
(1960) 03 CAL CK 0005

In the Calcutta High Court

Case No : Appeal from Original Order No. 49 of 1958

M. M. ISPAHANI LTD.

APPELLANT

Vs

UNION OF INDIA AND OTHERS

RESPONDENT

Date of Decision : 10-03-1960

Acts Referred:

Evidence Act, 1872 — Section 76
Income Tax Act, 1961 — Section 34(1A)

Citation : (1961) 43 ITR 58

Hon'ble Judges : Lahiri, C.J; Bachawat, J

Bench : Full Bench

Judgement

LAHIRI C.J. - Three points have been raised by Dr. Pal in this appeal against the order of P. B. Mukherji J. dated January 16, 1958, by which his Lordship has discharged a rule obtained by the appellant under article 226 of the Constitution. The appellant filed an application under article 226 of the Constitution for various reliefs including a mandamus directing the respondents to withdraw, cancel and revoke eight notices issued by the respondents u/s 34(1A) of the Indian Income Tax Act and also for a direction to give inspection of the materials in the possession of the respondents and the reasons recorded by the the Income Tax Officer, Central Circle XIII, for taking action under the aforesaid section. The facts which are undisputed are that the Income Tax Officer, Central Circle XIII, issued eight several notices against the appellant u/s 34(1A) of the Income Tax Act on June 15, 1955, in respect of assessment proceedings from the year 1940-41 to 1947-48 both inclusive. Section 34(1A) was introduced into the Indian Income Tax Act by the Indian Income Tax (Amendment) Act (XXXIII of 1954) and it is deemed to have come into force on July 17, 1954. It authorizes the Income Tax Officer to reopen the assessment of an assessee in respect of income, profits or gains for any year in respect of which the relevant previous year falls wholly or partly within the period beginning on the first day of September, 1939, and ending on the March 31, 1946. Two conditions must, however, be fulfilled in order that the Income Tax Officer may exercise his powers

under his section. The first one is that he must record his reason for taking action u/s 34(IA) and Central Board of Revenue must be satisfied on such reasons that his reasons for taking action u/s 34(1A) and the it is a fit case for the issue of such notice. The second condition is that the income, profits or gains which are likely to have escaped assessment for any year within the period specified above are likely to amount to one lakh of rupees or more. The appellant in its application under article 226 of the Constitution challenged the validity of the notices, inter alia, on three grounds : (1) section 34(1A) is violative of article 14 of the Constitution and, consequently, any action taken under that section is invalid; (2) that the assessee asked for a copy of the reasons recorded by the Income Tax Officer for taking action u/s 34(1A), but that copy was not supplied and, consequently, a direction should be issued upon the Income Tax Officer concerned to supply the assessee with a copy of the said reasons; and (3) that the assessment cases against the assessee were being dealt with by the Income Tax Officer, Companies District IV, but they were transferred en bloc without any notice to the assessee and, therefore, the order of transfer is void and inoperative.

Before P. B. Mukherji J. the only ground that was urged by the appellant was that the revenue sought to be realized was revenue belonging to the British Indian Government and it could be realized by its successor, the Indian Government, in the manner by which the British Indian Government could have realized it and within the time limit prescribed by the Indian Income Tax Act as it stood prior to the introduction of section 34(1). This point had been decided against the appellant in several cases recited in the judgment of P. B. Mukherji J. In view of the decisions in those cases Dr. Pal raised the three points, which I have already enumerated, in support of the appeal. Mr. Meyer appearing for the respondents has contended before us that the points taken in the appeal by Dr. Pal were abandoned by the the appellant by implication before the trial judge and so the appellant is not entitled to raise those points for the first time in appeal. Mr. Mitter who appeared in the trial court and who is appearing before us with Mr. Pal states that before the trial judge he did not expressly abandon any of the points taken by his client in its petition, but, in view of the opinion of the trial judge he did not press those points.

Out of deference to Dr. Pal we have allowed him to develop the points which his client has taken in its application under article 226 of the Constitution. The first point relates to the constitutional validity of section 34(1A) of the Indian Income Tax Act. Dr. Pal argues that it violates article 14 of the Constitution by selecting only the period between September 1, 1939, and March 31, 1946, for its operation to the exclusion of the earlier period. It is contended that if it was the intention of the Legislature to reopen assessments which had become final by lapse of time, provision should have been made for reopening all previous assessments irrespective of the question whether the relevant previous year falls within the period specified above. I have already said that section 34(1A) of the Indian Income Tax Act imposes two restriction upon the power of the Income Tax

Officer : (a) the relevant previous year must fall between September 11939, and March 31, 1946, and (b) the income which has escaped assessment amounts or is likely to amount to one lakh of rupees or more. No objection is raised by the appellant about the pecuniary restriction, but it is contended that the time-limit is arbitrary and discriminatory.

Authorities are numerous on the point that article 14 of the Constitution does not prohibit reasonable classification for legislative purposes. What it forbids is differential treatment of persons or things which belong to the same class or category. If a statute deals equally with all persons within the same class, it cannot be challenged on the ground of violating the equal protection clause. In all the decision of the supreme Court on this point it has been laid down that two condition must be fulfilled to satisfy the test of permissible classification : (1) the classification must be based on an intelligible differentia and (2) the differentia must have a rational relation to the object of the statute or, in other words, there must be a nexus between the differentia and the object of the statute. It is unnecessary to cite all the authorities bearing on the point. It is enough for the present purpose to refer to decision of the Supreme Court in the case of *Ram Krishna Dalmia v. Justice S. R. Tendolkar*, in which Das C.J. has made an exhaustive classification of all the cases decided by the Supreme Court under article 14 of the Constitution. There it has been pointed out that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles (see the observations in the above case at page 297)

For the purpose of deciding the first point I shall have to consider whether the Income Tax (Amendment) Act (XXXIII of 1954) satisfies the test laid down by the Supreme Court in the above decision and whether the assessee has established that there has been transgression of the constitutional principles. In order to determine the basis of the classification we have to consider the preamble to the Income Tax Act (Amendment) Act (XXXIII) of 1954 and also to consider the statement of objects and reasons for the purpose of ascertaining what was the evil which the statute intended to remedy. The preamble to the Amendment Act states that the object of the Act was to "provide for the assessment or reassessment of persons who have to a substantial extent evaded payment of taxes during a certain period and for matters connected therewith." The statement of objects and reasons, as published in the Gazette of India Extraordinary, part II, section 2, No. 41, dated September 3, 1954, page 535 shows that the object of the Bill seeking to amend the Indian Income Tax Act was to enable investigations to be made into certain cases of tax evasion during war-time. "A number of such cases has been referred to the Income Tax Investigation Commission u/s 5(1) of the Investigation Commissioner Act. A number of the cases was subsequently referred to the Commission u/s 5(4) of the Act. As the Supreme Court has held the latter provision to be invalid, an Ordinance had to be promulgated to amend the Indian Income Tax Act so as to provide for the application of the normal machinery to such cases." From this it is

clear that the Legislature selected the period between September 1, 1939, and March 31, 1946 because that was the period which coincided with the continuance of the Second World War which created abnormal conditions, caused a phenomenal rise in the prices of all commodities and thereby created opportunities for tax evasions on a large scale. If the Legislature selects such a period for investigation, it must be held that the classification is based upon an intelligible differentia.

The next question is whether there is a nexus between this differentia and the object of the statute. The object of the statute, as I have already said, is to provide for the assessment and reassessment of persons who have to a substantial extent evaded the payment of taxes and for the purpose of achieving that object section 34(1A) has authorized the Income Tax Officer, with the approval of the Central Board of Revenue, to issue certain notices and to take certain action. In my opinion, there is a rational relation between the differentia and the object of the statute. It is to be noticed that the assessee has stated nothing in its application under article 226 of the Constitution to show that it is similarly circumstanced with assessee in respect of assessment prior to September 1, 1939, and it has, therefore, completely failed to discharge the onus which lay upon it of proving that there was a clear transgression of the constitutional principles. For all these reasons I have no hesitation in overruling the first point urged by Dr. Pal in support of the appeal.

The second point taken by Dr. Pal is that the assessee has not been given a copy of the reasons which induced the Income Tax Officer to issue notices u/s 34(1A). It appears that by a letter dated July 13, 1955, the assessee asked the Income Tax Officer to give it an inspection of the records for the purpose of enabling it to comply with the notice u/s 34(1A) of the Income Tax Act. But this request of the assessee was not complied with by the Income Tax Officer. In the application under article 226 there is a prayer for a mandamus directing the Income Tax Officer to give inspection of the material in his possession, the reasons recorded by the Income Tax Officer and the order or direction of the Central Board of Revenue expressing its satisfaction upon the reasons given by the Income Tax Officer. Before this court Dr. Pal based his right to get a copy of the reasons of the Income Tax Officer entirely upon section 76 of the Indian Evidence Act. According to that section, "every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefore." There is no averment in the application under article 226 of the Constitution to the effect that the copy asked for is in the custody of the respondents or any of them. Mr. Meyer has contended before us that the executive head of the Income Tax Department in the State of West Bengal is the Commissioner of Income Tax, West Bengal, who has not been impleaded in the present proceeding. He has also argued that the reasons recorded by the Income Tax Officer u/s 34(1A) of the Indian Income Tax Act were presumably forwarded to the Central Board of Revenue and the record of reasons is presumably in the custody of the Central

Board of Revenue which has not also been impleaded in the present proceeding. The point was not raised by the appellant in the trial court and, in the circumstances of this case, it is impossible for us to give any relief to the appellant in this respect. In this view of the matter, it is unnecessary for us in the present case to decide the question whether the record of reasons of the Income Tax Officer is a public document within the meaning of section 76 of the Indian Evidence Act or the assessee had a right to inspect the same.

The third point raised by Dr. Pal relates to the validity of the action, taken by the Income Tax Officer after the order of transfer and before the coming into operation of the Explanation to section 5(7A) of the Indian Income Tax Act. It is conceded on both sides that the order of transfer in the present case was passed on January 19, 1955, and the notices were issued on June 15, 1955, and the Amendment Act by which the Explanation to sub-section (7A) of section 5 of the Indian Income Tax Act came into operation was in June, 1956. Dr. Pal's argument is that since the notices were issued prior to the coming into operation of the Explanation to sub-section (7A) of section 5 of the Indian Income Tax Act, the notices are invalid. It is to be noticed, however, that the amending Act which introduced the Explanation to sub-section (7A) of section 5 provides that the Explanation "shall be deemed always to have been there." In view of the language of the amending Act by which the Explanation was introduced, all acts done prior to the date of coming into operation of the Explanation must be deemed to be valid, because by a fiction the Explanation is supposed to be a part of sub-section (7A) of section 5 from the beginning. The observation made by Lord Asquith in the case of the East End Dwellings Co. Ltd. v. Finsbury Borough Council, cited before us by Mr. Meyer, supports the above conclusion. There Lord Asquith stated the law in the following terms :

"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it."

Dr. Pal also argued before us that the order of transfer is bad in law, because no notice of the proposed transfer was given to the assessee. This ground is taken by the appellant in ground No. (xxx) of the application under article 226, but there is no averment in the application to the effect that the notice was not served upon the appellant and there is, therefore, no averment that on account of the non-service of notice the assessee was prejudiced in any way. Ground No. (xxx) forms part of paragraph 20 of the application which, according to the verification, is a submission made by the appellant to the court and it is not therefore properly verified. This point was not also raised before the trial court and no ground has been taken on this point in the memorandum of appeal. The point, therefore, must be held to have been abandoned by the appellant.

As all the points urged in support of the appeal fail, this appeal must be and the same is hereby dismissed with costs.

The interim order will stand vacated.

Certified for two counsel.

BACHAWAT J. - I agree.

Appeal dismissed.