ANDHRA PRADESH HIGH COURT

Andhra Pradesh State Road Transport Corporation

Vs

Commissioner of Income Tax

(Obul Reddy, C.J.)

26.12.1974

JUDGEMENT

Obul Reddy, C.J.

(1.) IN this writ petition filed by the Andhra Pradesh State Road Transport Corporation, Hyderabad, the constitutional validity of Section 241 of the INcome-tax Act, 1961 (Act 43 of 1961) (hereinafter referred to as " the Act "), is challenged.
(2.) THE petitioner is carrying on the business of road transport in the State of Andhra Pradesh and it was assessed to income-tax for the assessment years 1960-61 and 1961-62 under the provisions of Act 11 of 1922 (hereinafter referred to as " the old Act ") and for the assessment year 1962-63 under the provisions of the new Act. THE petitioner paid a sum of Rs. 54,65,396 as income-tax for the said three assessment years. THE validity of the assessments was questioned before the Appellate Assistant Commissioner on the ground that the income derived by the petitioner on its transport business is exempt under the provisions of the old Act and the new Act and the Appellate Assistant Commissioner allowed the appeals. Against his orders, the Commissioner of Income-tax preferred appeals before the Income-tax Appellate Tribunal and the appeals were allowed by the Tribunal. THEn, at the instance of the petitioner, the question of its liability to pay income-tax under the provisions of both the Acts was referred to this court. This court, by its judgment dated December 3, 1971, in R.C. No. 14 of 1970, allowed the reference on the ground that the Corporation is an institution meant for the advancement of the object of general public utility not involving the carrying on of any activity for profit and, therefore, its income is exempt from assessment to tax under, Section 4(3)(i) of the old Act and Section 11 of the new Act. In compliance with the opinion expressed by this court, the Tribunal cancelled the assessments in question by its order dated August 28, 1972. THE petitioner, therefore, asked for refund of the amount paid by way of income-tax. Without refunding the amount, the respondents issued an order dated December 18, 1972, under Section 241 of the Act withholding the amount refundable to the petitioner and also adjusting a part of the amount for the next two assessment years on the ground that the appeal preferred by the revenue against the judgment of this court is pending before the Supreme Court. It is this action of the respondents withholding the amount of Rs. 54,65,396 on the ground that the revenue had preferred an appeal to the Supreme Court that is challenged as ultra vires. The learned Advocate-General appearing for the petitioner contended that Section 241 of the Act is ultra vires for two reasons : (1) that the Income-tax Officer, even if

it be with the previous approval of the Commissioner, has no jurisdiction to render the judgment of the High Court ineffective on the ground that the appeal preferred by the revenue against the judgment of this court is pending before the Supreme Court or that the grant of the refund is likely to adversely affect the revenue ; and (2) that the section confers an arbitrary exercise of power on the Income-tax Officer and does not provide for any guidelines or classification thus offending Article 14 of the Constitution. Another point urged by the learned Advocate-General is that, even assuming that the provision is not ultra vires, it has no retrospective application and it can cover only the subject-matter of an appeal or further proceedings under the provisions of the Act, and not proceedings under the provisions of the old Act. Section 241 reads : "241. Where an order giving rise to a refund is the subject-matter of an appeal or further proceeding or where any other proceeding under this Act is pending, and the Income-tax Officer is of the opinion that the grant of the refund is likely to adversely affect the revenue, the Income-tax Officer may, with the previous approval of the Commissioner, withhold the refund till such time as the Commissioner may determine." The scheme of the section is this : If there is an order directing refund of the tax paid by an assessee and that order is carried in appeal or further proceeding, the Income-tax Officer is given the discretion to withhold the refund. The Income-tax Officer cannot exercise that power unless he obtains the previous approval of the Commissioner. The Income-tax Officer must first form an opinion that the grant of the refund is likely to adversely affect the revenue. It is then that he moves the Commissioner and any action taken under Section 241 by him is subject to the approval of the Commissioner. Section 240, which provides for refund of amounts to an assessee under the orders of the appellate authority, is controlled by Section 241. What the learned Advocate-General contends is that when once this court gives an opinion in favour of the assessee and against the revenue and consequently orders are passed by the Tribunal in conformity with the opinion of this court, it is not open to the Income-tax Officer, purporting to act under Section 241, to nullify the effect of the judgment of this court. According to him, the legislature cannot set at naught the decision of this court so as to empower the revenue to retain the amounts illegally collected as tax. In support of his contention, the learned Advocate-General invited our attention to the decision in Municipal Corporation of the City of Ahmedabad v. New Shorrock Spinning and Weaving Co., . That was a case where the collection of property tax by the Municipal Corporation of Ahmedabad under the provisions of an amending Act was challenged. Prior to the amendment, under the provisions of the Bombay Provincial Municipal Corporation Act, buildings were assessed on the basis of what came to be known as " flat rate " method. Those assessments were challenged in the High Court of Gujarat by the companies whose buildings were assessed adopting the " fiat rate " method. The High Court dismissed the writ petitions. The Supreme Court considered the vires of Section 152-A(3) as introduced by the Gujarat Amendment Act. That provision reads : " Notwithstanding anything contained in any judgment, decree or order of any court, it shall be lawful, and shall be deemed always to have been lawful, for the Municipal Corporation of the City of Ahmedabad to withhold refund of the amount already collected or recovered in respect of any of the property taxes to which Sub-section (1) applies till assessment or reassessment of such property taxes is made, and the amount of tax to be levied and collected is determined under Sub-section (1), Provided that the Corporation shall pay simple interest at the rate of six per cent. per annum on the amount of excess liable to be refunded under Sub-section (2), from the date of decree or order of the court referred to in Sub-section (1) to the date on which such excess is refunded."

(3.) THE Supreme Court struck down that provision on the ground that it attempted to make a direct inroad into the judicial powers of the State, THE Supreme Court held : " THE legislatures under our Constitution have within the prescribed limits, powers to make laws prospectively as well as retrospectively. By exercise of those powers, the legislature can remove the basis of a decision rendered by a competent court thereby rendering that decision ineffective. But no legislature in this country has power to ask the instrumentalities of the State to disobey or disregard the decisions given by courts." In so holding, the Supreme Court relied upon its earlier decision in Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality, . Hegde J., who expressed the view of the court in Municipal Corporation of the City of Ahmedabad v. New Shorrock Spinning and Weaving Co. Ltd., again reiterated the view of the Supreme Court in State of Tamil Nadu v. M. Rayappa, . Relying upon these decisions, the learned Advocate-General contended that unless the basis of illegality which was struck down by this court in R. C. No. 14/70, on the basis of which decision the refund was directed to be paid by the Tribunal, is removed by the legislature, the Income-tax Officer gets no jurisdiction to render the decision of this court ineffective. It should be remembered in the first place, that the judgment of the High Court has not become final. Admittedly, an appeal against the judgment has been filed by the revenue under Section 261 of the Act. When an appeal is pending, it cannot be said that the Income-tax Officer, by his order dated December 18, 1972, has rendered the judgment of this court ineffective. Until the Supreme Court pronounces its judgment, there is no finality of the question as to the exemption claimed by the petitioner for payment of income-tax. The High Court, in the reference, had not struck down any provision of the statute on the basis of which the assessments were set aside. The question was only as regards the claim put forth by the petitioner for exemption from payment of income-tax. Therefore, the case on hand cannot be likened to the cases of the Supreme Court. ;