

(1953) 09 KL CK 0011

In the High Court Of Kerala

Case No : O.P. No's. 53, 56 and 57 of 1952

A.N. Lekshmana Shenoy

APPELLANT

Vs

The Income Tax Officer

RESPONDENT

Date of Decision : 14-09-1953

Acts Referred:

Cochin Income Tax Act, 1117 — Section 14, 27(2), 28(4), 44, 44(1)
Constitution of India, 1950 — Article 228, 277
Finance Act, 1950 — Section 13
Travancore Income Tax Act, 1121 — Section 47

Citation : AIR 1954 Ker 137

Hon'ble Judges : V.S. Subramanya Iyer, J;M.S. Menon, J;Joseph Vithayathil, J

Bench : Full Bench

Advocate : M.U. Isaac, in O.P. Nos. 53, 56 and 57 of 1952 and M.K. Nambier, in O.P. Nos. 53 and 56 of 1952, for the Appellant; G. Rama Iyer in O.P. Nos. 53, 56 and 57 of 1952 and A.G. in O.P. Nos. 53 and 56 of 1952, for the Respondent

Judgement

1. O.P. No. 53 of 1952 is a petition or a writ of prohibition preventing the Respondent "from taking proceedings or continuing proceedings already commenced, u/s 44, Cochin Income Tax Act, 1117, and Section 47, Travancore Income Tax Act, 1121, for re-assessment of the Petitioner's income assessable for the years ended the last day of Karkatagam 1123 and 1124 in the States of Cochin and Travancore" and for such other orders and directions as this Court may deem fit and proper on the facts and in the circumstances of the case.

2. O.P. No. 57 of 1952 is only a separate petition seeking the same reliefs regarding the commencement of proceedings u/s 47, Travancore Income Tax Act, 1121.

3. O.P. No. 56 of 1952 is for quashing the order of the Income Tax Officer, Ernakulam, dated. 17-6-1952 assessing the Petitioner under Sections 28(4) and 14, Cochin Income Tax Act, 1117 for the assessment year 1123 and this petition has apparently been filed to meet a possible argument to the effect that in view

of the assessment O.P. No. 53 of 1952 should not be considered on the merits at any rate as far as the Cochin State income for the assessment year 1123 is concerned. The learned Advocate General submitted that, he would rather have a decision on the merits in respect of O.P. Nos. 53 and 57 of 1952 and in view of this O.P. No. 56 of 1952 will not require any further consideration.

4. The notices served on the Petitioner u/s 44, Cochin Income Tax Act, 1117 are Exts. III and IV and those u/s 47, Travancore Income Tax Act, 1121, are Exts. I and II, all dated 12-2-1952.

5. The main points urged on behalf of the Petitioner are clearly summarised in para 13 of the affidavit affirmed by the Petitioner on 16-6-1952.

(a) Under the Constitution all laws of a State to the extent they are inconsistent with the Constitution became void. Tax on income would be collected only by the Centre and not by a State except for the limited period prescribed by Article 277. With the passing of the Finance Act which made Travancore-Cochin a taxable territory, Income Tax laws of Travancore-Cochin State became void and inoperative. The Parliament of India could not u/s 13 keep alive the Income Tax Act of Travancore-Cochin State or any provision thereof inconsistent with the Constitution which had become void; nor does the Constitution of India authorise Parliament to tax the subjects of any Part B States for a period anterior to the Constitution when they were the subjects, of Anr. Sovereign State. Section 13 Finance Act, cannot therefore be availed of by the Respondent to obtain authority to assess the subject of a Part B state for a period prior to the date of the Constitution. Any such attempt has no legal authority whatever and is ultra vires and void. The proceedings taken by the Respondent are therefore without jurisdiction.

(b) The proceedings started by the Respondent are to re-assess the incomes alleged to have been under-assessed. Section 13, Finance Act, 1950 even if valid keeps alive the provisions of the Income Tax Acts of Cochin and Travancore only "for the purpose of the levy, assessment and collection of the Income Tax and super-tax" in respect of certain period mentioned in the said section. The provisions of the said Income Tax Acts have therefore ceased to have effect for the purpose of any "re-assessment" of Income Tax and super-tax. The proceedings of the Respondent are therefore without any authority.

(c) The proceedings taken by the Respondent for re-assessment are without any bona fides. There are absolutely no grounds to initiate the said proceedings. I have shown my whole income during the assessment years in question, and the assessments have been properly and correctly made. The Respondent has absolutely no information whatever in his possession by which he could discover or even suspect that my income in any of the said years has been under-assessed. I submit that the statements made by the Respondent to the contrary effect in the notices issued to me are not true. The said statements have been made without any bona fides, for the purpose of initiating the said proceedings.

The Respondent is trying to get down all my accounts and other records in my possession so as to enable him to invent some grounds which would entitle him to initiate proceedings under Sections 44 and 47, Income Tax Acts of Cochin and Travancore respectively and then to reject my accounts as unreliable and make exorbitant and fanciful assessments as he did for the assessment year 1951-52. I submit that the Respondent is abusing the provisions of the Statute with ulterior purposes. The proceedings taken by him are therefore illegal and void.

6. Apart from the three questions mentioned above the only other question that has to be considered is the preliminary argument of the learned Advocate-General that the petitions are not maintainable on the ground that this Court has no jurisdiction to issue a writ in these matters under any circumstance whatsoever as the Income Tax law forms a self-contained Code affording the aggrieved Assessee adequate remedies including a reference to this Court. The argument was not that this Court should consider the existence of alternative remedies in deciding whether a writ should issue in a given case but that it has no jurisdiction whatsoever even if the action complained about was founded on a flagrant assumption of a non-existent jurisdiction. This is a very large claim and one which in our opinion is clearly unsustainable. To adopt a characteristic phrase of Scrutton L.J. "(1952) 2 KB 478 (A) we are not prepared to agree that there is any such Alsatia in which the judicial writs do not run.

7. We do not consider the existence of an (alternative remedy a bar to the issue of a writ of prohibition in appropriate cases. This is a conclusion well supported by judicial decisions and dicta spread over a long period of years. We do not however consider it necessary to refer to any case except a decision of the Queen's Bench in the first quarter of this year "R. v. Comptroller General of Patents; Ex parte Parke, Davis and Co." (1953) 1 All ER 862 (B) - in which Lord Goddard, C.J., negated the argument of the Attorney General that, because the statute concerned gave a right of appeal a prohibition would not lie and said:

Objection to jurisdiction can always be taken by plea, and, if an appeal lies from the Court or tribunal in which such a plea is raised, the appellate Court could, no doubt, decide the question of jurisdiction, but it by no means follows that, because there is an appeal, the power of this Court to issue a prohibition is taken away. There is no technical obstacle to the co-existence of a right to appeal and to a prohibition: "Turner v. Kingsbury Collieries Ltd." (1921) 90 LJ KB 1132 (C) Sweetland v. Turkish Cigarette Co." (1899) 80 LT 472 (D). In "Burder v. Veley" (1840) 9 LJQB 267 (E) Lord Denman, C.J. said:

The cases in "Gare v. Gapper" (1303) 102 EH 678 (F) and "Gould v. Gapper" (1803) 102 ER 1102 (G) then, seem to, establish, and consistency of reasoning requires, that the power of prohibition is in no case taken away by the, privilege of appeal. If called upon, we are bound to issue our writ of prohibition as soon as we are duly informed that any Court of inferior jurisdiction has committed such a fault as to found our authority to prohibit, although there may be a possibility of correcting it by appeal. For there is reason for driving the

subject to that expensive process to abide the chance of a repetition of the error....

If the defect of jurisdiction is apparent on the face of the proceedings, the order of prohibition must go as of right and is not a matter of discretion: see the elaborate judgment of Willes J. in "London Corporation v. Cox" (1837) 38 LJ Ex. 225 (H) followed and adopted in "Board v. Perkins" (1838) 57 LJQB 638 (I) and "Farquharson v. Morgan" (1894) 63 LJQB 474 (J). We considered this very point in "R. v. Wimbledon JJ. Ex. p. Dement" 1953-1 All ER 390 (K) heard in this Court on Jan. 23, 1953.

8. Tire learned Advocate General during the course of his argument, invoked "Padmanabha Menon Krishna Menon v. I.T. Commr." AIR 1953 Trav-C 293 (L) in support of his contention. All that that decision has laid down, is that a resort to the High Court for relief under Article 228 of the Constitution cannot be permitted.

when there is no illegality or fatal irregularity in the pursuit of the procedure provided, by the Act or a usurpation or excessive exercise of jurisdiction.

9. "Point (a)": Under Article 277 of the Constitution any tax, which, immediately before the commencement of the Constitution, was being levied by the Government of any State may notwithstanding its inclusion in the Union List "continue to be levied and to be applied to the. same purposes until provision to the contrary is made by Parliament by law" and Section 13, Finance Act, 1950, which effected the repeal of the Cochin Income Tax Act, 1117, and the Travancore Income Tax Act, 1121, specifically provides that the repeal will leave unaffected

the levy, assessment and collection of Income Tax and super-tax in respect of any period not. included in the previous year for the purposes of assessment under the Indian Income Tax Act 1922 (11 of 1922), for the year ending on the 31st day of March 1951, or for any subsequent year, or, as the case, may be, the levy, assessment and collection of the tax on profits of business for any chargeable accounting period ending on or before the "31st day of Man" 1949.

In view of this we are not prepared to accept the contention of the Petitioner that the proceedings launched are without jurisdiction According to us the combined effect of Article 277 of the Constitution and Section 13, Finance Act, 1950, is to effect a valid continuance of the operation of the Cochin Income Tax Act, 1117, and the Travancore Income Tax Act, 1121 for the purpose of the levy, assessment and collection of Income Tax and super-tax in respect of the period indicated in Section 13 and the proceedings commenced by the Income Tax Officers of Ernakulam and Kottayam are in order provided their action comes within the terms, "levy, assessment and collection" of Income Tax.

10. "Point (b)": Both the words "assessed" and "re-assessed" occur in Section 44, Cochin Income Tax Act, 1117 and Section 47, Travancore Income Tax Act,

1121, and the contention of the Petitioner is that as "re-assessment" is not specified in Section 13, Finance Act, 1950, the power to "re-assess" has ceased to exist and is not available any longer. This also is a contention which we are not prepared to accept. The words "levy, assessment and collection" as we understand them include all the processes by which the tax is ascertained, demanded and realised and "re-assessment", being one of those processes comes within the ambit of the phraseology employed.

11. In view of what is stated above we are of the opinion that there is no substance in the contentions raised as points (a) and (b).

12. "Point (c). Section 44(1), Cochin Income Tax Act, 1117, provides that if:

in consequence of definite information which has come into his possession the Income Tax Officer discovers that income, profit; or gains chargeable to Income Tax have escaped assessment in any year, or have been, underassessed, or have been assessed at too low a rate, or have been the subject of excessive relief under this Act the Income Tax Officer may, in any case in which he has reason to believe that the Assessee has concealed the particulars of his income or deliberately furnishes inaccurate particulars thereof, at any time within eight years, and in any other case at any time within four years of the end of that year, serve on the person liable to pay tax on such income, profits or gains, or in the case of a company, on the principal Officer thereof, a notice containing all or any of the requirements which may be included in a notice under Sub-section (2) of Section 27, and may proceed to assess or reassess such income, profits or gains, and the provisions of this Act shall, so far as may be apply accordingly as if the notice were a notice issued under that subsection.

Similar is the wording of Section 47, Travancore Income Tax Act, 1121. The only question therefore that arises for consideration is whether the notices concerned (Exs. I, II, III and IV) were issued in pursuance of a "discovery" in consequence of "definite information". The learned Advocate General submitted at the close of his argument that we need not refer in this connection to any exhibit other than Ex. VIII and if we come to the conclusion that the statements embodied therein did not amount to "definite information" leading to a discovery in respect of the Petitioner's assessment years 1123 and 1124 the Petitioner is entitled to succeed subject to the acceptance or otherwise of the preliminary argument which we have already dealt with in paras 6 to 8 above.

13. We have carefully perused Ex. VIII, the relevant portions of which are given in the Appendix hereto (which shall form part of this judgment) and have come to the conclusion that the Income Tax Officer, Ernakulam, had definite information sufficient to attract the provisions of Section 44(1), Cochin Income Tax Act, 1117. The Income Tax Officer, Kottayam, only proceeded on the basis of the information supplied by the Income Tax Officer, Ernakulam and so if the provisions of Section 44, Cochin Income Tax Act 1117 are attracted it will equally attract the provisions of Section 47, Travancore Income Tax Act, 1121.

14. The learned Counsel appearing for the Petitioner submitted that Ex. VIII is under appeal and so no reliance should be placed on the contents thereof and that the information and discovery of the Income Tax Officer, Kottayam being at second-hand from the Income Tax Officer, Ernakulam, should be completely ignored. We do not consider the fact that Ex. VIII is under appeal will in any way affect the existence of definite information leading to a discovery for the purpose of initiating proceedings u/s 44, Cochin Income Tax Act, 1117, and Section 47, Travancore Income Tax Act, 1121. It may be that on further scrutiny or after hearing the Petitioner the Income Tax Department will come to the conclusion that the information they had though definite was capable of a different explanation and that no re-assessment is necessary. All that we are concerned with is to find out whether the officers had information which can be considered as definite and whether that information lead to Die discovery of an escape in respect of the assessment years of 1123 and 1124, We also do not see any infirmity on the ground that the source of the information as far as the Income Tax Officer, Kottayam, is concerned was not extraneous to the Department but was derived from an officer of the department itself.

15. The further argument of the Petitioner's learned Counsel that as Ex. VIII relates to the assessment year 1950-51, the year subsequent to the assessment year 1124, it cannot possibly provide information leading to a discovery regarding the assessment years of 1123 and 1124 is also not acceptable. Ex. VIII makes it quite clear that apart from the various items of information received, the transactions themselves disclosed a "definite pattern of avoidance not only in respect of the year covered by the order but also spread over the years anterior to it.

16. In the light of what is stated above we dismiss O.P. Nos. 53, 56 and 57 of 1952 but in the circumstances of the case without costs.