

SUPREME COURT OF INDIA

Vivekanand School Through Headmaster

Vs.

President of Zila Panchayat

C.A.No.....of 2008

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

14.11.2008

JUDGMENT

Dr.Arijit Pasayat, J.

1. Leave granted.
2. Challenge in this appeal is to the judgment of a Division Bench of the Uttarakhand High Court dismissing the writ petition filed by the appellant.
3. Factual background in a nutshell is as follows:

“Demand of tax was made by the Tax Assessing Officer, Zila Panchayat, Dehradun under Section 121 of The *Uttar Pradesh and Uttaranchal (Kshetra Panchayat and Zila Panchayats) Adhiniyam, 1961* (hereinafter referred to as the `Act'), for the assessment years 1998-1999, 1999- 2000 and 2000-2001. The appellant took the stand that it has no liability to pay the tax. The appeal before the Commissioner, Garhwal Division, has been dismissed. A writ petition was filed challenging the orders. It was submitted that the School was not a commercial venture and in any event, the income level stipulated under Section 121 had not been crossed and, therefore, the demand of tax, as raised cannot be maintained.

The President of Zila Panchayat and its officials filed counter affidavit justifying the demand, inter alia, stating that the School is a commercial body and it had collected Rs.2,86,472/- and Rs.3,32,435/- as fees from the students in the year 1993-94 and 1994-95 respectively. Therefore, the demand was justified. The High Court on consideration of the counter affidavit filed, dismissed the writ petition.”

3. Learned counsel for the appellant submitted that the true scope and ambit of Section 121 of the Act has not been kept in view.

4. There is no appearance on behalf of the respondents in spite of service of notice.

5. Section 121 deals with tax on "circumstances and property". The relevant portion of Section 121 reads as follows:

“121 - Conditions and restrictions for tax on Circumstances and Property - The power of a Zila Panchayat to impose a tax on circumstances and property shall be subject to the following conditions and restrictions, namely-

a) the tax may be imposed on any person residing or carrying on business in the rural area provided that such person has so resided or carried on business for a total period of atleast six months in the year under assessment;

b) no tax shall be imposed on any person whose total taxable income is less than twelve thousand rupees per annum;

c) the rate of tax shall not exceed three Naye Paise in the rupee on the total taxable income; and

d) the total amount of tax imposed on any person shall not exceed such maximum, if any, as may be prescribed by rule.”

6. Rule 6 of the *U.P. Zila Panchayat (Imposition, Assessment and collection of Circumstances and Property Tax) Rules, 1994* (for short 'the Rules') provides that tax shall be assessed and paid on the basis of the total taxable income of the assessee in the previous financial year. As provided in clause (e) of Rule 7 of the Rules, the total amount of tax imposed on any person shall not exceed rupees six thousand per annum. Different provisions of the Rules envisage the powers and duties of the taxing authority, basis and conditions of assessment of tax, assessment and collection of tax, notice to general public for inspection of the list and filing of objection against the tax so assessed.

7. A bare reading of the Act shows that the tax is leviable on the total income. "Taxable income" is a well known concept. In *Pandit Ram Narain Vs. State of U.P. & Ors.*¹, it was noted as follows: "A tax on 'circumstances and property' is a composite tax and the word 'circumstances' means a man's financial position, his status as a whole depending, among other things, on his income from trade or business."

8. In *M/s. R.R. Engineering Co. Vs. Zila Parishad, Bareilly and Anr.*², it was, inter-alia observed as follows:

“But a person can be subjected to tax on circumstances and property in relation to his 'Haisiat', that is to say, the status he occupies by reason of the fact of the pursuit by

him of a beneficial calling or possession by him of an interest in property. While determining the status of an individual for the purposes of tax on circumstances, the total turnover of his business or avocation may therefore be legitimately taken into consideration.”

9. Strictly speaking, R.R. Engineering case (supra) did not deal with the question as to what is taxable income. The said expression can be considered in the background of what has been stated in the *Income Tax Act, 1961* (in short `the Income Tax Act).

10. Pursuant to our directions, the Balance Sheets as on 31.3.1994 and 31.3.1995 and the Income-Expenditure Statement for the financial years 1993-94 and 1994-95 were produced. Receipt from the students was Rs.2,86,472/- for the first period, while for the subsequent period, it was Rs.3,32,425/-. Apparently, the respondents were not justified in treating the said amounts to be the taxable income.

11. It appears from the financial statements that apart from the students' fees, donation was received from Indian School Society amounting to Rs.3, 15,000/- for the first year and Rs.2,84,000/- for the subsequent year. After deduction of the expenses, the surplus, i.e. income over expenditure which was transferred to the school fund account was Rs.28,449.15 for the first year and Rs.26,647.80 for the subsequent year. The question may arise as to whether donation could be treated as a part of the receipts for computing the taxable income. We need not express any opinion in that regard because the authorities have proceeded on erroneous premises. The High Court also fell into error by considering the students' fees as taxable income.

12. In the circumstances, we set aside the impugned order of the High Court and direct the authorities to compute the taxable income and then decide as to whether any tax is leviable.

13. Another aspect which has been submitted by learned counsel for the appellant is that even if it is conceded for the sake of arguments that while computing the surplus i.e. income over expenditure donations can be taken into account, yet, the tax payable cannot exceed three naya paisa on a rupee on the total taxable income. The relevance of this question can only arise after the authorities decide as to whether there is any taxable income or not.

14. The appeal is allowed to the aforesaid extent. No costs.

¹(1956 SCR 664)

²(AIR 1980 SC 1088)