

State of Punjab and Another

Vs

Prem Sukhdas and Others

Civil Appeal Nos. 2152, 2153 of 1968

State of Punjab and Others

Vs

Rikhab Das and Others

Civil Appeal Nos. 1754-1755 and 1497 of 1968

(CJI M. H. Beg, A. C. Gupta, P. S. Kailasam JJ)

01.04.1977

JUDGMENT

BEG, C.J. –

1. The only question decided by the High Court of Punjab and Haryana in the cases now before us by special leave was whether Section 3 of the Punjab Professions, Trades, Callings and Employments Taxation Act, 1956 (hereinafter referred to as 'the Act') restricts taxation upon persons in Punjab to the income made within the State of Punjab. This section reads as follows :

3. Levy of tax - Every person who carried on trade either by himself or by an agent or representative, or who follows a profession or calling, or who is in employment, either wholly or in part, within the State of Punjab, shall be liable to pay for each financial year or a part thereof a tax in respect of such profession, trade, calling or employment :

Provided that for the purpose of this section a person on leave shall be deemed to be a person in employment.

2. Section 4 of the Act provides for taxation in accordance with a schedule annexed to it. Section 5 lays down the manner of determination of the tax which is to be assessed on the total "gross income". The term "total gross income" is defined by Section 2 of the Act as "aggregate gross income derived from various professions, trades, calling and employment". The Legislature amended this provision by adding in 1962, "Whether such profession or calling is followed, trade is carried on or employment is, within or outside the State of Punjab" to the definition. The annexed schedule, conformably with the provisions of Article 276 of the Constitution does not tax any person, under the scale laid down in the schedule, to an extent more than Rs. 250 per annum. Nevertheless, it is clear, by reading the provisions of Section 5 and Section 2 together, that the determination in accordance with the scale laid down in this schedule of the aggregate gross income on which tax is assessed, will have to take into account the income of the individual concerned earned both inside and outside Punjab.

3. The result is that the only condition for making a person taxable under the Act is that he must also have some profession, trade, calling or occupation which is to be taxed, which he carries on within the State of Punjab. It does not matter whether that person is employed or carries on the same or some other profession, trade, or calling outside Punjab also. Section 3 is only meant to indicate that the person who is to be made liable has carried on some profession, calling, trade, or occupation within Punjab. It does nothing more. It has nothing to do with the calculation of the aggregate amount of the tax to be levied. That is dealt with by Section 5 read with Section 2(b) of the Act as amended. And, in determining the amount of tax which an assessee has to pay or the grade in which he falls, the amount he makes outside must also be added to what he makes inside Punjab. His total gross income determines only his grade or amount of tax he has to pay. His subjection to a profession or calling tax depends only on the fact that he carries on some business or has some trade or calling "within the State of Punjab". The words qualifying the whole or a part of the calling which determines only the taxability of the person cannot possibly, on the language used, fix also the grade of taxation in which the individual fails.

4. We, however, find that the Punjab High Court, in accordance with a view it had been consistently taking even before the amendment of Section 2(b) of the Act, has held that, in determining the aggregate gross income, only the income made within Punjab by the calling, occupation, trade, or profession carried on must be taken into account. We think that this view of the Punjab High Court is based on a very forced interpretation given to the clear words of Section 3 of the Act, probably because it thought it necessary to do so to make the effect of the section correspond to provisions of Article 245(1) of the Constitution. We think that the Punjab High Court has clearly erred in interpreting Section 3 in such a way as to make Section 2(b), read with Section 5 of the Act, useless in determining the tax in accordance with the gradation laid down in the Schedule 2 of the Act. This amounts to nothing short of legislation. We think that the view is an impossible one. The principle that, where a provision is capable of one of two interpretations, the interpretation which validates rather than one which may invalidate a provision applies only where two views are possible. It cannot be pushed so far as to alter the meanings of the clear words used in an enactment and to, in effect, repeal statutory provisions by making them useless without holding them to be void.

5. It is true that the question of the validity of the provisions of the Act on the ground that they contravene Article 245(1) of the Constitution was also raised in the High Court, but, the High Court left this question open as it held in favour of the assessee on the first question. As the first question was decided by clearly misinterpreting the provisions of the Act as they stand, we have to allow these appeals. A Division Bench of the High Court, in the judgment under appeal, had purported to follow an earlier Division Bench decision of the High Court in *Beli Ram v. The Assessing Authority* (1960 PLR 846 (Punj HC)), which had interpreted the provisions of Section 3 of the Act as the Act stood before the amendment of Section 2 in the manner indicated above. As the High Court had not decided the question of validity of the amendment these cases cannot be disposed of without deciding that question. We do not propose to express any opinion on this question as we do not have the benefit of the High Court's views on it.

6. In the circumstances mentioned above, we set aside the judgments and orders of the High Court on these cases. We send the cases back to the High Court for deciding the question of validity of the amendment to Section 2 of the Act. The parties will bear their own costs.

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