegation of authority under section 5(vi) was within permissible constitutional limits.

Powell's case [1855] 10 APP Cas 282(PC) as well as the case of V. M. Syed Mohamed [1952] 3 STC 367(Mad) were referred to with approval by this court in the case of Pt. Banarsi Das Bhanot [1958] 9 STC(SC). The above decisions clearly lend support for the conclusion arrived at by the High Court in the judgment under appeal that the State Government was within its competence to make rule 23 reproduced above.

We, therefore, uphold the judgment of the High Court and dismiss the appeals with costs. One set of fee.

Appeals dismissed.

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