

ALLAHABAD HIGH COURT

District Board of Farrukhabad

Vs.

Prag Dutt

(Malik, C.J.)

11.05.1948

JUDGMENT

Malik, C.J.

1. This second appeal has been filed by the defendant, the District Board of Farrukhabad. The plaintiffs filed a suit for an injunction restraining the defendant from realizing a tax which was assessed on the plaintiffs by the defendant as the circumstances and property tax for 1944.1945. The plaintiffs alleged that they did not do any business within the area under the management of the District Board and were therefore not liable to pay the tax.

2. The defense was that the plaintiffs resided and also carried on business within the limits of the District Board and the Board had assessed the plaintiffs on only such income as was made by the plaintiffs within those limits. It was further pleaded that the suit was barred by Section 131, District Boards Act.

3. The learned Munsif came to the conclusion that except the plaintiff Bansidhar, who resided in Benares, all the other plaintiffs resided in Makrandnagar and their house in Kanauj was used for the purpose of their business. It may be mentioned that the plaintiffs are brothers and are members of a joint Hindu family. The learned Munsif recorded a finding that the plaintiffs resided within the limits of the District Board and were, as such, liable to its jurisdiction for purposes of assessment. The learned Munsif held that the suit was barred by Rule 131, District Boards Act. As a result of the two findings mentioned above he dismissed the suit with costs.

4. The plaintiffs filed an appeal which came up for hearing before the learned District Judge of Farrukhabad. Before the learned District Judge it was again contended that the plaintiffs earned their income within the municipality and were, therefore, not liable to pay the circumstances and property tax imposed by the District Board. On behalf of the Board it was urged that so long as the plaintiffs were residents in the rural area they were liable to be assessed even though the income may have been earned within the municipal limits.

5. The learned Judge came to the conclusion that if the entire income of the plaintiffs was assessed to the circumstances and property tax by the Municipal Board of Kanauj, they were not liable to pay the same tax on the same income to the District Board. On the question whether the civil Court had any jurisdiction the learned Judge was of the opinion that no objection could be taken to a valuation of assessment and no liability of a person to be assessed or taxed could be questioned in any other manner or by any other authority than was provided for in the Act, but if the dispute was whether the plaintiffs resided within the limits of the District Board and were, therefore, subject to the application of the District Boards Act that dispute could be decided by a civil Court though the civil Court might not be able to entertain a suit about the amount of the taxable income.

6. Before the District Judge a new point was raised that under the Professions Tax Limitation Act (20 [xx] of 1941) no tax payable to any Municipality or District Board by way of tax on professions, trades, callings or employments could be valid beyond the sum of ₹ 50/-. The learned Judge held that the Act was applicable, the plaintiffs were not liable to pay more than ₹ 50/- per annum to the District Board as circumstances and property tax and issued an injunction restraining the District Board from realizing more than ₹ 50/- per annum from the plaintiffs as circumstances and property tax.

7. The District Board has filed this appeal. The case came up before a learned single Judge of this Court who referred it for decision by a Pull Bench.

8. Two points have been raised before us by learned counsel, firstly that the jurisdiction of the civil Court was barred by Section 131, District Boards Act. The second point that has been argued is whether the tax imposed is governed by the provisions of the Professions Tax Limitation Act (20 [xx] of 1941). The points have been fully considered in the judgments of my learned brothers, Raghubar Dayal and Bind Basni Prasad. I agree with the order proposed, but in view of the importance of the questions raised in this appeal, I would like to set out very briefly my reasons.

9. The plaintiffs have submitted to the decree of the Court below and have neither filed an appeal nor a cross-objection. They have, therefore, accepted their liability to pay the amount of ₹ 50/- which was the maximum amount payable under the Professions Tax Limitation Act (20 [xx] of 1941). The provisions of Section 2 of the Act are as follows:

Notwithstanding the provisions of any law for the time being in force, any taxes payable in respect of any one person to a Province, or to any one municipality, district board, local board or other local authority in any Province, by way of tax on professions, trades,

callings or employments, shall from and after the commencement of this Act cease to be levied to the extent to which such taxes exceed fifty rupees per annum.

If the provisions of this section apply to the tax which has been imposed on the plaintiffs then there can be no doubt that the District Board had no right to impose a tax of a larger amount than ₹ 50/- and any imposition in excess thereof must be deemed to be illegal.

10. The argument of Mr. Banerji is firstly that the tax on circumstances and property is not a tax on professions, trades, callings or employments and is, therefore, not governed by the Professions Tax Limitation Act. In the alternative he has argued that the question of illegality could be decided by the District Magistrate in an appeal under Section 128, U.P. District

Boards Act (10 [x] of 1922). Section 128 reads as follows:

(1) An appeal against an assessment, or any alteration of an assessment, of a tax on circumstances and property may be made to the District Magistrate or to such other officer as may be empowered by the Local Government in this behalf.

(2) Provided that when the District Magistrate or such other officer as aforesaid is a member of the board, the appeal shall lie to the Commissioner.

He has relied on the provisions of Section 131 which bars the jurisdiction of civil and criminal Courts in matters of taxation. Section 131 provides that:

(1) No objection shall be taken to a valuation or assessment, nor shall the liability of a person to be assessed or taxed be questioned in any other manner or by any other authority than is provided in this Act or in the United Provinces Local Rates Act, 1914.

(2) The order of the appellate authority confirming, setting aside or modifying an order in respect of valuation or assessment or liability to assessment or taxation shall be final : provided that it shall be lawful for the appellate authority, upon application or on his own motion, to review any order passed by him in appeal by a further order passed within three months from the date of his original order.

Mr. Banerji has urged that the words 'in respect of assessment or liability to assessment or taxation' are wide enough to include the objections that are now being raised in the civil Court and has urged that all these objections could be decided by the District Magistrate and the plaintiffs have, therefore, no right to come to the civil Court.

11. I will take up the question of the jurisdiction of the civil Court first. If an assessment is made within the framework of the Act but the assessment is wrong it may not be possible for the civil Court to give to the assessee any relief and his remedy may be confined to an appeal under the Act. If, on the other hand, the assessment complained of is beyond the competence of the Board and is, therefore, an illegal imposition, the civil Court should certainly have jurisdiction to

interfere. If the tax is not imposed in accordance with the provisions of the Act, the District Board cannot rely on the Act to oust the jurisdiction of the civil Court. It is also now well recognized that a statutory tribunal must act in accordance with the provisions of the Act, and if it has not acted in accordance with those provisions the jurisdiction of the civil Court cannot be ousted. If a tax is challenged on the ground that it is ultra vires and that objection is upheld it is difficult to accept the argument that the assessee has no remedy in a civil Court and the Board can be allowed to rely on the provisions of the Act, when they themselves have not followed the provisions thereof and have imposed the tax illegally. I have, therefore, no hesitation in holding that if the tax in question comes under the provisions of the Professions Tax Limitation Act, the District Board's jurisdiction was limited and any amount claimed beyond the sum of ₹ 50/- was wholly illegal and unjustified and the civil Court can grant the relief asked for.

12. The next point for consideration is whether the circumstances and property tax is governed by the provisions of the Professions Tax Limitation Act. The U.P. District Board Act (x of 1922) was enacted by the Provincial Legislature with the previous sanction of the Governor-General under Sub-section (8) of Section 80A, Government of India Act, 1919. Sub-section (8) of Section 80A was as follows:

The local legislature of any province may not, without the previous sanction of the Governor-General, make or take into consideration any law,

(a) imposing or authorizing the imposition of any new tax unless the tax is a tax schedule as exempted from this provision by rules made under this Act; or

(b) affecting the public debt of India, or the customs duties, or any other tax or duty for the time being in force and imposed by the authority of the Governor-General in Council for the general purposes of the Government of India, provided that the imposition or alteration of a tax schedule as aforesaid shall not be deemed to affect any such tax or duty.

13. Section 108(b), District Boards Act, gives the Board power to impose a tax on circumstances and property in accordance with the provisions of Section 114 with the previous sanction of the Local Government. The relevant provisions of Section 114 are as follows:

The power of a Board 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 at least six months in the year under assessment;

(b) no tax shall be imposed on any person whose total taxable income is less than Rs 200 per annum;

(c) the rate of tax shall not exceed four paise in the rupee on the total taxable income....

In accordance with the provisions of these sections the Board used to impose a tax on the

income derived by a person residing or carrying on business in the rural area. The amount on which the tax was to be calculated was worked out by estimating the amount of income that the assessee could derive from his property and the estimated income that he was making from, his business. Calculating the taxable income on this basis the Board issued a notice of demand on the plaintiff requiring him to pay by 10-4-1944, a tax of ₹ 879-3-0/- for the year 1941-45. This amount was calculated on an income of Rupees, 18,000 from trade and ₹ 200/- from property.

14. In the year 1985, the Government of India Act, 1935, (26 Geo. V, Ch. 2) came into force. Under Sections 100-104 of this Act, the legislative powers of the Central and of the Provincial Legislatures were divided into three Lists, List 1 in Schedule 7 was the Federal Legislative List; List 2 in the same schedule was the Provincial Legislative List and List 8 was the Concurrent List with respect to which both the Legislatures had powers to make laws. The Provincial Legislature had no power to make laws with respect to matters entered in List 1 and similarly the Central Legislature had no power to make laws with respect to matters entered in List II. Section 143 of the Act, however, was enacted to save taxes, duties, cesses or fees which were in force before the first day of January, 1935. Sub-section (2) of the section provided:

Any taxes which immediately before the commencement of Part III of this Act were being lawfully levied by any local authority for the purposes of the district under in force on the first day of January, 1935, may notwithstanding that that tax is mentioned in the Federal Legislative List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by the Federal Legislature.

In case it is held that the Professions Tax Limitation Act applies to the circumstances and property tax then it can be levied only to the extent permitted by that Act. To decide this matter, we have first to consider what exactly the circumstances and property tax is. As has been said by their Lordships of the Judicial Committee in *Governor-General in Council v. Province of Madras¹*, it is not the name of the tax but its real nature which must determine into what category it falls. I have already said that in the case before us the tax has been imposed at the rate of pies to the rupee on the basis of an income of ₹ 18,000/- being the income from trade and on the basis of ₹ 200/- being the income from property.

15. Section 2, Professions Tax Limitation Act (20 [xx] of 1941) provides:

Notwithstanding the provisions of any law for the time being in force, any taxes payable in respect of any one person to a province, or to any one municipality district board, local board or other local authority in any province, by way of tax on professions, trades, callings or employments, shall from and after the commencement of this Act cease to be levied to the extent to which such taxes exceed ₹ 50/- per annum.

The question, therefore, is whether the tax on the income from trade which was estimated at Ks. 18,000 and the income from property which was estimated at ₹ 200/-, or any part of it, can be included within the words "taxes on professions, trades, callings or employments." As regards the tax on property, there can be no difficulty and it cannot be governed by the provisions of the Professions Tax Limitation Act. As regards the tax assessed on the sum of ₹ 18 000/-, the income from trade, which is said to be a tax on circumstances, we have to consider what the word "circumstances" means. To nay mind, the word means a man's financial position, his status taken as a whole and includes what may not properly be comprised under the term 'property' and at the same time ought not to escape assessment." Its vernacular equivalent is "haisiat." In assessing the tax on circumstances, a man's financial status may be judged, among other things, by taking into account his income from business. When a tax is a graduated tax calculated on the basis of so many pies per rupee of the income made from business and property, then the line of demarcation between a tax on "income" and

¹ AIR 1942 PC 98 : AIR 1945 PC 98 : 1945-58-LW 228

a tax on "circumstances" becomes narrow and they almost converge. It is not the name which is given to the tax that matters but it is the pith and substance of it. The point whether the tax that was imposed at the rate of four pies to the rupee on the income of ₹ 18,000/- made in trade was Income Tax, was not raised in either of the Courts below and we have, therefore, not been called upon to decide the same. I may, however, mention that the fundamental difference between a tax on "income" and a tax on "circumstances and property" is that income tax can only be levied if there is income and if there is no income, no tax is payable but in the case of Circumstances and Property Tax, where a man's status has to be determined his total business turnover may be considered for purposes of taxation, though he may not have earned any taxable income. As has been pointed out in *In re a Reference under Government of Ireland Act*² the measure of the tax is not itself the test. In determining the nature of the tax consideration, may be given to the standrad on which the tax is levied, but that is not the determining factor; see *Byramjee Jeejeebhoy v. Province of Bombay*²⁰

16. A tax on professions, trades, callings or employments may not be a graduated tax according to the income earned from the profession, trade, calling or employment. In that case it would be more in the nature of a licensing fee. It may again be a graduated tax and if it is on the basis of income derived from professions, trades, callings or employments and is payable only if there is income, a serious question for consideration may arise whether it is anything other than Income Tax.

17. The only point for consideration before us, however, is whether the tax that has been imposed on the income from business, which has been calculated at the figure of ₹ 18,000/-, comes under

the Professions Tax Limitation Act and is a tax on trade. If the tax is not in the nature of an Income Tax, I do not see the difference between a tax levied on the basis of income from trade and called a circumstances tax and a tax on trade. As have already said, there may be a tax on trade in the nature of a licensing fee even though it may be on a graduated scale. Again there may be a tax on circumstances which means a tax on a man's status and would, therefore, be on a graduated basis, but it would not be a tax on trade. Here, however, after considering the real nature of the tax, I am inclined to the view that if it was not an Income Tax it was certainly a tax on trade and it was not merely a personal tax on the status of the assessee. I, therefore, agree in the order proposed that the District Board could tax the plaintiff up to ₹ 50/- on the income derived from trade and that it could also impose a tax on, the income derived from property.

Dayal, J.

18. I have read through the judgment of my brother Bind Basni Prasad J. and agree with him in the order proposed.

19. In view of the clear observations of their Lordships of the Privy Council in the case in *Secretary of State v. Mask & Co*⁴, it is settled law that:

²(1936) A.C. 352 21 ⁴ AIR 1940 PC 105: 1940 AWR (P.C.) 10 132 : 1940-52-LW 21 : 1940-52-LW 1

³ A.I.R. 1940 Bom. 65

The exclusion of the jurisdiction of the Civil Courts is not to be readily inferred but such exclusion must either be explicitly expressed or clearly implied. Even if jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

Section 131, District Boards Act, is no bar to the civil Courts deciding in the present case whether the District Board acted beyond its jurisdiction in assessing a tax amounting to more than ₹ 60/- if under the law it could not have made an assessment exceeding ₹ 50/-.

20. The limitation to tax up to ₹ 50/- is said to be the result of the Professions Tax Limitation Act, 1941 (Act 20 XX. of 1941), which limits the tax on professions, trades, callings or employments by a District Board to ₹ 50/-. This Act will apply if it be held that the tax on circumstances and property is in reality a tax on professions, trades, callings or employments.

21. To determine this point it is necessary to scrutinize the nature of tax and not to go by the name given to it. Section 108(b), District Boards Act authorizes a District Board to impose a tax on persons assessed according to their circumstances and property in accordance with Section 114 of the Act. Section 114 mentions certain conditions and restrictions on the imposition of this tax and makes it clear that the tax is to be imposed on total taxable income which has been defined in explanation to the section as estimated income not including income of certain kinds

mentioned therein.

22. It appears from the assessment notice issued by the District Board to the plaintiffs, respondents that of the six heads of income mentioned therein the income of the plaintiffs-respondents was estimated at ₹ 18,000/- from trade and ₹ 200/- from property. It is clear, therefore, that this tax on circumstances and property is in reality a tax on income according from various sources including in the present case the two sources, namely, trade and property. So much of the tax as there is on account of income from trade has to follow the limitations prescribed by the Professions Tax Limitation Act, 1941.

23. It is argued that the entire tax assessed as circumstances and property tax is not to be spilt up into several taxes on different sources which made up the taxable income. I do not see why this be not done in cases where it can be ascertained that the entire taxes are total of several taxes. To bold otherwise will enable Taxing authority to combine an illegal tax with another and to give the consolidated tax a different name and thus defeat any particular law restricting its powers of taxation.

24. The tax on the income of property has been validly assessed. I need not decide the question whether the tax would be a valid tax falling under, Item 42, List. 2, Schedule 7, Government of India Act, 1985, if the provisions empowering District Board to assess this tax were enacted by the Provincial Government now. The provisions, however, were enacted in 1922 and according to law in force then were lawfully enacted as held in *District Board, Dehra Dun v. H. Trotter*⁵, 25. Section 143(2), Government of India Act, 1935, provides that:

Any taxes which immediately before the commencement of part 3 of this Act were being lawfully levied by any local authority for the purposes of the district under a law in force on the first day of January, 1935, may notwithstanding that that tax is mentioned in the Federal Legislative List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by the Federal Legislature.

No such provision to the contrary has been made by the Federal Legislature. It follows, therefore, that the tax on the income from property can be validly raised by the District Board under its general tax "circumstances and property tax."

26. For these reasons I agree that the District Board could tax the plaintiffs up to ₹ 50/- on the income derived from trade and that it could tax the income derived from property.

Bind Basni Prasad, J.

27. This second appeal raises an important question of law, namely, the limits of the powers of the District Boards in this Province to levy what is known as tax on circumstances and property.

The appeal came up originally before a learned Single Judge who, in view of the importance of the question involved, referred it to a Full Bench. The facts are as follows:

28. Clause (b) of Section 108, U.P. District Boards Act, 1922 (U.P. X of 1922) empowers Boards in this Province to impose, with the previous sanction of the Provincial Government, a tax on persons according to their circumstances and property in accordance with Section 114. Section 114 provides that the powers of a Board to impose the tax shall be subject inter alia to the condition that:

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 at least six months in the year under assessment.

The term "rural area" is defined in Sub-section (10) of Section 3 as the area of a district excluding every municipality as defined in the U.P. Municipalities Act, 1916, and every cantonment as defined in the Cantonments Act, 1910.

29. In exercise of the powers conferred by the above sections, the District Board of Farrukhabad imposed the tax on circumstances and property upon persons in rural area and assessed the four plaintiffs, who are brothers, to a sum of ₹ 379 3-0/- as tax for the year 1944-45. On 9th December 1944, the Board attached a she-buffalo of the plaintiffs to realize the said tax. The plaintiffs then brought the suit against the District Board, Farrukhabad, and alleged in the plaint that the imposition of the tax upon them was illegal, without jurisdiction and ultra vires and that the Board was not entitled to realize it from them and to attach their she-buffalo. The ground upon which the plaintiffs based this contention was that the plaintiffs neither resided nor carried on business in the "rural

⁵ AIR 1939 All 389: 1939 AWR (H.C.) 9 218

area" of Farrukhabad. It was alleged that plaintiffs 1 to 3 lived within the limits of Kanauj Municipality and plaintiff 4 in the city of Benares and that all their business was situated in Kanauj Municipality. In other words, the sole criterion in the plaint was that the plaintiffs did not fall within the purview of Clause (a) of Section 114. The relief claimed was an injunction to restrain the Board from realizing ₹ 379-3-0/- as the tax for 1944-45 and from selling their she-buffalo.

30. In defence the Board asserted that the plaintiffs resided and carried on business in village Makrandnagar which is in the rural area of the district and that even if a part of the income accrued to the plaintiffs in the limits of the Kanauj Municipality they were not exempt from the tax. It was also pleaded that having regard to the provisions of Section 131 of the aforesaid Act, the suit against the Board was not maintainable.

31. The suit was tried by the learned additional Munsif of Farrukhabad. His findings were that barring one of the plaintiffs, the others resided in Makrandnagar within the jurisdiction of the District Board, Farrukhabad, that they formed a joint Hindu family and were amenable - to the jurisdiction of the District Board. Further, he held that in the circumstances the suit was barred by the provisions of Section 131, District Boards Act. In the result he dismissed the suit.

32. The plaintiffs went up in appeal. They reiterated the grounds taken in the plaint and took up an additional ground, namely, that, in view of the provisions of Section 2, Professions Tax Limitation Act, 1941, (Act 20 [xx] of 1941), no tax in excess of rupees fifty per annum could be levied upon them. Learned District Judge upheld the finding of the trial Court as regards the plaintiffs' residence, but found that, in view of the provisions of Section 2, Professions Tax Limitation Act, 1941, the plaintiffs were not liable for more than rupees fifty per annum for the tax. He accordingly allowed the appeal and granted the plaintiffs an injunction restraining the District Board from realizing more than rupees fifty per annum as tax on circumstances and property and from attaching the plaintiffs, property in execution of a process for the recovery of any sum in excess of that amount. As regards Section 131, District Boards Act, he held that it did not bar the plaintiffs from claiming in the civil Court the benefits of Section 2, Professions Tax Limitation Act, 1941.

33. The defendant District Board comes in second appeal against the above decree of the learned District Judge. The plaintiffs have accepted that decree and no more assert that in view of Section 114(a), District Boards Act, they are not liable to any tax.

34. The following two points have been urged in this Court on behalf of the appellant : (1) The provisions of Section 2, Professions Tax Limitation Act, 1941, do not affect the powers conferred upon the District Boards by Section 108, U.P. District Boards Act, to levy the tax on circumstances and property, (a) Section 181, U.P. District Boards Act, 1922, bars this suit.

35. Taking the first point it will be seen from the preamble to the Professions Tax Limitation Act, 1941, that it was made in pursuance of the provisions of Section 142-A, Government of India Act, 1935, which provides as follows:

(1) Notwithstanding anything in section one hundred of this Act, no provincial law relating to taxes for the benefit of a province or of a municipality, district board, local board, or other local authority therein in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income.

(2) The total amount payable in respect on any one person to the Province or to any one municipality, district board, local board, or other local authority in the Province by way of taxes on professions, trades, callings and employments shall not, after the thirty first day of March nineteen hundred and thirty-nine, exceed fifty rupees per annum: Provided that if in the financial year ending with that date there was in force in the case of any Province or any such municipality, board or authority a tax on professions, trades, callings or

employments the rate, or the maximum rate, of which exceeded fifty rupees per annum, the preceding" provisions of this sub-section shall, unless for the time being provision to the contrary is made by a law of the Federal Legislature, have effect in relation to that Province, municipality, board or authority as if for the reference to fifty rupees per annum there were substituted a reference to that rate or maximum rate, or such lower rate, if any, (being a rate greater than fifty rupees per annum) as may for the time being be fixed by a law of the Federal Legislature; and any law of the Federal Legislature made for any of the purposes of this proviso may be made either generally or in relation to any specified Provinces, municipalities, boards or authorities.'

(3) The fact that the Provincial Legislature has power to make laws as aforesaid with respect to taxes on professions, trades, callings and employments shall not be construed as limiting, in relation to professions, trades, callings and employments, the generality of the entry in the Federal Legislative List relating to taxes on income.

36. Section 2, Professions Tax Limitation Act runs as follows:

Notwithstanding the provisions of any law for the time being in force, any taxes payable in respect of any one person to a Province, or to any one municipality, district board, local board or other local authority in any Province, by way of tax on professions, trades, tailings or employments, shall from and after the commencement of this Act cease to be levied to the extent to which such taxes exceed fifty rupees per annum.

By Section 8 of that Act, the provisions of Section 2 were made inapplicable to any tax specified in the schedule thereto. The tax levied under Section 108, U.P. District Boards Act, 1922, does not appear in the schedule. The tax with which we are concerned is thus not one of the taxes exempted from the operation of Section 2, Professions Tax Limitation Act. The question at the threshold is whether the tax on circumstances and property is a tax dealt with by Section 2 of that Act. The tax with which it deals is described in it as "tax on professions, trades, callings or employments" which are leviable by an Act of the Provincial Legislature under entry No. 446 of the Provincial Legislative List contained in the seventh schedule to the Government of India Act, 1935. The entry runs as follows : "Taxes on professions, trades, callings and employments, subject however, to the provisions of Section 142A of this Act."

37. The tax which has been levied upon the plaintiffs is described in Clause (b) of Section 108, U.P. District Boards Act, 1922, as 'tax on circumstances and property.' It is, however, not the name of the tax, but its real nature, its pith and substance as it has sometimes been said, which must determine into what category it falls. Numerous authorities support this proposition and I may refer only to *Governor-General in Council v. Province of Madras*⁶, and to the pronouncement of the Federal Court in *In the matter of C.P. & Berar Sales of Motor Spirit and Lubricants Taxation*. The U.P. District Boards Act, 1922, contains indications of the nature of this tax. Section 114 prescribes the conditions and restrictions subject to which the tax on circumstances and property may be imposed. Inter alia, income is the criterion of this taxation.

No tax can be imposed on any person whose total taxable income' is less than two hundred rupees per annum. The rate of tax is not to exceed four pies in the rupee on the 'total taxable income. The expression 'total taxable income' is defined in the explanation to that section. It means total income from all sources except those specified therein. Thus there is no room for doubt that it includes income from trades, professions, callings and employments also. We have on the record an assessment notice issued by the defendant-appellant to the plain, tiffs-respondents for the disputed tax for 1944-45. It is on a printed form. It specifies the income from the following six heads on the basis of which the assessments are made : (1, Interest) (2, Trade) (3, Service or pension) (4, Profession) (5, Property.) (6, Others.) By this notice the plaintiffs were called upon to file their objection, if any, to the proposed assessment. Their total estimated income was shown in it as ₹ 18,200/- ₹ 18000/- from trade and ₹ 200/- from property. The provisional assessment of the tax in the notice was at Bs.379-30.

38. Section 126(1), District Boards Act empowers a Board to call upon any person specified in Clause (a) of Section 114 to furnish such information as may be necessary in order to ascertain (a) whether such person is liable to pay a tax assessed on his circumstances and property; (b) at what amount he should be assessed, (c) the annual value of the building or land, which he occupies, and the name and address of the owner.

39. It appears that in previous years the appellant had issued notice to the respondents in pursuance of Section 126 calling upon them to send a true return of their total income.

40. Rule 2 of the model rules for the assessment and collection of the tax on circumstances and property printed at p. 181 of the District Board Manual provides that "all the activities of an assessee" shall be considered in calculating his total assessment.

41. It is clear from these facts that the tax on circumstances and property imposed under Section 108, U.P. District Boards Act, 1922, is a composite tax, consisting inter alia of the tax on professions, trades, callings and employments which fall under entry No. 46, and on lands and buildings which falls under entry No. 42, Provincial Legislative List of the Government of India Act, 1935. Taxes under other entries of the said list may also form part of this composite tax, but we are not concerned with that matter. Tax on circumstances and property as such does not appear in the Provincial Legislative List, evidently because of its composite nature. But this is immaterial. In substance, the tax is of the nature as mentioned above. To the extent the tax on circumstances and property is

⁶ AIR 1942 PC 98: AIR 1945 PC 98 : 1945-58-LW 228

from the income derived from trades, professions, callings and employments, it cannot, in view of Section 2, Professions Tax Limitation Act, 1912, exceed fifty rupees per annum. But as this section places no limitation on "taxes on lands and buildings, bearths and windows" leviable under entry No. 42, Provincial Legislative List, the circumstances and property tax so far as it is referable to this heading is not subject to this restriction. In other words, the taxes assessed upon the plaintiffs on their income of ₹ 18,000/- from trade should be reduced to rupees fifty. But there

should be no reduction of the tax on the estimated income of ₹ 200/- from properties.

42. Here I may refer to Sub-section (2) of Section 143. Government of India Act, 1935, which provides as follows:

Any taxes, duties, cesses or fees which, immediately before the commencement of Part 3 of this Act, were being lawfully levied by any Provincial Government, Municipality or other local authority or body for the purposes of the Province, municipality, district or other local area under a law in force on the first day of January, nineteen hundred and thirty-five, may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Federal Legislative List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by the Federal Legislature.

As the Central Legislature has now made a provision restricting the powers of the local authorities to levy the tax on income derived from professions, trades, callings and employments to fifty rupees per annum, the power of the appellant to impose the tax on circumstances and property so far as it relates to professions, trades, callings and employments is subject to this restriction. The power of the Boards, however, to levy the tax from lands and buildings continues as before the commencement of Part 3, Government of India Act, 1935. In this connexion reference may be made to *Byramjee Jeejeebhoy v. Province of Bombay*⁷ in which the urban immovable property tax was held to be valid as falling under entry No. 42, Provincial Legislative List.

43. Entries Nos. 42 and 46, Provincial Legislative List are distinct and the argument that the tax falling under the former entry is included in the tax falling under the latter cannot be accepted.

44. Learned Counsel for the appellant has referred also to Clauses (ii), (iii) and (ix) of Section 128, U.P. Municipalities Act, 1916, which enumerates the taxes which a Municipal Board may impose. These clauses describe the taxes in the following words:

- (ii) a tax on trades and callings carried on within the municipal limits and deriving special advantages from, or imposing special burdens on, municipal services,
- (iii) a tax on trades, callings and vocations, including all employments remunerated by salary or fees;
- (ix) a tax on inhabitants assessed according to their circumstances and property.

From the fact that in Section 128, U.P. Municipalities Act "taxes on circumstances and

⁷ A.I.R. 1940 Bom. 65

property" appear as a head distinct from "the taxes on trades, callings and vocations and employments" it is argued that the two taxes are distinct "also for the purposes of the U. P District Boards Act." It is no sound principle of construction to interpret the expressions used in one Act with reference to their use in another Act. The meanings of words and expressions used

in an Act take their colour from the context in which they appear. While in the Municipalities Act, taxes on circumstances and property may be different from the taxes on trades, callings and vocations including employment, as the two appear under different heads in it, in the U.P. District Boards Act, 1922, it is not so, as shown above. The enumeration of taxes in the District Boards Act is not so elaborate. Section 108 empowers the District Boards to impose only two kinds of taxes.

45. Learned Counsel for the appellant refers to two decisions of this Court *District Board, Dehra Dun v. H. Trotter*⁸, and *L. Macdowell v. District Board, Dehra Dun*⁹ None of these cases decides the question before us, namely the effect of the enactment of the Professions Tax Limitation Act 1941, on Sections 108 and 114, U.P. District Boards Act, 1922. In the first mentioned case, two questions were considered, namely (1) whether the fact that the defendant as a Government servant paid Income Tax, could be a ground for his exemption from the tax on circumstances and property, as the "second assessment" operated harshly on him and (2) whether the defendant resided in "rural area." It was held that the defendant was not exempt from the tax for the above reasons and that he resided in rural area. In the second case, the only question considered by this Court was "whether the enactment of the Government of India Act 1935, had any effect in the way of repealing or rendering void in some way the relevant provisions of the District Boards Act." The answer was in the negative. These two authorities do not support the appellants' contention that the provisions of the Professions Tax Limitation Act do not affect or restrict the appellant's powers to impose the tax on circumstances and property.

46. Learned Counsel for the appellant has also contended that as the respondents did not raise the plea based on the provisions of the Professions Tax Limitation Act in the trial Court, he is not entitled to raise it now. In support of this, reliance is placed upon *Tarak Govinda v. Indu Jyoti*¹⁰, That case is distinguish, able from the present one. In that case, the plea of illegality of the 'personal tax' was not raised in both the Courts below. It was raised for the first time before the High Court. In the present lease, the plea was raised before the lower appellate Court and it was decided by it. It is not being raised for the first time in this Court.

47. In the last mentioned case the term "circumstances" occurring in Section 85, Bengal Municipal Act, 1884, was also construed. It was held that the word "circumstances" in the section is not intended to restrict the term "property", but to widen the scope of the section. And although it is not easy to define what "circumstances" are, still the amounts which pass through the limits of the Municipality and are available to the persons taxed at any moment, and the fact that the persons taxed are wealthy zamindars, cannot be altogether ignored while estimating the "circumstances and property". As already stated above, the interpretation of an expression occurring in one Act is not applicable when it occurs in another Act. The meanings of words and phrases take color from the context in which they occur.

⁸ AIR 1939 All 389; 1939 AWR (H.C.) 9 218 ¹⁰ AIR 1929 Cal 452

⁹1943 A.L.W. 84

48. I hold that Section 2, Professions Tax Limitation Act 1941, modifies the powers of the

District Boards under Sections 108 and 114, U.P. District Boards Act, 1922, and the Boards cannot levy more than fifty rupees per annum from the plaintiffs as tax on circumstances and property in so far as the tax is based upon the income derived from professions, trades, callings and employments.

49. The second point urged on behalf of the appellant is that the suit is barred by the provisions of Section 131, U.P. District Boards Act, 1922. The assessment and collection of the tax on circumstances and property is governed by rules made under Section 123. Section 128 provides for appeals against "an assessment or any alteration of an assessment, of a tax on circumstances and property" to the District Magistrate or to such other officer as may be empowered by the Provincial Government in this behalf. If the District Magistrate or such other officer is a member of the Board then the appeal lies to the Commissioner. Section 131 provides as follows:

(1) No objection shall be taken to a valuation or assessment, nor shall the liability of a person to be assessed or taxed be questioned in any other manner or by any other authority than is provided in this Act or in the United Provinces Local Rates Act, 1914.

(2) The order of the appellate authority confirming, setting aside or modifying an order in respect of valuation or assessment or liability to assessment or taxation shall be final: provided that it shall be lawful for the appellate authority, upon application or on his own motion, to review any order passed by him in appeal by a further order passed within three months from the date of his original order.

50. As observed by their Lordships of the Judicial Committee in *Secretary of State v. Mask & Co¹¹*, the exclusion of the jurisdiction of the civil Courts is not to be readily inferred but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. It was also held in the above case:

Where the statute creates a liability not existing at common law and gives also a particular remedy for enforcing it...with respect to that class it has always been held, that the party must adopt the form of remedy given by the statute.

51. I proceed now to examine the above provisions of the District Boards Act in the light of the two principles mentioned above as laid down by their Lordships of the Judicial Committee.

52. The first case to which I may refer is *District Board, Dehra Dun v. Damodar Dutt¹²*. In that case the District Board had brought a suit for the recovery of a certain sum of money on account of circumstances and property tax. The defendant contended that he did not reside within the rural area. The Board contended that having regard to Sections 128 and 131, U.P. District Boards

Act it was not open to the defendant to raise the plea,

¹¹ AIR 1940 PC 105; 1940 AWR (P.C.) 10 132; 1940-52-LW 21; 1940-52-LW 1

¹² AIR 1944 All 223; 1944 AWR (H.C.) 14 237

once he has been assessed to the tax, that he was not a resident of the rural area. Their Lordships observed:

The answer to this contention is that all this presupposes that the District Board had jurisdiction to impose the tax. Where the very foundation of the claim of the Board, that is, its very jurisdiction, is challenged, no provision of the Act can come into operation. We have, therefore come to the conclusion that the learned small Cause Court Judge was right in holding that, once it is established that Kishan Datt did not reside within the jurisdiction of the District Board of Dehradun, the latter had no right to impose any tax.

53. This case lays down that the word "assessment" occurring in Section 131, District Boards Act, means "assessment" in accordance with law. In other words, so long as the Board acts within the framework of the U.P. District Boards Act, as amended by any other law, the civil Court is barred by Section 131 from going into the question of the assessment. But if the Board -acts contrary to the provisions of the law and beyond its jurisdiction, then a suit in the civil Court is maintainable. In this connection I may refer to the following cases also : In *Giridh Municipality v. Suresh Chandra*¹³ it was held that:

Section 116, Bengal Municipal Act does not take away the jurisdiction of civil Courts in a case in which it is alleged and established that the assessment, the propriety of which is in controversy, is open to objection on the ground that it is ultra vires.

54. In *Jesraj Jaichandlal v. Chairman of Natore Municipality*¹⁴, it was held that the civil Courts have jurisdiction to entertain a suit brought by an assessee for a declaration that the sum assessed by a municipality as license fee for a 'yard or depot for trade in jute' was not legally recoverable, where the action of the commissioners of the municipality exceeded their statutory powers, and as such the levy of a license fee of ₹ 326/- was ultra vires because the entire area in respect of which the license fee was levied by the municipality was not a 'yard or depot for trade into jute'.

55. There are corresponding provisions excluding the jurisdiction of the civil Courts in Sections 164 and 321, U.P. Municipalities Act, 1916, and questions have often arisen in this Court whether or not a suit in a civil Court relating to taxes imposed by municipalities or actions taken by the municipality is maintainable. I proceed to consider those cases.

56. IN *Municipal Board, Benares v. Jokhun*¹⁵, it was held that the word "assessment" in Section 164, Municipalities Act, means assessment in accordance with the provisions of Sections 142,

143 and 144 of the Act. Upon general principle even if two interpretations are possible, the Court would reject that interpretation of the Act which would have the effect of depriving the citizen of his only remedy in respect of arbitrary and illegal acts, of the Municipality.

¹³(1908) 35 Cal. 859

¹⁵ AIR 1939 All 394: 1939 AWR (H.C.) 9 230

¹⁴ AIR 1932 Cal 177: (1931) ILR 58 Cal 1356: 136 Ind. Cas. 542

57. The flagrant disregard by a local authority of the provisions of the law was held as not a mere irregularity which might have the effect of taking away the jurisdiction of the civil Courts. In that case the plaintiff sued for a declaration that his house was not liable to be assessed for water tax and claimed to recover the water tax paid by him and also damages on account of illegal attachment of his property. It was found that the plaintiff's house was not within a radius of 600 feet from the nearest standpipe nor it had any water pipe connection and the Municipal Board supplied no water at all to the plaintiff. He, however, received a notice in which it was alleged that he was "assessed" in respect of water tax. On receipt of the said notice, the plaintiff objected under Section 143 of the Act claiming exemption on the ground that the house was beyond the prescribed radius. No orders were passed upon this objection, but the plaintiff's name was included in the final assessment list prepared by the Board. It was held under these circumstances that there was no assessment within the meaning of Section 164 since the procedure prescribed by the mandatory provisions of Section 143 of the Act was not followed and therefore, the plaintiff was entitled to sue under Section 9, Civil Procedure Code, for the recovery of the money which had been illegally extorted from him by the defendant Board.

58. In *Brij Behari Lal v. Emperor*¹⁵ a Full Bench of this Court held that the criminal Court trying a case under Section 307, Municipalities Act is not debarred from going into the question of the legality of the notice under Section 186 on account of the bar laid down by Section 321 of the Act.

59. In *Munnalal v. Municipal Board, Cawnpore*¹⁶, a Full Bench of this Court held that a Bill brought for remission or refund of certain house and water taxes charged by a Municipal Board for the period during which the plaintiff alleges the premises to have remained vacant and claims refund or claims remission under Section 151, Municipalities Act, is not barred by Section 164 of the Act.

60. Learned Counsel for the appellant relies upon the following cases; *Cantonment Board, Agra v. Kanhailal*¹⁷, It was held in this case that

The jurisdiction of the civil Court is excluded in all matters relating to any valuation, assessment, liability to assessment or taxation by a Cantonment Board.

The facts of that case are distinguishable from those of the present case. The assessment in dispute in that case was according to law and was not beyond the jurisdiction of the Cantonment Board. *Sheonarain v. Town Area Panchayat Chhibramau*¹⁸, In this case a suit was brought in the civil Court against the Town Area Panchayat, constituted under the U.P. Town Areas Act in which the plaintiffs asked for a declaration that the assessment of

town tax-on the plaintiff was illegal and ultra vires being beyond the Scope of the powers conferred on the Panchayat by the law. It was held that in view of the provisions of Sections 18(4) and 15(4), U.P. Town Areas Act, 1914, such a suit did not lie in the civil Court. This ruling was dissented from in *Municipal Board, Benares v. Jokhun*¹⁹, *Municipal Board, Benares v. Krishna*

¹⁵ A.I.R. 1943 All. 676 17 AIR 1933 All 163 : 1933 AWR (H.C.) 1 830

¹⁶ AIR 1936 All 676: 1936 AWR (H.C.) 754 : 165 Ind. Cas. 167

¹⁸ AIR 1936 All 117: 1936 AWR (H.C.) 107 : 159 Ind. Cas. 897

¹⁹ AIR 1939 All 394 : 1939 AWR (H.C.) 9 230

& Co²⁰. In this case a suit was brought for the refund of octroi which had been assessed by the Municipal Board on goods imported on the ground-that the goods were not in fact assessable or that the amount of assessment was excessive. It was held that in view of the provisions of Section 164, U.P. Municipalities Act, such a suit did not lie-in the civil Court. This case is also distinguishable from the present one, as the Municipal Board had acted within the frame-work of the-Act in imposing the octroi.

61. After the enactment of the Professions Tax Limitation Act, 1941, the powers of the-Board to impose tax on circumstances and property was limited to ₹ 50/- per annum. The District Boards Act must be read as modified by the Professions Tax Limitation Act. The moment a District Board sought to impose more than ₹ 50/- per annum as tax on circumstances and property it went beyond its jurisdiction. Its act became illegal and ultra vires. It was not an assessment in accordance with law and as such a suit of the present nature in civil Court was not barred by Section 131, U.P. District Boards Act, 1922.

62. The last point urged on behalf of the appellant was that Section 9, Civil Procedure Code, contemplates a suit between a subject and a subject and not between a subject and the State or a local authority. I disagree from this proposition. As observed in *Municipal Board, Benares v. Jokhun*²¹, it is not the status of the parties to the Suit but the subject-matter of the suit which determines whether or not the suit is one of civil nature.

63. In view of the above findings, the position is that the Board is entitled to Section 50 only from the plaintiff on account of the tax referable to the incomes derived from professions, trades, callings and employments and to ₹ 4-2-0/- on account of tax referable to lands and buildings. It appears on a calculation of the tax assessed against the plaintiffs on their income that it has been levied at the rate of four pies in the rupee.

64. I would therefore allow the appeal only to this extent that I would substitute the figure find word ₹ 54-2-0/- for ₹ 50/- in the operative order of the learned District Judge and dismiss the rest of the appeal. In the circumstances of the case I would allow proportionate costs between the parties throughout.

²⁰ AIR 1935 All 760: 1935 AWR (H.C.) 585

²¹ AIR 1939 All 394: 1939 AWR (H.C.) 9 230