
(1926) 02 CAL CK 0024
In the Calcutta High Court

Emperor	Vs	APPELLANT
Indu Bhusan Sarkar		RESPONDENT

Date of Decision : 11-02-1926

Acts Referred:

Income Tax Act, 1961 — Section 6, 66(2)

Citation : AIR 1926 Cal 819 : 95 Ind. Cas. 539

Hon'ble Judges : Page, J;Cuming, J

Bench : Division Bench

Judgement

Cuming, J.—This is a Reference tender Section 66 (2) of the Income Tax Act by the Commissioner of Income Tax and the question of law referred for decision is.

2. Is the income from the jalkars, which were included in the assets upon which the jamas of the Estate Touzi Nos. 106 and 107, Dacca Collectorate and Touzi No. 6301 of the Faridpur Collectorate were assessed under Regulation I of 1793 at the time of the Permanent Settlement, liable to assessment to income tax under Act XI of 1922? I am of opinion that the answer must be in the negative. The sections of the Income Tax Act on which the Commissioner relies are--

3. Section 4 which provides that save as hereinafter, provided this Act shall apply to all incomes, profits or gains as described or comprised in Section 6 from whatever source derived, accruing, or arising or received in British India or deemed under the provision of this Act to accrue or arise, or be received in British India.

4. Section 6 provides: "Save as otherwise provided by this Act, the following heads of income, profits and gains shall be chargeable to income tax in the manner hereinafter appearing, namely:

(i) Salaries.

(ii) Interest on securities.

(iii) Property.

(iv) Business.

(v) Professional earnings.

(vi) Other sources.

5. The contention of the Commissioner of Income Tax is that the profits from fisheries fall under "other sources" and that there is nothing in the Act which exempts such profits from the operation of the Act.

6. The assessee relies on Regulation I of 1793 (the Bengal Permanent Settlement Regulation) with special reference to Articles III, IV, VI.

7. He argues that by this Regulation the amount of revenue payable by his estate is fixed in perpetuity; that the income from these fisheries was taken into account in assessing the amount of revenue to be paid, and hence he is paying revenue for these fisheries, and that now to assess these fisheries to income tax is in reality to increase the amount of revenue payable by him.

8. He does not contend that the Legislature has not the power to do so, but he argues that the Act which takes away a right conferred on the subject by a previous enactment must do so, in clear and unequivocal language.

9. The Commissioner of Income Tax contends that the language of the Income Tax Act is sufficiently clear, and that by the words "other sources" so much of Regulation I of 1793 as covers the income derived from fisheries is repealed.

10. To discover what is the rule which should guide the Courts in determining whether the provisions of one Act are repealed or modified by a subsequent enactment, it will be sufficient if I refer to the observation of three very learned Judges.

11. Lord Selbourne, Lord Chancellor in the case of *Seward v. Vera Cruz* (1834) 10 A. C. 59 at p. 68 : 54 L. J. P. 9 : 52 L. T. 474 : 33 W. R. 477 : 5 Asp. M. C. 380 49 J. P. 324. remarks---"If anything be certain it is this, that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered or derogated from merely by force of such general words without any indication of a particular intention...."

12. Let us apply the rule to the present case.

13. We have in the Regulation of 1793 an Act which deals specially with the fixing of the revenue to be paid by permanently settled estates. The words used in the Income Tax Act are very general, viz., "other sources " The provision is obviously capable of a reasonable and sensible application without extending it to incomes derived from fisheries. They are obviously not the only income which might fall under other sources.

14. There is, to my mind, nothing in the words "other sources" to indicate that

by these words the Legislature had the particular intention of repealing so much of Regulation I of 1793 as dealt with, the fixity of revenue so far as fisheries were concerned.

15. Lord Justice Bowen re-stated the same rule in the case of *In re Cuno Mansfield v. Mansfield* (1889) 43 Ch. D. 12 at p. 17; 62 : L. T. 15. In the case of *Garnett v. Bradley* (1879) 3 A. C. 944 at p. 967 : 48 L. J. Ex. 186 : 39 L. J. 261 : 26 W. R. 698. Lord Blackburn remarked: " But where there is the case, where the particular enactment is particular in the sense that it protects the rights, the property, the privileges of particular persons or a class of persons, the reason for the rule which has been acted upon is exceedingly plain and strong. It would-be very unjust, or I would rather say unfair (I do not go further than that), to pass an enactment taking away from a particular person or class of persons his or their rights, without hearing what he or they have got to say about it; and if general words were to have the effect of taking away the rights of: a particular person or class, which had been given to them beforehand, it would be done without their having any knowledge or opportunity of resisting it and it. is not to be imputed to the Legislature or to be supposed that the Legislature would do what was unfair." Let us apply these observations also to the present case.

16. Regulation I of 1793 does certainly confer; certain rights and privileges on a particular class of persons with whom these estates were settled at the time of the Permanent Settlement, enacting that the revenue which they should pay for their estates then settled with them was fixed for ever. Id these rights are to be taken away by the general words "other sources of income," clearly their rights would be taken away without their having any knowledge or opportunity of resisting it.

17. As Lord Blackburn puts it, it is an intelligible principle that the Legislature shall not be presumed to have done anything unfair and to have taken away a privilege not having openly stated that they meant to take it away or in such open or clear language that the persons affected might come and resist and use arguments to show why it should not be taken away but having simply used general words quite consistent with their never having thought of the privilege at all.

18. It must be remembered that the Income Tax Act was passed by the Central Assembly. There are many parts of India where the Permanent Settlement and all that it implies are entirely unknown, and there is nothing to show that the Legislature when enacting the particular Act had in mind the Permanent Settlement and deliberately took away one of the privileges conferred by the Regulation. As Lord Blackburn puts it the general words are quite consistent with the Legislature having never thought of the Permanent Settlement at all. It is difficult for me to think that the Legislature would by an indirect route alter the important and long-cherished privileges conferred by the Permanent Settlement.

19. I am not in any way impressed by the argument of the Commissioner of

Income Tax that hitherto incomes from fisheries have been assessed to income tax without objection. It may have been but that does not make it any more legal. Neither is there anything to show that the incomes of these fisheries he referred to were taken into account in fixing what revenue had to be paid.

20. The view which I now take is the view which has commended itself to the Madras High Court see *Secretary to the Chief Commissioner of the Income Tax Madras v. Zemindar of Singampatti* 70 Ind. Cas. 504 : 45 M. 518 : 15 L. W. 496 : (1922) M. W. N. 353 : 31 M. L. T. 21 : A. I. R. 1922 Mad. 225 and also to the Patna High Court see *Maharaj Dhiraj of Darbhanga v. Commissioner of Income Tax* 78 Ind. Cas. 783 : 3 Pat. 470 : 2 Pat. L. R. 25 Cr. : (1924) Pat. 69 : 5 P. L. T. 459 : A. I. R. 1924 Pat : 474 on remand 92 Ind. Cas. 338 : (1925) Pat. 49 : 2 Pat. L. R. 242 Cr. : A. I. R. 1925 Pat. 313 : 6 P. L. T. 855. The answer I would give to the Reference of the Commissioner of Income Tax is that the incomes of such jalkars as are referred to in his letter of reference are not liable to be assessed to income tax.

Page, J.

21. I agree. In the case of *Probhat Chandra Barua Vs. Emperor*, I had Occasion to state my views on this matter and I need not repeat them. In that case had the misfortune to differ from my brother Rankin, but before that case was decided the Madras High Court in *Secretary to the Chief Commissioner of the income tax, Madras v. Zemindar of Singampatti* 70 Ind. Cas. 504 : 45 M. 518 : 15 L. W. 496 : (1922) M. W. N. 353 : 31 M. L. T. 21 : A. I. R. 1922 Mad. 225 and since it was decided, the Patna High Court in *Maharaj Dhiraj of Darbhanga v. Commissioner of income tax* 78 Ind. Cas. 783 : 3 Pat. 470 : 2 Pat. L. R. 25 Cr. : (1924) Pat. 69 : 5 P. L. T. 459 : A. I. R. 1924 Pat : 474 on remand 92 Ind. Cas. 338 : (1925) Pat. 49 : 2 Pat. L. R. 242 Cr. : A. I. R. 1925 Pat. 313 : 6 P. L. T. 855. arrived at the same conclusion as that which I expressed in *Probhat Chandra Barua Vs. Emperor*, It is highly important that questions affecting the liability of the subject to taxation should not remain in doubt, and notwithstanding the dissentient views of Rankin, and Mullick, JJ., it is satisfactory that a Full Bench of the Madras High Court, and a Division Bench of the High Courts at Calcutta and Patna which have been invited to express an opinion on this important matter have each now answered the question propounded in the same sense, and are of opinion that income derived from sources such as that which is the subject-matter of this Reference is, not assessable to income tax.