
(1977) 04 MP CK 0004
In the Madhya Pradesh High Court
Case No : M.P. No. 320 of 1976

Girdharilal

APPELLANT

Vs

Profession Tax Assessing Authority and another

RESPONDENT

Date of Decision : 20-04-1977

Acts Referred:

Constitution of India, 1950 — Article 19(1)(f), 226, 226(1), 226(3), 31

Citation : (1977) JLJ 413

Hon'ble Judges : P.D. Mulye, J;G.L. Oza, J

Bench : Division Bench

Final Decision : Allowed

Judgement

G.L. Oza, J.—This petition has been filed by the petitioner against the assessment of the professional tax made by the Profession Tax Assessing Authority. Indore, Circle III, Indore and imposition of penalty of Rs. 15 00.

2. According to the petitioner he is the head of a joint family consisting of himself and his sons. The family owns immovable properties at Indore. The rental income of the family for the year commencing from Diwali 1968 to Diwali 1969 i.e. from 22-10-1968 to 5-11-1969 was Rs. 24084.00, In addition to this income of the family consisted of interest received on compulsory saving deposits and interest from other sources. According to the petitioner the professional tax could be charged at the rate determined on the basis of the income of the family derived from sources other than the rental income of the property as the definition of the "income" provided in section 3 of M.P. Vritti, Vyapar, Ajivika, Adhiniyam, 1966 (hereinafter referred to as "the Adhiniyam") does not talk of the "income" from property. According to the petitioner, therefore, the rental income of the impugned year i.e. Rs. 24084.00 could not be included in the income for the purpose of determining the rate at which the tax was payable. According to the petitioner he submitted the statement of accounts and the respondent No. 1 assessed the tax on the basis of the rate determined treating Rs. 24059.25 as the income of the petitioner. This figure of Rs. 24059.25 was

reached by the assessing authority after adding the rental income and therefore levied the professional tax Rs. 165.00 and Rs. 15.00 as penalty. The petitioner, therefore, has filed the present petition contending that u/s 3 of the Adhiniyam, income from property could not be considered as it does not fall within the income derived from profession, trade, calling or employment and therefore, prays that the order passed by the Assessing Authority be quashed. The petitioner in support of his contention placed on the decisions reported in GOPI MOHAN AND SONS Vs. COMMISSIONER OF Income Tax, U. P. and C. P., Secunderabad Club Vs. Commissioner of Sales Tax, Hyderabad State (Now Andhra Pradesh), Senairam Doongarmall, v. Commissioner of Income Tax Assam AIR 1971 SC 1579 . Waliati Ram Nathu Ram Vs. Municipal Committee, Rupar, and Chengarath Velu Vs. Executive Officer, Erumayur Panchayat, Post Erumayur, Alathur and Another, . It was also contended by the petitioner that although the petition was filed when the present amendment in the Constitution was not in force; but even after the present amendment, according to learned counsel as this petition involves the question of the fundamental rights of the petitioner Art. 226 (3) of the Constitution will not be applicable to this case and the petitioner is entitled to the relief under Art. 226 of the Constitution.

3. The respondents in their Return contended that for purposes of ascertaining the rate at which the tax should be levied would include the rental income of property also and it was, therefore, contended that as the rent received will fall within the Aajivika the tax should be levied on that basis.

4. This tax has been levied by the M. P. Vritti Vyapar Aajivika Adhiniyam, 1966. This Act has been passed by the State Legislature exercising its powers under list II, Item 60 of the Seventh Schedule of the Constitution,

60. Taxes on professions, trades, callings and employments.

This item empowers the State legislature to levy tax on profession, trades, callings and employments. It is significant that the word "Aajivika" which has been included in the heading of the Act has not been included in this item. Section 3 of the Adhiniyam which fixes the liability of this tax reads :--

3. Liability to tax--(1) Any person who carries on a trade, either himself or by an agent or representative, or who follows a profession or calling, other than agriculture, or who is in employment, either wholly or in part in Madhya Pradesh shall, subject to the provisions of this Act, pay from and after the 1st day of April, 1966, for each financial year, a tax in respect of such profession, trade, calling or employment at the rate specified in the Schedule if his income, in respect of such profession, trade, calling or employment during the previous year is :--

(a) In the case of a person other than Hindu undivided family, four thousand and two hundred rupees and above ; and

(b) In the case of a Hindu undivided family, six thousand rupees and above;

and such tax shall be payable in addition to any tax, duty or fee which he is liable to pay under any other law for the time being in force in respect of such profession, trade, calling or employment.

(2) Any person who is in employment in Madhya Pradesh shall be deemed to be in employment even though he may be absent there- from on leave or otherwise.

A reading of this section goes to show that tax has been levied on a person who carries on a trade, or who is in employment either wholly or in part in Madhya Pradesh and the tax that would be payable would be in respect of such profession, trade, calling or employment. It is significant that the word "Aajivika" on which reliance has been placed in the Return is not included in section 3.

5. This section also provides that the tax would be chargeable at the rate specified in the schedule if his income in respect of such profession, trade, calling or employment during the previous year is up/to the certain limit if he is a person other than Hindu undivided family or by a certain limit if the assessee is a Hindu undivided family. Therefore, the rate has to be determined on the basis of the income in respect of the profession, trade, calling or employment and not from any other source. This fact is further clarified in section 2 while providing the definition for the word used in the enactment by section 2 (iii) the word "Income" has been defined. Section 2 (iii) of the Adhiniyam reads--

2. (iii) income means--

(a) profits and gains;

(b) salary including the value of any perquisite or profit in lieu of salary ;

(c) dividend and interest;

(d) the value of any benefit or perquisite, whether convertible into money or not obtained from a company either by a director or by a person who has a substantial interest in the company, and any sum paid by any such company in respect of any obligation which, but for such payment would have been payable by the director or other person aforesaid ;

accruing or arising to a person within the State from any profession, trade, calling, other than agriculture, or employment.

This provision also makes it clear that income from property by way of rental income has not been included in the definition of income for the purpose of this Act because it is on the basis of this income as provided for in section 3 (i) of the Adhiniyam that the rate for levy of tax will have to be determined. In *GOPI MOHAN AND SONS Vs. COMMISSIONER OF Income Tax, U. P. and C. P.,*) while considering the income from profession, business or vocation as opposed to income from property in the context of the provisions of the Income Tax Act, their Lordships of the Allahabad High Court observed :--

Income from property has been described separately and put under a different

head from "profits and gains of business profession or vocation." The method of computation of income from property has been laid down in section 9 while that for the computation of income from business, profession or vocation has been described in section 10. From this it is clear that the expression business, profession or vocation" used in Section 25 (3) relates to that head of income, which has been dealt with in section 10, and is quite distinct from the head of Income from property," which has been mentioned in section 9.

In *Waliati Ram Nathu Ram Vs. Municipal Committee, Rupar*, the question of tax on profession or calling was considered and their Lordships held that the word profession or calling has to be given a wide meaning. However, in this decision also the question of income from property whether would fall within the ambit of the income as contemplated in this Act has not been considered. The question as has been raised in this petition is not considered in any one of the decisions referred to by learned counsel, As discussed above, in view of the provisions contained in section 3 coupled with the definition of "Income" it could not be doubted that for purposes of determination of the rate at which the tax would be chargeable rental income from property could not be considered.

6. Article 226 of the Constitution as it stands today lays down in sub-clause (3) that no petition for the redress of any injury referred to in sub clause (b) or sub clause (c) of clause (1) shall be entertained if any other remedy for such redress is provided for by or under any other law for the time being in force. According to learned counsel his case will be covered not by sub clause (b) or (c) of Art, 226 (1) of the Constitution; but will fall within the ambit of sub-clause (a) of Art. 226 (1) and in that view of the matter it was contended that the bar of sub clause (3) will not be applicable. However, it was not disputed that although the petition was filed when the Constitution was not amended but when it has come up for hearing now Art, 226 of the Constitution as it stands today will have to be considered to find out as to whether the petition could be entertained under this Article as it not stands amended.

7. According to learned counsel for the petitioner under Article 19 (1) (f) the petitioner has a right to hold property and Article 31 provides that no one will be deprived of his property save by authority of law. It was contended that taxation without authority of law will amount to deprivation of property of the petitioner and in this manner according to learned counsel for the petitioner by levy of this tax on the rental income of the property which does not have the authority of law would amount to an encroachment on the fundamental right of the petitioner to hold property.

8. It could not be disputed that the petitioner has a right to hold property and also that he cannot be deprived of his property without the authority of law. If the tax levied against the petitioner is not justified within the ambit of M.P. Vritti. Vyapar, *Ajivika Adhiniyam*, 1966, then it would be a tax on property without the authority of law, and to this extent apparently it will be an encroachment on the right of the petitioner to hold property and in this view of the matter it cannot be

doubted that this petition would fall within the ambit of sub clause (a) of section 226 (1) of the Constitution.

9. In the light of the discussion above, therefore, in our opinion, this petition is allowed. The orders passed by the respondent No. 1 are quashed and it is directed that the respondent No. 1 will proceed to assess the tax in the light of the law as discussed above. The petitioner shall be entitled to costs of this petition. Counsel fee Rs. 100,00, if certified.