

(1951) 03 BOM CK 0015
In the Bombay High Court
Case No : Income-tax Ref. No. 3 of 1950

Jamnadas Prabhudas

APPELLANT

Vs

Commr. of Income Tax

RESPONDENT

Date of Decision : 28-03-1951

Acts Referred:

Constitution of India, 1950 — Article 14, 141, 245, 245(1), 372(1)
Income Tax (Amendment) Act, 1950 — Section 2
Income Tax Act, 1922 — Section 9(2)

Citation : AIR 1951 Bom 438 : (1951) 53 BOMLR 590 : (1952) ILR (Bom) 590 : (1951) 20 ITR 160

Hon'ble Judges : Chagla, C.J.;Tendolkar, J

Bench : Division Bench

Advocate : Sir Jamshedji Kanga, R.J. Kolah and N.A. Palkhivala, for the Appellant; C.K. Daphiary, Advocate-General and G.N. Joshi, for the Respondent

Judgement

Chagla, C.J.—In this reference we are concerned with a lease executed by the assessee on 30-5-1940, by which he gave a rent-farming contract to a particular party & under that contract he received a sum of Rs. 14,000 per month in respect of the various properties covered by the rent-farming contract. The question that the Tribunal has raised on this reference is whether the assessee is entitled to claim the sums paid as municipal property tax u/s 9 (1) (iv), Income Tax Act & the sums paid as urban property tax under either Section 9 (1) (iv) or Section 9 (1)(v) of the Act ?

2. Now this Court has taken the view that these amounts are not permissible deductions u/s 9 of the Act, New Piece Goods Bazar Co., Ltd. Bombay v. Commr. of Income Tax 49 Bom. L. R. 620. The Supreme Court took a different view & came to the conclusion that they were permissible deductions : New Piece Goods Bazar Go Ltd., v. Gommr. of Income Tax, Bombay 52 Bom. L. R. 764. Therefore, if nothing more had happened & if the judgment of the Supreme Court had stood, we would have been bound to answer this question in favour of the assessee, But the Union Govt. intervened & passed art Ordinance No. XXVIII

[28] of 1950 which has now taken the shape of an Act of Parliament Act LXXI [71] of 1950, & by Section 2 of the Ordinance & the Act it is provided:

"To Sub-section (1) of Section 9, Income tax Act, 1922 (hereinafter referred to as the said Act), the following Explanation shall be added, & subject to the provisions of Section 9 of this Act, shall be deemed always to have been added, namely : -

Explanation --For the purposes of Clause (iv) of this subsection, the expression, annual charge does not include any tax in respect of property or income from property levied by a local authority or a State Govt. or the Central Govt."

Therefore the effect of this Ordinance 4 Act was to restate the law as it was understood by this Court. If the Act is a valid piece of legislation, then Sir Jamshedji for the assessee does not dispute that he must fail on this question. But his contention is that this Act is void as offending against the various provisions of the Indian Constitution, & it is this contention that we have to examine because if the Act offends any provision of the Indian Constitution, then the Act would be void & the law would be as declared by the Supreme Court.

3. The first contention of Sir Jamshedji is that it is not competent to Parliament retrospectively to deal with a piece of legislation which was in existence prior to the coming into force of the Constitution, & this argument is based on the terms of Article 372 That article provides :

"(1) Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395, but subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority."

Sir Jamshedji puts his argument in this way. He says that it is because of Article 372 that laws which were in force prior to the coming into force of the Constitution have been saved & the laws have been saved in the form & in the shape in which they were at the date when the Constitution came into force. Sir Jamshedji adds that the power of Parliament is restricted to altering or amending these laws prospectively, but they cannot amend the laws which were in existence at a time when the Indian Parliament was itself not in existence. The Parliament which has come into existence as a result of our Constitution is a sovereign Parliament, it is sovereign within its own sphere, & its legislative competence is to be found in the various articles of the Constitution. It would not be proper to put any limitation or qualification upon the legislative competence of the Indian Parliament, unless we find some such limitation or qualification expressly laid down in the Constitution itself In the first place, the legislative competence of Parliament is to be found in Article 245. That article provides:

"(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, & the Legislature of a State may

make laws for the whole or any part of the State."

Therefore legislative competence is conferred upon Parliament in the widest possible terms. Then the following articles lay down what are the various subjects on which the Parliament & the State Legislatures can legislate. There is no dispute that as far as the subject matter is concerned, this particular law is within the sphere of the Indian Parliament. If the subject-matter is within the legislative competence of the Indian Parliament then there is no restriction placed upon its power to legislate in the whole field with regard to that subject under Article 245(1). Again, turning to Article 372(1), although the laws in force prior to the coming into force of the Constitution have been saved by Article 372(1), it must not be overlooked that the Legislature has been given the power to alter, repeal or amend any of these laws, & what the Indian Parliament has done by this Act is to amend a law which was in existence at the date of the coming into force of the Constitution & which was saved by Article 372(1). Article 372(1) does not lay down any limitation upon the power of the Parliament to amend a pre existing law. Its power of amendment is wide & untrammelled, & in the exercise of that power if the Parliament has chosen to amend the Indian Income Tax Act & to declare that the law was always what it has declared it to be, in our opinion that is perfectly within the scope & ambit of the powers conferred upon the Indian Parliament by the Constitution.

4. Our attention is then drawn to Article 141 which provides: "The law declared by the Supreme Court shall be binding on all Courts within the territory of India." Sir Jamshedji almost suggests that the power of the judiciary is so great under the Constitution that the law once declared by the Supreme Court cannot be altered or amended by any competent Legislature. Surely that is not the meaning of Article 141. When the Supreme Court declared the law, it declared the law on the basis of the Indian Income Tax Act as it then was, & so long as the Indian Income Tax Act continued to remain in the same form, undoubtedly the law declared by the Supreme Court was the law of the land & no one can question that law. But when the Parliament amended the law, then it was the amended law that became the law of the land & not the law as declared by the Supreme Court.

5. It is finally urged by Sir Jamshedji that this Act offends Article 14 of the Constitution which provides for equality before the law, & it is pointed out that an invidious exception has been made in the case of the appellant before the Supreme Court who succeeded in getting a judgment from the Supreme Court before 7-10-1950. It is argued that there is no reason why other assesses should have to pay the tax as provided by the amended law & an exception should be made in the case of a particular individual, who successfully carried his appeal to the Supreme Court & got the Supreme Court to hear his appeal. It is true that on the face of the law a discrimination has been made in favour of a particular assessee, & what we have to find is whether there was any reasonable basis for making this discrimination. It is quite a reasonable view which Parliament could

have taken & has taken that in the case of those assesseees who prosecuted their appeals & got a judgment before 7-10-1950, there should be some relaxation as far as the Income Tax law is concerned. They took the trouble to prefer the appeal, they took the trouble to prosecute it, they incurred costs, & they succeeded in getting a judgment from the Supreme Court. A possible view also was that the judgment of the Supreme Court should be respected, as it should always be respected, by the Legislature of the land, & although they dealt with future cases, the Parliament perhaps did not intend that the actual judgment delivered by the Supreme Court in a particular reference before them should be altered or modified by the law which the Legislature was passing. It does not seem to us that in making this exception a discrimination was made by the Legislature which cannot be justified as being on a reasonable basis.

6. The result therefore is that in our opinion the challenge made by Sir Jamshedji upon the Act as contravening any of the provisions of the Constitution cannot be sustained.

7. There is one more point in this reference, A notice of motion has been taken out by the assessee for asking the Tribunal to refer certain questions of law which according to the assessee did arise from the order of the Tribunal & which have not been referred by the Tribunal & the questions that are suggested in this motion arise out of an interpretation of Section 9 (2) of the Act. Now the tax on property is to be paid in respect of the bona fide annual value of the property & annual value is defined in Sub-clause (2) as meaning the sum for which the property might reasonably be expected to be let from year to year. Therefore, what the law contemplates is not the actual rent received by the owner of the property but a notional rent & the notional rent is to be gathered from what a hypothetical tenant would pay for the property under assessment. Undoubtedly, if actual rent is received, that would be an important factor for the taxing authorities to consider, but that would not in every case be the proper annual value as contemplated by the Act. Take a case like this. An owner of a property may let out his property to a tenant & enter into an agreement with him that all charges which are normally & ordinarily paid by the landlord should be paid by the tenant. In consideration of this, he may get much less rent than he would have got if he himself was liable to pay all these ordinary charges. Surely, it cannot be suggested that in a case like this the annual value of the property is the rent which the owner actually receives. He not only receives rent from the tenant but he receives other consideration in the shape of the tenant paying the charges for which he would be ordinarily liable.

8. Now, in this case, it has been found as a fact that although the assessee receives Rs. 14,000 from the lessee, he also receives other considerations & those considerations are set out in the order of the Income Tax Officer which is embodied in the statement of the case & these considerations are that expenses for current repairs, salaries of sweepers & payment of electric bills are all to be borne by the lessee. Ordinarily these would be borne by the landlord. The

Tribunal has also clearly stated in its judgment that the rent realised by the assessee is no doubt an important piece of material which was before it for deciding what was the bona fide annual value of this property. But it rightly points out that that by itself is not conclusive, & what it has accepted is the municipal valuation of this property. Sir Jamshedji's grievance is that the Tribunal was wrong in accepting the municipal valuation. Sir Jamshedji says that the Tribunal did not take the trouble to find out for itself what was the proper annual value, but it borrowed the opinion formed by the Municipality of the proper annual value. If the Tribunal had laid down as a principle that in every case municipal valuation should be the only determining factor, we would undoubtedly have interfered & we would have asked the Tribunal to state a question on which we would have laid down what the correct law was. But as far as this particular case is concerned, it is clear that the municipal valuation by itself has not been the only evidence which the Tribunal has considered. Not only that, but the Tribunal has not laid down that in every case the municipal valuation should be the only test that should be applied in order to determine what is the annual value of a property. As it happens, in this particular case on a consideration of all the factors the Tribunal has come to the conclusion that the proper annual value of the property is the value fixed by the Municipality. Under these circumstances we do not think any question of law arises which we should ask the Tribunal to refer to us.

9. The result is that the motion fails & must be dismissed with costs.

10. With regard to the question submitted to us, our answer must be in the negative. There will be no order as to costs on the reference.