

# MADHYA PRADESH HIGH COURT

Hirjibhai Tribhuwandas

Vs.

Income-Tax Officer

Letters Patent Appeal No. 215 of 1956, D/d. 9.4.1957, against order of Kotwal, J., in  
M.P No 466 of 1955  
(Hidayatullah, C.J. and Shrivastava, J.)

09.04.1957

## JUDGMENT

### **Shrivastava, J**

This is a Letters Patent Appeal against the order of Kotwal, J., in Miscellaneous Petition No. 466 of 1955.

2. The appellant used to carry on business in the State of Nandgaon and did so during the years 1946-47, 1947-48 and 1948-49. At that time, the provisions of the Indian Income-tax Act, 1922, were applicable to the Nandgaon State on account of the extension of that Act to the State in the year 1942, The appellant was assessed to income-tax for the above years under the said act by three separate orders of the Income-tax Officer, dated respectively 29-12-1947, 9-1-1948 and 29-3-1949, and the tax was duly realized by the State authorities.

The State merged with Madhya Pradesh with effect from 1st August 1949 by the State Merger (Governors' Provinces) Order, 1949, and by the Taxation Laws (Extension to Merged States and Amendment) Act 1949 (hereinafter referred to in the judgment as the Taxation Laws Act) the Indian income-tax Act was extended to the State of Nandgaon with effect from 1st April 1949. In the years 1954 and 1955, the Income-tax Officer issued three separate notices to the appellant under section 34 of the Indian Income-tax Act for re-assessment of tax for the very same years. The petitioner contested the validity of the notices under Article 226 of the Constitution. His petition was heard by Kotwal, J., and was dismissed.

3. The Taxation Laws Act repealed the Income-tax Act applicable to the State with the only saving in section 7 as below :

".....except for the purposes of the levy assessment and collection of income-tax and supertax in respect of any period not included in the previous year for the purposes of assessment under the Indian Income-tax Act, 1922, as extended to that State by Section 3, or, as the case may be, the levy, assessment and collection of business profits tax for any chargeable accounting period ending on or before the 31st day of March, 1948 and for any purposes connected with such levy, assessment or collection."

The contention of the appellant was that the exception did not cover the case of 're-assessment' and accordingly notices for re-assessment could not be issued under section 34 of the Indian Income-tax Act. This contention was repelled by the learned Single Judge on the view that the term 'assessment' in section 7 of the Taxation Laws Act, should be interpreted widely to cover the proceedings of re-assessment.

4. In *Rajendra Nath v. Commissioner of Income-tax*,<sup>1</sup> their Lordships of the Privy Council held that the Indian Income-tax Act nowhere imposed any limit of time within which the assessment under the provisions of Sections 23 and 29 was to be made, and that the service of notice of demand could, therefore, be made at any time. This decision was explained by their Lordships in *Commissioner of Income-tax, Bombay Presidency and Aden v. Khemchand Ramdas*,<sup>2</sup>, in which it was observed that when once a final assessment is arrived at, it cannot be re-opened except in the circumstances detailed in Sections 34 and 35 of the Act. In this connection, their Lordships of the Mysore High Court observed in *City Tobacco Mart v. Income-tax Officer*,<sup>3</sup>

"The view taken by the Privy Council was that an assessment became complete when the Income-tax Officer determined the amount due by the assessee and issued a notice of demand under section 29. The mere fact that the Commissioner of Income-tax could exercise powers of revision under section 33 of the Income-tax Act or that the Income-tax Officer at any time within one year from the date of any demand, may make rectifications, and correct mistakes in his assessment did not make the assessment under section 23 of the Act any the less final or the proceedings under the Income-tax Act incomplete."

5. The interpretation of section 13 of the Finance Act, 1950, which is in terms of section 7 of the Taxation Laws Act, came up for consideration before a Pull Bench of the Travencore-Cochin High Court in *Lakshmana Shenoy v. Income-tax Officer*,<sup>4</sup> In that case, their Lordships held that the words "levy, assessment and collection" in section 13 of the Finance Act, include all the processes by which the tax is ascertained, demanded and realized and accordingly, re-assessment, being one of these processes, comes within the ambit of the phraseology employed. This view was not followed by the Mysore High Court in *City Tobacco Mart v. Income-tax Officer*, (supra), in which it was held that the process of assessment did not cover the proceedings for re-assessment. The view held by the Mysore High Court was not followed in *Firm L. Hazari Mal v. Income-tax Officer, Ambala*,<sup>5</sup> in which the same view as that of the Travencore-Cochin High Court in the case of *Lakshmana Sheony v. Income-tax Officer*, (supra) was taken. Their Lordships also referred to *Bhailal Amin and Sons Ltd. v. R.P. Dalai*,<sup>6</sup> in support of their view, but that case appears to have involved another question and not the one under consideration.

6. It is contended on behalf of the appellant that the words "assessment" and "re-assessment" have been used in different senses in the Income-tax Act itself and therefore, the use of the word "assessment" alone in section 7 of the Taxation Laws Act should be interpreted to exclude the process of "re-assessment."

7. In its normal sense "to assess" means "to fix the amount of tax due or to determine such amount". The process of re-assessment is to the same purpose and would thus be included in the connotation of the term "assessment." It has been observed by their Lordships in 1955-27 ITR 572 FN (D) :

"The words "levy, assessment and collection" as we understand them include all the processes by which the tax is ascertained, demanded and realized and "re-assessment", being one of those processes comes within the ambit of the phraseology employed."

8. It will be observed that section 36 of the Income-tax Act contemplates four different cases in which the power to assess escaped income has been given. Where there has been no assessment at all, the term "assessment" would be appropriate and where there was an assessment at too low a rate or with unjustified exemptions, the term "re-assessment" would be appropriate. It was thus necessary to resort to the use of two

different terms to cover with clarity the different cases dealt with in that section. This does not mean that the terms should be treated as mutually exclusive.

9. In interpreting the term "assessment" as used in section 7 of the Taxation Laws Act, it should be given its plain meaning. It should not be understood in any restricted or special sense in which it may have been used in the Indian Income-tax Act in a particular context.

10. The object of the saving clause is obviously to make the provisions of the State Law available in all cases in which the income was assessed or was assessable according to that law before the date of merger. It is difficult to see why only a part of the process of assessment should be saved and the other part repealed. According to the interpretation sought to be put by the appellant, a curious result would follow inasmuch as section 34 would be partly saved and partly repealed. It would be available for enabling assessment to be made in cases in which no assessment had been made at all; but it would not be available for enabling assessment to be made in cases where there had been an assessment at too low a rate or with unjustified exemptions. This could not obviously be the intention.

11. In the Mysore case cited above, reliance was placed on the report of the Indian States Finance Inquiry Committee which had recommended saving only to secure legal continuity of pending proceedings" and to ensure finality and validity of completed proceedings under the preexisting State legislator." However, we are not quite clear how these observations can be used to interpret the plain words of the statute. Even if the term "assessment" is interpreted to exclude "reassessment", the exclusion of reassessment in all cases does not follow from the saving clause in question. Proceedings for assessment in cases where there was no assessment at all, will still be open under section 34 Income-tax Act and those will not be "pending proceedings."

It seems to us that the saving is for the purpose of levy, assessment or collection of income-tax in respect of chargeable accounting periods prior to the 31st day of March 1948, irrespective of the fact whether any proceedings were pending or not on that date. If the saving was to be restricted only to pending proceedings, this could have been easily said in express words in the saving clause itself.

12. The meaning of the word "assessment" as used in section 7 of the Taxation Laws Act is unambiguous if that Act is read by itself. It is an important rule of construction of statutes that where the language is plain and unambiguous, there is no need to look for anything else for interpretation. The words used must first be given their ordinary, natural and popular meaning. If this is done it will be clear that "assessment" must include "re-assessment."

13. There is yet another reason why this should be so. In the case of repeal and re-enactment at the same time, it should be held that there was no repeal at all. It has been observed in Sutherland's Statutory Construction in paragraph 2035 as follows :

".....When, however, an existing statute is re-enacted by a later statute in substantially the same terms, a repeal by implication is effectuated only of those provisions which are omitted from re-enactment, while the unchanged provisions which are reiterated in the new enactment are construed, as having been continuously in force."

In this case, the Income-tax Act as applied to the Nandgaon State, was repealed but was replaced by the Indian Income-tax Act. Section 34 in both these Acts are identical. According to the principle quoted above, Section 34 should be deemed to be continuously in force.

14. It is not necessary for us to repeat the reasons given by the learned Single Judge for the view he has taken and with which we find ourselves in respectful agreement. We hold that Income-tax Officer had power to initiate proceedings for re-assessment for the years in question.

15. It has next been argued that the notices issued by the Income-tax Officer are invalid because they purport to be under section 34 of the Indian Income-tax Act which was not in force in the accounting periods stated. It appears that the Indian Income-tax Act was extended bodily to the Nandgaon State in 1942. The correct citation would, therefore, be "S. 34 of the Indian Income-tax Act as applied to Nandgaon State." The omission of the words underlined (here into " ") is a slip and should not affect the merits of the case. When an authority has power to perform an act and the power under which the act is being performed has been wrongly stated it is the duty of the Court to refer to the appropriate power. We do not think there is any

substance in this contention of the appellant.

16. The appeal is accordingly dismissed with costs.

Appeal dismissed.

Cases Referred.

1. AIR 1934 PC 30
2. AIR 1938 PC 175
3. AIR 1955 Mys 49
4. AIR 1954 Tran Coc 137
5. AIR 1957 Pun 5
6. AIR 1953 Bom 441