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In the High Court Of Kerala

Case No : O.P. No. 34 of 1955

Harrisons and Crosfield Ltd. APPELLANT

Vs

Commissioner, Quilon Municipality and Another RESPONDENT

Date of Decision : 09-08-1955

Acts Referred:

Constitution of India, 1950 — Article 226, 270, 276
Taxation and Finance Rules — Rule 16 , 17, 18, 19
Travancore District Municipalities Act, 1116 — Section 133, 91
Travancore Income Tax Act, 1121 — Section 8

Citation : AIR 1955 Ker 174

Hon'ble Judges : N. Varadaraja Iyengar, J;Joseph Vithayathil, J

Bench : Division Bench

Advocate : P. Govindan Nair, G.B. Pai and K.V.R. Shenoi, for the Appellant; M. Madhavan Nair, V. Rama Shenoi, for the Respondent

Judgement

Varadaraja Iyengar, J.—This is an application made under Article 226 of the Constitution of India by Messrs. Harrison and Crosfield Ltd., Quilon, which a company doing business within the municipal area of Quilon among other places, inside and outside the State of Travancore-Cochin.

The matter arises in connection with their assessment to profession tax by Respondent 1 Commissioner, Quilon Municipality, for the half years comprised in 1125, the first 71/2 months of 1126, 1951-1052, 1952-1053 and 1953-54, The Petitioner company contended that the rule which was applicable for the purpose was contained in Rule 18(2) of Sch. 2, Taxation and Finance Rules, of the Travancore District Municipalities Act, 23 of 1116. This contention was overruled by the Municipal Commissioner in whose opinion the proviso to Rule 18(2) was alone applicable.

On assessments made upon such basis the Petitioner-company took various appeals before Respondent 2-Municipal Council. The appeals were all dismissed by a single order dated 30-12-1954 which is filed in this case as Ex. A. The

Petitioner company has therefore applied herein for the issue of a writ of certiorari or other appropriate writ, calling up the relevant records and cancelling the order of assessment passed by Respondent 1-Municipal Commissioner and confirmed by Respondent 2-Municipal Council on the ground that these orders are illegal and ultra vires the powers vested in the Respondents as per the provisions of the Travancore District Municipalities Act and the Rules framed thereunder.

The application also mentions that in regard to the assessment for the half years 1954-55 Respondent 1 Municipal Commissioner had proceeded to assess the Petitioner-company as per the proviso to Rule 18(2) which in his opinion was the applicable rule and had issued notice filed In the case as Ex. B. Accordingly the Petitioner prays for relief in this matter as well by the issue of appropriate writ.

2. The motion is opposed by the Respondents appearing through learned Counsel. The ground taken is that the procedure adopted by the Municipal authorities was the correct one in the circumstances and no question of illegality or ultra vires arose.

3. Before proceeding to discuss the question raised it will be useful to state briefly the relevant provisions of law governing the matter. The statutory provision in regard to taxation and finance under the District Municipalities Act 23 of 1116 is contained in Chap. VI and Section 91 therein is the charging section in connection with profession tax leviable against every company which transacts business within the Municipality.

Section 133 provides that the rules and tables embodied in Sch. II should be read as part of Chap. 6 and Schedule II contains the Taxation mid Finance Rules. Rules 16 to 19 of Schedule II deal with the assessment of the profession tax. Rule 16. Clause (1) gives in a tabular statement the classes into which companies and persons shall, for the purpose of assessment to profession tax, be divided and the maximum half-year tax leviable on each class.

This tabular statement comprises 12 classes in descending order of liability, the last class (12) providing for a half yearly maximum tax of 14 Chuckrams for half yearly income of more than Rs. 150 and less than Rs. 300/-, while the 1st class provides for a maximum half yearly tax of Rs. 275 for a half yearly income of more than Rs. 21,000/-. But there is a proviso added that:

A company whose half yearly income is more than Rs. 21,000 shall, notwithstanding anything contained in this or any other rule, pay in addition to the maximum half yearly tax of Rs. 275 an additional half yearly tax on such excess calculated at the rate of one rupee per one hundred rupees or part thereof.

Rule 16, Clauses (2) and (3) vest a discretion in the Council in the matter of determination of tax leviable on each class subject to the maximum specified in Sub-rule (1) and in the matter of exemption of any one or more of the classes in

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Sub-rule (1) from liability to profession tax. Rule 17 defines when a company or person can be deemed to have transacted business within a Municipality, and Rule 18, Clauses (1) and (2) then provides for the basis of computing the income of any company or person,

Rule 18, Clause (1) deals detailedly with a company or person transacting business in any half-year exclusively in the area of a single municipality, while Clause (2) deals with companies or persons transacting business partly in the area of a municipality and partly outside such area.

Clause (1) as it originally stood was amended by notification S.O.C. No. 1969/44/ A , LGA dated 25-12-1945 with the view to assess by reference to an assessment of Income Tax under the Agricultural Income Tax Act of 1119 and Clause (2) was later amended by notification H. Dis. 705/47/LCA dated 26-8-1947 by the addition of a proviso with a view to have the benefit of figures ascertained by an assessment to Income Tax.

Rule 18, Clause (3) and the Explanation thereto deal with ascertainment of the turnovers referred to in Clauses (1) and (2) of that Rule. Rule 19 finally deals with the administrative details as to the calling for and submission of returns and the passing ultimately of the order of assessment.

4. It is now necessary to set forth in greater detail the provisions of Rule 18, Clauses (1) and (2) as amended. They read as follows:

(1) Where a company or person transacts business in any half-year exclusively In the area of a single municipality, the Income of such company or person from the transaction of such business shall, for the purpose of levying profession-lax under this Act during the half-year, be deemed to be:

(a) where Income Tax is assessed on such company or person under the Travancore Income Tax Act for the year, comprising the half-year, one-half of the amount at which the profits and gains of such business are computed u/s 8 of the Travancore Income Tax Act for the purpose of assessing the Income Tax;

(2a) where agricultural Income Tax is assess on such company or person under the Travancore Agricultural Income Tax Act, 1919 for the year comprising the half year one-half of the amount at which the total agricultural income computed under the Act for the purpose of assessed the agricultural Income Tax;

(b) where the amount of the said profits and gains or the amount of the said total agricultural Income Tax is not ascertainable or where such company or person is not assessed to Income Tax or agricultural Income Tax, such percentage as our Government may prescribe, of the turnover of the business transacted in the area of the Municipality during the half-year or where this is also unascertainable during the corresponding half-year of the previous year.

(2) Where a company or person transacts business partly in the area of a municipality and partly outside such area, the income of such company or person

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from the transaction of business in the area of the municipality shall, for the purpose of levying professional tax under this Act, be deemed, to be the percentage prescribed under Clause (b) of Sub-rule (1) of the turnover of the business transacted in such area during the half-year or the corresponding half-year of the previous year, as the case, may be.

Provided that in the case of a company or person assessable to Income Tax the total profit earned by the company or person as disclosed by the Income Tax assessment for the whole State for the year comprising the half year for which the profession tax is to be levied shall be divided, in the proportion of the turnover or the business of the company or person in the Municipality or outside for purpose of assessment to profession-tax.

5. It is the common case of both parties that Rule 18(1) does not apply to the instant case inasmuch as the Assessee company transacts business in a large number of places outside the limits of the Respondent Municipality. We have therefore to consider Rule 18(2) on the one side and the Proviso to this sub-rule on the other. The Petitioner''s contention was put this way.

For the application of the proviso there must be the possibility of an Income Tax assessment of the total profits for the whole state of Travancore for the half-year in Question or at least the whole year which contained it. But such possibility totally ceased with the coming into force of the financial integration of the State and the Centre.

Thereafter the State ceased to be the Income Tax authority for its area and the Centre took over the jurisdiction for purpose of single assessment to Income Tax for all India and this assumption of jurisdiction by the Centre rendered it impossible again to have the figure of "the total profits" "for the whole State" within the meaning of the proviso.

The proviso has therefore become infructuous and the matter must fall naturally within the ambit of Clause (2), that is to say, the income of the Company had to be fixed on the basis of 2 per cent of the turnover of the business transacted in the Quilon Municipal area during the period concerned as prescribed under Clause (b) to sub-rule (1) of Rule 18 with reference to the Quilon Municipality and the computation had to be made accordingly.

6. Learned Counsel for the Respondent Municipality contends that in the changed circumstances under which Income Tax assessment has been taken over by the Centre the expression "for the whole State" in the proviso should be taken to mean "for the whole of India" and the income could be calculated within the meaning of the proviso from the figure of the Municipal area turnover on the basis of the ratio of the all India turnover with respect to the all India income, as ascertained from the Income Tax assessment made after the financial integration.

The question for consideration is whether the proviso on its proper construction has become inapplicable as contended for by the Petitioner or the proviso could

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still be put into effect by the enlarged interpretation contended for by the Municipality.

7. The scheme of Rule 38 seems to be in the first instance to depend upon the figure adopted by the Income Tax Department in the matter of their assessment, for purpose of the proposed assessment to profession tax and if that was not available or possible, to adopt a rough and ready rule on the basis of a certain percentage of the turnover of the business.

If the business happened to be confined to a tingle Municipality the matter would be simple. The Income Tax assessment would reflect the entire turnover of the business and therefore the entire profits earned within the Municipality. But the complexity would arise if the business was only partly carried on inside the Municipal limits. The rule as it originally stood apart from the proviso provided for the simple method of computation in such cases, viz., arrive at certain percentage of the turnover and fix the income on such basis.

The proviso introduced the adoption of the Income Tax basis which was already the basis where the business was confined to a single Municipal limit. Apparently the Income Tax assessment which was thought of for purpose of Clause (1) was to be of the same kind for Clause (2) under the proviso. The assessment was to be under the Travancore Income Tax Act in regard to both.

Learned Counsel for the Respondent says that while the Travancore Income Tax Act is definitely referred to a Clause (1) the non-reference to Travancore in the Proviso to Clause (2) must mean that the idea of "State" was left to be construed with reference to the context and that enabled him to say that if an Income Tax assessment could now be made by the Centre alone then ''the whole State'' must refer to ''the whole State of India.''

But "the effect of a qualifying proviso according to the ordinary rules of construction is to except out of the proceeding portion of the enactment, or to qualify something enacted therein, which but for the proviso would be within it; and such a proviso cannot be construed as enlarging the scope of an enactment when it can be fairly and properly construed without attributing to it that effect." See - ''Duncan v. Dixon'' (1890) 44 Ch D 211 (215) (A), referred to at page 201 of Craies on Statute Law, 5th Edition.

8. Again the legislation in question is in respect of Municipalities and not in respect of Income Tax and the object of the clause in question was to adopt the figure ascertained under the Income Tax assessment for the purpose of Municipal assessment to profession tax. The District Municipalities Act was a law restricted to certain areas inside Travancore and therefore the Income Tax assessment which was thought of as relevant for the purpose of the proviso was the Income Tax assessment for the State of Travancore.

The non-user of the word ''Travancore'' in the proviso did not introduce any distinct conception and if that is so, it is difficult to understand how the words

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''the whole State'' can be read as ''Whole India,'' merely because Income Tax has been taken over by the Centre for the time being. Besides, what the proviso really provides for is the adoption of certain figures representing total profits as disclosed by an Income Tax assessment for a particular area. The emphasis is not upon the assessing authority but upon the assessable area. There is no reason therefore to interpret the assessable area with reference to a change in the assessing authority which has taken place.

In these Circumstances we think that the Interpretation contended for by learned Counsel for the Respondents is totally unsupportable. We hold that what was intended by the proviso was the ascertainment of the total profits of the company for the Travancore State area. And, if this has become impossible by virtue of certain constitutional developments, it follows that the proviso has become obsolete.

9. The Municipal Council in their final order disposing of the matter seem to think that Rule 18(2) was not equitable and the proviso had been enacted with a view to remedy certain injustice. Learned Counsel for the Municipal Council in unable to explain what exactly, these observations mean. We do not therefore-propose to say more on this aspect. We have already stated what, in our opinion, underlay the Rule.

10. It follows therefore that the Municipal authorities have misdirected themselves in applying the proper rule for purpose of ascertaining the income of the Petitioner-company which was liable to assessment for profession tax.

11. The point was raised by learned Counsel for Petitioner during the course of the argument that the interpretation of the proviso contended for by the Respondents involved an enhancement in the rate or maximum race of profession tax beyond Rs. 250 so as to make the assessment ultra vires the Constitution and he referred in this connection to Article 276 of the Constitution of India.

The argument was, that by interpreting the words for ''the whole State'' as the whole of India the Municipality would be getting within the purview of profession tax a certain proportion of all India income in respect of which they had otherwise no jurisdiction, inasmuch as a computation with reference to a ratio on the basis of State income would not be the same as computation on the basis of all India income. We are not clear as to how this constitutional question really arises on the facts of this case.

For one thing, it was not raised as an objection before the Municipality nor was it raided in the petition before us and as a matter of practice no objection which was not raised in the subordinate tribunal could be allowed to be raised in the High Court in a motion for certiorari. There is also no merit in the contention either. For there is no question involved in getting into the Act for purposes of assessment any case of income which lies outside or any enhancement of a rate beyond what is allowed by Article 276.

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The only question is the ascertainment of the proper basis of computation of the income earned Inside the Municipal area for assessment at rate already fixed before the Constitution and Article 270 does not impose any restriction on a pre-Constitution rate. We overrule this objection.

12. We think however that the Petitioner is entitled to win on the main question that Rule 18(2) of the Travancore District Municipalities Act, apart from the proviso, is the applicable rule in the case. We therefore issue a writ of certiorari quashing the assessment of the Petitioner-company as made by the Respondent Municipality under Ex. A order.

We have no doubt that in respect of the assessment for the future also the Municipality will apply only Rule 18(2). We do not think therefore, in the circumstances, that the issue of separate writ in the matter of the assessment to 1964- 55 is called for. The Respondents will pay the costs of the Petitioner, Advocate''s fee Rs. 150/-.

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