
(1997) 05 KAR CK 0008

In the Karnataka High Court

Case No : Writ Petitions No's. 24457 and 24458 of 1996

East India Hotels Ltd. and another

APPELLANT

Vs

C.R. Shekhar Reddy and another

RESPONDENT

Date of Decision : 28-05-1997

Acts Referred:

Income Tax Act, 1961 — Section 119, 194 C, 298

Citation : (1998) 144 CTR 570 : (1998) 230 ITR 622 : (1998) 101 TAXMAN 119

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

G.C. Bharuka, J.—In the present writ petitions one of the prayers is for quashing a part of the clarification given by the first respondent-Deputy Commissioner of Income Tax, in his letter dated October 5, 1995, addressed to the President, Confederation of Indian Industry, Southern Region, Bangalore (annexure "B"), where in paragraph 3(a) it has been opined that the payment to hotels towards banquet charges, which include catering for a certain number of people at a fixed rate per person exceeding the limit will attract the provisions of section 194C of the Income Tax Act, 1961 (in short "the Act").

2. The first petitioner is a public limited company owning and operating a chain of five star hotels. One of its hotels is situated at Bangalore. The second petitioner is one of its shareholders.

3. According to the petitioners in their hotels they offer a number of facilities and amenities to patrons such as a select restaurant, a restaurant with facility of orchestra and a banquet hall for special private gatherings and entertainments and other similar facilities.

4. According to the petitioners, the petitioner company provides banquet facilities within its hotel premises to the patrons. At these banquets apart from serving food and beverages as per the requirements of its customers, various other

facilities like those of providing furniture, air-conditioning, trained staff, communication are also provided, subject to payment of consolidated charges. According to the petitioners, the said services are provided in the normal course of their hotel business as required by the Department of Tourism under the guidelines (annexure "C") issued by them.

5. The controversy raised herein has arisen because of certain answers given by the first respondent-Deputy Commissioner of Income Tax, in an interface held by corporate persons with the officers of the Income Tax Department on the provisions pertaining to deduction of tax at source which was held at Hotel Ashoka, Bangalore, on August 31, 1995. These answers were communicated to the people of industry as noticed above through a communication dated October 5, 1995 (annexure "B"), giving an impression that the interpretation so given of the statutory provisions contained under the Act, statutorily binds the persons who are to abide by those provisions.

6. As a matter of fact, as averred in the writ petition pursuant to the said clarification at annexure "B", Tata Information Systems Limited being one of the companies which had availed of the banquet facilities provided by the first petitioner, has deducted tax at source u/s 194C on the payments made by it. According to the first petitioner when objections were taken to such deduction at source, the same was refused to be acceded to by the customer, Tata Informations Systems Limited, resting its stand on the clarifications given by the first respondent - Deputy Commissioner of Income Tax, in its communication at annexure "B". Their reply dated February 29, 1996, has been placed at annexure "D".

7. Therefore, the first and foremost question to be considered is as to whether the replies/clarifications/instructions given by the first respondent-Deputy Commissioner of Income Tax, or for that sake, given by any of the Income Tax authorities referred to in section 116 of the Act has any statutory sanction so as to bind the persons governed by the provisions of the Act and thereby giving rise to a cause of action for interference under the writ jurisdiction.

8. The first respondent-Deputy Commissioner of Income Tax, in his statement of objections has stated that the Chief Commissioner and the Commissioners being Heads of the Department are responsible for the administration of the Act and are, therefore, duty bound to periodically meet the various trade associations as well as associations of professionals to redress their grievances and also to explain the Departmental point of view whenever new provisions or procedures are sought to be introduced. It has been stated that the underlying idea to follow such a practice is to apprise the general public as to the implications of the new provisions and to ensure a fair and uniform implementation of the provisions of the Act.

9. The first respondent, after stating as above, has made certain statements having far-reaching implications on the powers and functions of the Income Tax

authorities and the rights and obligations of the taxpayers. The material part of the statement which needs close judicial scrutiny is to the following effect :

"It is necessary to add that any such clarifications which are in favour of the taxpayers are binding on the officers of the Department. However, where such clarifications are against the taxpayer, he is entitled to challenge the view expressed therein in appropriate proceedings either before the normal appellate forum under the Act or the High Court or the Supreme Court as the case may be. To avoid ambiguity or misunderstanding, the clarifications given are usually communicated by an official of the Department shortly after the meeting. The first respondent at the relevant time holding the post of Deputy Commissioner of Income Tax (TDS) and also being concerned with effective implementation of the amended provisions of section 194C of the Act was also present at the interface meeting along with other senior officials of the Department. The Chief Commissioner and Commissioner have given clarifications as stated above and they have been communicated in writing by the first respondent. Thus it may be noticed that on the provision in question being amended by the Finance Act, 1995, and queries being raised by the trade association as regards the implications of the said provision, clarification has been given, as explained above, as regards the scope and ambit of the said provisions. In answering the query and tendering clarification thereto the Departmental stand and view with respect to the said provisions is made clear. The answer so given to the query does not partake of the character of any statutory order but is only an expression of Department's view."

10. The above statement discloses the manner in which the Income Tax authorities under the Act have construed their powers and functions as virtually attributing to themselves certain legislative functions/powers of issuing clarifications binding both the Revenue as also the taxpayers, though, Parliament under the Act has not entrusted any such powers or functions to them. I have absolutely no hesitation in holding that the entertainment of such concept on the part of the Income Tax authorities is not only misconceived and unwarranted but is also indicative of a menacing trend.

11. The Income Tax authorities are the creatures of the Act. The officers appointed to discharge the functions under the Act are supposed to have been given some amount of training regarding basic Constitutional law and rules of interpretation as also the administrative law. If it is not done, in my opinion, it is high time that the Government should take care to acquaint the statutory authorities with the said branches of law.

12. It is basic that the authorities created under the Act have to function within the four corners of the powers and duties assigned to them under the Act. They cannot claim to themselves any inherent power howsoever benevolent or plausible the purpose it is intended to serve. The power to issue clarifications of purportedly ambiguous statutory provisions lies only with the Legislature or its delegate under specified conditions. In the absence of any such delegation, such

a power cannot be exercised by any person and if it so exercised then it will be nothing but a nullity binding none on the earth.

13. In the case of *Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union*, it has been held by the Supreme Court that "a provision authorising the Central Government to provide by order for removal of doubts or difficulties in giving effect to the provisions of the Act amounts to delegation of legislative power". As a matter of fact u/s 298 of the Act, such a power has been specifically conferred upon the Central Government subject to various limitations. The said section reads thus :

"Power to remove difficulties. - (1) If any difficulty arises in giving effect to the provisions of this Act the Central Government may, by general or special order, do anything not inconsistent with such provisions which appears to it to be necessary or expedient for the purpose of removing the difficulty.

(2) In particular, and without prejudice to the generality of the foregoing power, any such order may provide for the adaptations or modifications subject to which the repealed Act shall apply in relation to the assessments for the assessment year ending on the 31st day of March, 1962, or any earlier year.

(3) If any difficulty arises in giving effect to the provisions of this Act as amended by the Direct Tax Laws (Amendment) Act, 1987, the Central Government may, by order, do anything not inconsistent with such provisions for the purpose of removing the difficulty :

Provided that no such order shall be made after the expiration of three years from the 1st day of April, 1988.

(4) Every order made under sub-section (3) shall be laid before each House of Parliament."

14. Similarly, u/s 119 of the Act a power has been reserved in favour of the Central Board of Direct Taxes (in short "the Board") to issue instructions to subordinate Income Tax authorities for proper administration of the Act and who are required to observe and follow such instructions. None the less, it may be made clear that such instructions which may even pertain to the interpretation of a statutory provision under the Act cannot bind the taxpayers requiring to seek any remedy against the said instructions/clarifications either statutory or constitutional. But to my utter surprise the respondent-Deputy Commissioner has come on oath before this court to take a stand that the instructions issued by the Commissioners will bind the taxpayers, unless they get rid of it by availing of remedies as suggested by him in his statement quoted above. His statement to the said effect needs to be denounced as not only misconceived but as also perverse and exceeding all limits of founding legal notions. I can only trust that henceforth the Income Tax authorities should deter from enjoying five star comforts and dinners by accepting the hospitality of corporate people by giving an illusory and ill-conceived impression that they are the final law making and

clarifying authorities. It may be clarified that the Income Tax authorities while discharging their quasi-judicial functions having a bearing on the rights and obligations of the taxpayers under the provisions of the Act may take such views on the interpretation of a particular statutory provision as may be permissible which will be always subject to the statutory remedies under the Act. But the view so taken in the particular case cannot partake of the colour of a law of general application so as to bind a whole class of taxpayers and providing them a cause of action for coming before this court seeking interference under the writ jurisdictions.

15. Keeping in view the said deliberations the impugned communication/clarification dated August 8, 1995 (annexure "A"), is quashed reserving liberty to the parties to exercise their rights and discharge their obligations in accordance with the provisions of the Act, subject to judicial pronouncements and clarifications/instructions issued by the Board. Accordingly, the writ petitions are allowed. No costs.