

ALLAHABAD HIGH COURT

Western U.P. Electric Power and Supply Company Ltd

Vs.

Town Area

Civil Misc. Writ No. 1266 of 1955
(Mootham and Srivastava, JJ.)

01.02.1957

JUDGMENT

Srivastava, J.

1. This is a petition under Article 226 of the Constitution praying for the issue of a writ in the nature of certiorari or any other suitable writ, order or direction quashing the order dated the 5th September, 1955 and all proceedings relating to the assessment of the applicant for the years 1952-53, 1953-54 and 1954-55 in respect of circumstances and property tax.

2. The applicant is an incorporated company having a branch at Jaswantnagar in the district of Etawah. Its head of office is located at Delhi. It carries on the business of supplying electricity at several places including Jaswantnagar. The town of Jaswantnagar is situate within the jurisdiction of the Town Area Committee of that place constituted under the U. P. Town Areas Act (Act No. II of 1914). Holding that the applicant was liable to pay circumstances and property tax, the Town Area Committee of Jaswantnagar has assessed the applicant to a tax of Rs. 250 per year for the three years 1952-53, 1953-54 and 1954-55. In these years the earned gross income of the applicant has been held to be Rs. 30,630-11-0, Rs. 30, III-5-3 and Rs. 29,993-9-3 respectively. The applicant objected to the assessment on the ground that during the years in question it had no income and had on the contrary suffered losses. It had, therefore, no taxable income in those years and could not consequently be assessed to any circumstances and property tax. The objection was not upheld by the Town Area Committee. An appeal was filed before the District Magistrate and was decided by the Sub-Divisional Magistrate of Etawah to whom it was transferred. He too rejected the appeal. The applicant has, therefore, come up to this Court with the contention that its assessment to circumstances and property-tax, is illegal and without jurisdiction.

3. The main argument put forward in support of the contention is that the power to tax income vests only in the Parliament. The rules framed by the State Government authorizing Town Areas to tax a person on his gross income, must, therefore, be held to be ultra vires and the assessment of the applicant on the basis of gross income is consequently illegal.

4. Section 14 of the U. P. Town Areas Act, sub-section (1) (leaving out the unnecessary words) reads as below :

"Subject to any general rules or special orders of the State Government in this behalf, the taxes which a Committee may impose are the following :

Clause (f). A tax on persons assessed according to their circumstances and property not exceeding such rate and subject to such limitations and restrictions as may be prescribed :"

5. Section 39 of the Act authorises the State Government to make rules applicable to all or any Town Areas for carrying out the purposes of the Act. Clause (II) of sub-section (2) of this section lays down that in particular and without prejudice to the generality of the powers conferred by sub-section (1) rules framed may relate to 'the limitations, restrictions and rate subject to which the circumstances and property tax shall be levied under section 14'.

6. Rules framed under Section 39 (2) (II) include

"2. The tax shall be assessed on every person on whom it is imposed in two separate parts, namely (1) on his circumstances and (2) on the property, if any, owned by him, and the aggregate of the sums to be determined on both the counts shall constitute the total composite amount payable by him as circumstances and property tax :

Provided that nothing shall render it irregular to assess a person on only one of the two counts aforementioned if he does not fulfill the conditions for liability in respect of that count on which he is not assessed.

3. (1) The tax assessed on the circumstances of an assessee may be imposed on any person residing or carrying on business within the limits of the town area :

Provided that such person has so resided or carried on business for a total period of at least six months in the year of assessment.

(2) No tax shall be imposed on any person whose total taxable income is less than Rs. 200 per annum.

(3) The rate of tax shall not exceed one anna in a rupee on total taxable income.

4. The total amount of tax assessed on any person shall not, any year, exceed a sum of Rs. 250.

Explanation :- (i) For purposes of this rule "taxable income" means gross income accruing within the limits of the Town Area.

(ii) The words "carrying on business" mean the carrying on of any trade, profession, calling or other practice or activity which yields or is capable of yielding income but do not include service under Government or a local body."

7. Thus, R. 3 prescribes the maximum and the minimum limits of the tax that can be imposed on

the basis of circumstances and property. If a person is assessable, the tax he must pay is to be calculated at so many pies per rupee of his gross income, subject to a ceiling of Rs. 250. It is urged that because of this the tax becomes a tax on income and it is not permissible for the State Legislature to impose such a tax. It could be imposed only by the Central Legislature.

8. Clause (f) of sub-section (1) of Section 14 was inserted in the U. P. Town Areas Act by Section 3 of U. P. Act XXIII of 1950. Its constitutionality has, therefore, to be determined with reference to the Constitution which had come into force by the date on which this clause was enacted.

9. Before entering into the question of the vires of the tax, however, it is necessary to have a clear conception of the nature of a 'circumstances and property tax' in general and also of the particular tax which has been imposed in the present case on the applicant in the years in dispute.

10. As its very name shows, circumstances and property tax is a composite tax on property and circumstances. The import of the term 'property' is no doubt very wide and the word would cover all kinds of properties moveable and immovable (including lands and buildings), tangible and intangible, cash and investments, capital, and assets etc. A tax on property may be assessable, among other things, on its extent, dimensions, value, yield or income. No precise definition appears to be possible in respect of the term 'circumstances' but as was observed by Malik C. J., in the Full Bench case of the '*District Board of Farrukhabad v. Prag Dutt*', reported in¹

"To my 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."

This view appears to have been approved by their Lordships of the Supreme Court in the case of - '*Ram Narain v. State of Uttar Pradesh*', reported in² wherein they observed :

"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 and business."

11. Generally speaking, therefore, a tax on circumstances and property is a tax on the assessee's financial status as well as on his property. In judging the financial status or property it is possible to take into account the income he receives from his property, trade or business, but this is only one of the various considerations that can be kept in view. It is possible for a man to have a taxable financial status even if he has no income.

12. The rules framed under Section 39 of the U. P. Town Areas Act, however, appear to have limited the scope of the terms 'circumstances and property' as used in Clause (f) of sub-section

(1) of Section 14 of the Act to a considerable extent. Under these rules the other aspects of a man's property or financial status have been left untouched. It is only his gross income accruing within the limits of the Town Area that has to be taken into

¹ AIR 1948 All 382

² AIR 1957 SC 18

account.

This gross income is the income which he receives from his property or business. This gross income has been called his taxable income. If it is less than Rs. 200 no tax can be imposed upon him. If it exceeds the minimum of Rs. 200 he is liable to pay tax at a rate not exceeding one anna a rupee for every rupee by which his total income exceeds that amount. There is, however, a ceiling of Rs. 250 and the tax imposed upon him cannot exceed that amount. In view of these rules, therefore, the circumstances and property tax which can be imposed under Section 14 (1) (f) of the Act is, practically speaking, a tax on the assessee's gross income received from his properties situated in or business carried on in the Town Area in question.

13. In the case of the applicant, so far as the years in dispute are concerned, the tax has been levied on the basis of its income from trade and business alone. No income from any property appears to have been taken into consideration.

14. The question is whether in the above circumstances the tax which has been imposed on the applicant is circumstances and property tax or is income tax.

15. In the case of '*District Board of Farrukhabad v. Prag Dutt*' (FB), already referred to, Malik C. J., while pointing out the distinction between a tax on income and a tax on circumstances observed :

"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."

In the case of '*London County Council v. A. G.*³' Lord Macnaughten laid down :

"Income-tax, if I may be pardoned for saying so, is a tax on income. It is not meant to be a tax on anything else. It is one tax, not a collection of taxes essentially distinct."

If we apply these tests it will not be difficult to see that the tax imposed on the applicant in the present case is essentially an income-tax and not a tax of any other kind. It is a tax assessed on the income it has derived from its trade and business carried on within the limits of the Town Area in the years in dispute. In identical circumstances a tax levied under Section 114 of the

District Board Act (the provisions of which are very similar to the provisions of Section 14 (1) (f) and the rule framed under Section 39 of the Town Areas Act) has been held to be income-tax in the '*Tata Oil Mills Co. Ltd. v. District Board of Allahabad*', reported in³ We have, therefore, no doubt that the tax imposed on the applicant in the present case is a tax on income other than agricultural income, i. e., income from its trade and business.

³(1901) AC 26

⁴1955 All LJ 630

16. The learned counsel for the applicant contends that the tax imposed on his client under the guise of circumstances and property tax being really a tax on income must be held to have been illegally imposed because such a tax could have been imposed only by the Union under item No. 82 of the first list of the 7th Schedule of the Constitution. In imposing such a tax the State has encroached on the preserves of the Union.

17. The reply of the learned counsel for the respondent is that even if the tax in the present case be held to be a tax on income from trade or business, it cannot be declared to be ultra vires because it is saved by Article 276 of the Constitution.

18. Clause (1) of Article 276 provides that : "Notwithstanding anything in Article 246 no law of the Legislature of a State relating to taxes for the benefit of the State 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."

19. It cannot be seriously disputed that the circumstances and property tax which the State Legislature has authorized a Town Area to impose under Section 14 (1) (f) of the Town Areas Act is a tax meant for the benefit of the Town Area. In so far as it is a tax in respect of a trade or calling, if Article 276 applied, it cannot be held to be invalid simply because it is a tax on income. This will be so notwithstanding that under Article 246 the Union Government alone has authority for levying a tax on income other than agricultural income. Prima facie, there appears to be no reason why the tax in question should not be held to have been saved from invalidity by Article 276 of the Constitution.

20. The learned counsel for the applicant, however, contends that what is saved under Article 276 is only tax on professions, trades and callings as contemplated by Clause (d) of sub-section (1) of Section 14 of the Town Areas Act and not a tax falling under Clause (f) of the sub-section. We are not, however, able to accept this contention. Under Clause (d) of sub-section (1) of Section 14 of the Town Areas Act a tax can be imposed on trades, callings or professions. An obvious distinction exists between a tax on trades, callings or professions and a tax on income arising from a trade, calling or profession. If a tax is imposed on a trade, calling or profession, it will have to be paid by any person practicing that trade, calling or profession, whether he derives any income from it or not.

It will be a tax on the trade, calling or profession itself. Such a tax may certainly be called a tax

in respect of professions, trades, or callings but it cannot by any means be said that it relates to a tax on income. In respect of such a tax, no question can arise about its being invalid on the ground that the State Government had no authority to impose it. The State Government is entitled to impose tax on professions, trades, callings and employments under item No. 60 of the second list of the 7th Schedule of the Constitution. No recourse to Article 276 of the Constitution is, therefore, necessary for the validation of such a tax. A tax by whatever name it may be known if it is based on the income derived by the assessee from trade, profession or calling can, however, be questioned on the ground that it being an income-tax could not be imposed by the State Government. It is to save such a tax that Article 276 of the Constitution appears to have been enacted.

21. It, therefore, appears to us that though there can be no escape from the position that the tax imposed on the applicant in the years in dispute was practically an income-tax, the imposition of it cannot be held to be ultra vires or illegal because it is saved by Article 276 of the Constitution.

22. In the view we have taken it is not necessary in this case to consider the wider question whether a circumstances and property tax based on income other than income from the assessee's profession, trade, calling or employment will be valid or not. It will obviously not have the protection of Article 276 of the Constitution. Whether it will be protected by any other provision can, however, be considered only in an appropriate case when a suitable occasion arises. We leave that question open.

23. The only ground urged on behalf of the applicant in support of its petition is, therefore, without force and the petition cannot succeed. It is rejected, but in the circumstances of the case we think it will be fair if the parties are ordered to bear their own costs, and we order accordingly. Petition dismissed.